
Appeal Decision

Site visit made on 20 April 2022

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2022

Appeal Ref: APP/D1780/W/21/3284238

Land rear of 124 - 128 Upper Shaftesbury Avenue, Southampton SO17 3RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr B Shanker against the decision of Southampton City Council.
 - The application Ref 21/00751/FUL, dated 7 May 2021, was refused by notice dated 9 July 2021.
 - The development proposed is to erect 2 bedroomed bungalow (within Class C3) with associated bin and bicycle stores, following demolition of existing garage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the refusal of the planning application, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. I have taken the revised Framework into account where relevant to my decision.

Main Issues

3. The main issues are:
 - The impact of the proposal on the character and appearance of the area; and
 - The impact of the proposal on the living conditions of the occupiers of Nos. 124 – 128 Upper Shaftesbury Avenue (USA), having regard to outlook impacts and the provision of private outdoor living space.

Reasons

Character and appearance

4. The appeal site comprises a flat, rectangular-shaped parcel of land which fronts onto Kitchener Road, within an established residential area to the northeast of the city centre. It is occupied by a detached pitched roof garage which is accessed via Kitchener Road.
5. The site formerly comprised parts of the rear gardens of three residential properties at 124 – 128 USV, and has been severed from these sites since 2010, according to the appellant. It is fully enclosed by timber fencing and the side wall of the adjacent two storey house at No.76.

6. The immediate locality is characterised by semi-detached and terraced two-storey residential properties fronting onto the street, positioned at right-angles to the street and within close proximity of the road frontage. Plots tend to be rectangular-shaped, long and narrow. A perimeter block layout includes long residential rear gardens which back on to each other, providing a spacious and distinct separation between linear rows of street-facing dwellings in different roads.
7. This applies to back-to-back street-facing properties, including those in Kitchener Road and Sirdar Road, as well as perpendicular arrangements of groups of properties. The appeal site contributes to the retention of a distinct gap between the road-facing properties on the east side of USV and those fronting onto Kitchener Road, reflecting the original, spacious arrangement of linear built development.
8. Buildings within rear gardens generally comprise single storey structures of a design, height and scale which reflects their function as ancillary domestic outbuildings. The existing garage on the appeal site accords with this pattern of development. Its size is such that it has an unassuming appearance within the street scene, and it is largely screened from Kitchener Road by frontage fencing. As such, it has not fundamentally altered the established layout of residential development within the site vicinity, and it has a presence within the townscape of a subsidiary building to the rear of 124 USA.
9. The appeal site has a planning history of refused applications for different schemes in respect of its redevelopment with a single dwelling. In particular, my attention has been drawn to the most recent scheme which was dismissed on appeal¹ in 2014. The appellant has sought to overcome the appeal Inspector's concerns, and I have taken this appeal decision into account in my determination of the current appeal.
10. The scheme before me differs from that of the previous appeal, which related to a detached two-storey contemporary dwelling, with an asymmetrical pitched roof, and narrower, more vertical, building proportions than that of the currently proposed bungalow. Whilst incorporating land to the rear of Nos. 124 – 128 USA, the proposed plot tapered, having a narrower width than that currently proposed for most of its depth.
11. As such, the current proposal would have a different relationship with the adjacent property at No.76 than the dismissed scheme, having regard to plot and building width differences, which would not be as marked as in the previous scheme. In addition, the current scheme would address the previous inspector's concerns in respect of the contemporary appearance of the former proposal appearing incongruous within the street.
12. However, notwithstanding the above, I share the concerns of the previous appeal Inspector in respect of the principle of extending the Kitchener Road frontage in its own right. In extending to match the depth of the adjacent house at No.76, and being sited within close proximity of the side wall of that property and the existing fencing along the rear of Nos 124 – 126, the new building would result in an unduly cramped form of built development which would result in a significant erosion of the space between the linear residential

