
Appeal Decision

Site visit made on 16 December 2021

by J P Longmuir BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal Ref: APP/U3935/W/21/3281658

Land adjacent to 85 Clifton Street, Swindon, Wiltshire SN1 3PZ

- 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 Michael O'Brien against the decision of Swindon Borough Council.
 - The application Ref S/20/0063/TB, dated 14 January 2020, was refused by notice dated 13 May 2021.
 - The development proposed is erection of 6 flats and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 6 flats and associated works on land adjacent to 85 Clifton Street, Swindon, Wiltshire SN1 3PZ in accordance with the terms of the application, Ref S/20/0063/TB, dated 14 January 2020, subject to the conditions in the conditions annexe at the end of this decision.

Procedural matters

2. The above description is taken from the appeal form as the proposal changed during the course of the application, being originally for 4 dwellings. The Council determined the application on that basis and I have considered the appeal similarly.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on heritage assets including the Town Gardens Conservation Area;
 - the effect of the proposal on biodiversity;
 - the effect of the proposal on the management of surface water;
 - whether the proposal would provide acceptable living conditions for the intended occupants with particular regard to air quality and noise and;
 - the effect of the proposal on the living conditions of the occupants of the adjacent dwelling No. 85 with particular regard to privacy, light and outlook.

Reasons

The effect on character and appearance

4. The appeal site is within a suburb of Swindon, approximately two miles from the town centre. The appeal site itself is at the end of the residential Clifton Street, by its junction with Kingshill Road, which is a busy through route.
5. Clifton Street is characterised by its Victorian style houses close to the road. There is a wide range of walling and roofing materials and design. Many appear to have had contemporary changes including replacement windows and large box dormers on the front elevations.
6. The appeal site appears as a former garden from the nature of the shrubs and grass. There is a scatter of semi-mature indifferent trees largely to the rear of the site, where there is also a vertical bank and rocky outcrop. Above this, prominently, are two houses with large horizontally orientated windows and deep plan form suggesting a 1970s style.
7. The appeal site frontage is surrounded by timber fence panels which are approximately 2 metres high. These have remnants of paper signage and apparently have previously accommodated hoardings. There are several elements of graffiti and at one point the panels have fallen over into the site.
8. The proposed buildings would be sited in a row following the building line and alignment of Clifton Street. Accordingly, they would emulate its form and continue the frontage towards the junction with Kingshill Road. Thus, the proposal would appear appropriate in terms of its pattern of building.
9. The rear of the site has a steep bank which curtails any sense of openness, and the 1970s style houses above emphasize a sense of enclosure. The appeal site is part of the view from Kingshill Road into Clifton Street but any openness from this aspect is abruptly curtailed by the side wall of the neighbour at No. 85.
10. The width of the buildings would be modest and reflect those in Clifton Street. The proposed buildings would end with a full hipped roof, which would not only reflect the adjacent house, No. 85, but also appear to differentially step down towards Kingshill Road. The openings to the side are narrow and arched and modest in relation to the size of the elevation. They would give the side elevation some interest whilst not being overly strident to detract from the form of the Clifton Street building line.
11. The front of the buildings would have typical Victorian detailing, in terms of bays, arched windows and entrance doors, which with chimneys would re-assert the character of Clifton Street. I note the Council expressed concern about juliet balconies to the rear, but these are very small scale, simple, in line with the windows and would appear subservient with the rear elevations.
12. The area is characterised in part by its long terraces and the proposal would in a similar vein extend the Clifton Street frontage. Indeed, the proposal would complete the frontage, whereas at the moment the appeal site appears as a void, in an area typified by strong building lines.
13. In addition, the submitted layout shows significant space would be left at the side of the site, by the prominent Clifton Street/Kingshill Road junction. The

proposed buildings would also be small, narrow width and stepped up the hill. Consequently, the massing along the frontage would be well broken and not appear cramped.

14. For the reasons above I conclude that the proposal would not harm the character and appearance of the area. Policy DE1 of the adopted Swindon Borough Local Plan (LP) promotes high quality design and respect for the context. The Swindon Residential Design (SPD) Guide promotes the contextual appraisal of sites and response to character. It provides guidance on suburban townscape elements. The proposal would not be in conflict with these policies and guidance.
15. The policies are broadly consistent with the National Planning Policy Framework (the Framework). Paragraph 126 requires the creation of high quality, beautiful and sustainable buildings. Paragraph 130 refers to the need to establish or maintain a sense of place and for development to be sympathetic to local character and be visually attractive. The proposal would not be in conflict with these national policies

The effect on heritage assets

16. The appeal site is just inside the Town Gardens Conservation Area, but the rest of Clifton Street is excluded; the two 1970s style houses to the rear are included. The 2008 Conservation Area appraisal characterises the designated area as a hillside residential location focussed on an urban park. It has a distinct street pattern with terraces and larger detached dwellings in spacious gardens. The appraisal notes the variety and quality of the architectural detailing. The designation recognises the Victorian interest, but the appraisal does not mention the appeal site.
17. The nearby listed Kingshill House is noted in the appraisal as an early villa in extensive grounds. The properties on the other side of Kingshill Road are included, which are high above the road and their thoughtfully planted gardens are a discernible feature, filtering the views of the houses behind. Thereafter the Conservation Area has a mix of characteristic terraces and large individual dwellings set in spacious gardens.
18. As stated earlier, the removal of the timber boarding around the site's frontage, which looks oppressive and unsightly, would improve the character and appearance of the Conservation Area.
19. The Conservation