¹ APP/D1780/A/13/2202272

- developments in Kitchener Road and USA. This would be out of keeping with the spacious regular layout of development characteristic of the site locality.
13. The proposed replacement of the garage with a single storey, detached dwelling would present a significantly different appearance within the Kitchener Road street scene. It would comprise a notably wider building form, with a more overtly residential design compared to the existing garage, together with a formalised parking, bin storage and front entrance door to the street. It would involve the removal of a large section of the close-boarded fencing fronting Kitchener Road, which currently serves to reinforce the existing arrangement of built development on the appeal site having the appearance of relating to subsidiary rear garden development in respect of property in USA.
 14. The proposed bungalow design would be at odds with the surrounding two-storey terraced and semi-detached dwellings characteristic of the locality. In terms of its height and scale, the proposed built form would appear disproportionately small in comparison with the semi-detached two-storey buildings within Kitchener Road. The incongruous and congested appearance of the appeal scheme would be particularly noticeable due to its much smaller building size, and its narrower building and plot widths in comparison to No.76 adjacent. The result would be a visually discordant design and size of dwelling, and a layout of built development that would harmfully erode the established pattern of built development along this part of Kitchener Road and USA.
 15. Whilst the rear gardens of Nos 124-128 USA have been severed for a number of years, there is no evidence before me that a formal application for a certificate of lawfulness has been determined by the Council prior to the planning application. It is not for me, under a section 78 appeal, to determine whether or not the severance of the appeal site is lawful. To that end, it is open to the appellant to apply for a determination under sections 191/192 of the Act, and my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 regardless of the outcome of this appeal.
 16. I have had regard to the development at 89/89A Sirdar Road, taking account of the appellant's email to the Council confirming that the plot depth of this site is shorter than that shown on the planning application site block and location plans. I note that this development, which resulted in shortened rear gardens for the adjacent properties in USA, formed part of the prevailing townscape at the time of the previous dismissed appeal.
 17. Whilst the current appeal scheme plot width and depth is comparable with those of that development, the built form of that development is notably different from that of the appeal scheme. 89/89A Sirdar Road comprises a two-storey flats property, of a comparable scale, height, massing, width and roof form to those of other dwellings within that street. As such, the building is in keeping with the townscape of that road.
 18. Moreover, that scheme was approved under a different planning policy context, prior to the introduction of the Framework, which attaches high importance to achieving well-designed places, and prior to the adoption of the current relevant Development Plan policies. As such, that scheme does not alter my conclusions on this main issue or justify allowing the current appeal.

19. The appellant has referred to a dwelling at No.89 USA, which has resulted in shorter rear gardens to Nos. 1–7 Granby Grove. I do not consider that this development, which comprises a detached two-storey dwelling in keeping with the scale and design of nearby houses, and which formed part of the original layout of housing in the area, to be directly comparable to the circumstances of the current appeal scheme, nor to justify coming to a different view in respect of the appeal proposal.
20. My attention has also been drawn to a number of existing bungalows within the locality at 2–8 Sirdar Road, 5–9 Kitchener Road, and rear of 599 Portswood Road. The first two examples comprise rows of similarly designed, detached bungalows which formed part of the original townscape, and are located at the eastern ends of their roads close to Portswood Road, where there is a greater variety of styles of built development. I have not been provided with the details of the planning history of the latter, but this also falls within the same, more mixed-style residential area. As such, I am not persuaded, on the basis of the evidence before me, that the circumstances of these single storey dwellings are directly comparable with those of the current appeal scheme.
21. I have also had regard to an allowed appeal², referred to by the appellant, in respect of a new bungalow at 52 Chatsworth Road. That site is located in a different part of the city, within a row of residential properties rather than at the end, and within a less consistent townscape, comprising a mix of semi-detached and detached two-storey dwellings and single storey bungalows, and where infilling has resulted in a more closely developed frontage and differences in plot width, size and density. As such, the circumstances are notably different to those of the current appeal. As such, this decision does not alter my conclusion in respect of the current appeal, which I must determine on the basis of the particular circumstances of the appeal site, and on the merits of the scheme before me.
22. For the above reasons, I conclude that the proposal would have a detrimental impact on the character and appearance of the area. As such, the appeal scheme would be contrary to Saved Policies SDP7 and SDP9 of the *City of Southampton Local Plan Review* (2015) (the LPR), Policy CS13 of the *Local Development Framework Core Strategy Development Plan Document* (2015) (the CS) and Sections 2 and 3 of the *Residential Design Guide Supplementary Planning Document* (2006) (the RDG). These policies and guidance, amongst other aims, require new development to be of a high-quality design, respond positively and integrate with its local surroundings, including in respect of scale, massing and visual impact, and not materially harm the character and appearance of an area.
23. For similar reasons, the proposal would also be contrary to Policies of the Framework which seek to achieve well-designed places, as set out in Chapter 12.

Living conditions

24. Notwithstanding that the appeal site has been severed from the rear gardens of Nos. 124–128 USA, there is no substantive evidence before me that the land can be lawfully used for any other purpose other than in association with the residential uses of those properties. As such, the appeal scheme would result in

² APP/D1780/W/21/3267276

a reduction of the private rear garden space associated with these properties. Moreover, whilst the information before me is that these sites are currently in use as HMOs, as confirmed by the Council's public register of licensed HMOs, I have not been provided with evidence that these uses are lawful.

25. As such, I consider it reasonable that the Council applies the minimum garden sizes in relation to houses, as set out in RDG, in assessing whether the appeal scheme would provide satisfactory living conditions for the occupiers of those properties, having regard to private outdoor living space. The proposal fails to accord with the minimum garden depth and garden size requirements of the RDG in respect of all three of these neighbouring properties. I consider these standards to be appropriate, having regard to the family dwelling size of the properties, and the typical requirements of occupiers of properties of this size, which include sitting out, outdoor dining and the provision of outdoor play and drying facilities. I have noted that this matter was not an issue considered by the 2014 appeal Inspector, but also that the previous appeal scheme proposed a greater retained garden depth for these properties.
26. The proposed bungalow would result in a larger building which is sited closer to the rear boundaries of Nos. 124–126 than currently exists in respect of the existing garage on the appeal site. However, taking into account the proposed low eaves height of the bungalow, its shallow hipped roof form, which slopes away from the western site boundary thereby minimising overbearing impacts, and the juxtaposition of the new building so that it would not align with the full rear boundary of either 124 or 126, I consider that the proposal would not unduly impact on the outlook from the rear gardens of these properties.
27. For the above reasons, whilst I am satisfied that there would be no harm in respect of outlook impacts, I conclude that the proposal would not provide adequate living conditions for the occupiers of Nos. 124-128 USA, having regard to the provision of private outdoor living space. As such, the appeal scheme would not accord with LPR Policy SDP1 and the RDG, in so much as this policy and guidance seek to ensure that new development respects the amenity of the city's citizens.
28. This is generally consistent with paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Other Matters

SPAs

29. The site lies within the Zone of Influence of the Solent SPAs and the New Forest SPA, SAC and Ramsar site (the European Sites), where a net increase in housing development is likely to result in impacts to the integrity of these sites, requiring the inclusion of a package of avoidance/mitigation measures to address these effects.
30. This matter does not constitute a reason for refusal, and the Council's Delegated Report confirms that mitigation will be secured through a contribution in accordance with the adopted Solent Recreation Mitigation Strategy (which has already been made by the appellant) and a CIL contribution towards Suitably Accessible Green Space.

31. However, in the context of this appeal, the responsibility for assessing the effects of the proposal on the European designated sites falls to me as the competent authority. Were I minded to allow the appeal, I would need to carry out an Appropriate Assessment (AA), since the proposal would be likely to have a significant effect on the SPAs. However, as the main issues provide clear reasons for dismissing the appeal, I have not had cause to pursue undertaking an AA. As such, I do not need to consider this matter further, since any findings on this issue would not change the appeal outcome.

Planning Balance

32. The Council has confirmed that it is unable to demonstrate a five-year supply of deliverable housing sites. It considers that it has a 4.53 year supply. As such, paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five-year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.
33. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well, in that it would be within a designated settlement boundary, where access to facilities and public transport connections is likely to be greatest.
34. One additional dwelling would make a small contribution towards the Council's housing supply, and it could be built out relatively quickly, having regard to Paragraph 69 of the Framework. There would be economic benefits as a result of the construction of the dwelling, and economic and social benefits as a result of its future occupation. By providing a modest, single storey unit, which would suit first time buyers, elderly downsizers, or mobility-impaired occupants, the proposal would also contribute to the Framework objective of creating mixed and balanced communities.
35. The Council has raised no objection to the appeal scheme in respect of matters including the principle of development, highway safety and parking, the living conditions of future occupiers of the development, on-site biodiversity and flood risk. In terms of the planning balance, the lack of identified harm is a neutral factor that does not diminish the significant harm that would arise from the proposal in respect of the impact on the character and appearance of the area and the living conditions of neighbouring occupiers.
36. I acknowledge the proposed incorporation of sustainable design elements and the appellant's intention to enhance on-site biodiversity and landscaping, including the planting of trees. However, these are requirements of current national and local planning policies in any case, and do not outweigh my conclusions on the main issues.

37. The deficit in the Council's supply of housing is not acute. Moreover, a high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area and the living conditions of neighbouring occupiers would be significant. As a result, the social objectives of sustainable development, of fostering well-designed and beautiful places and providing a good standard of residential amenity, would not be achieved.
38. Whilst the Framework encourages the effective use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harm that I have identified in respect of the main issues.
39. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits, and the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

40. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR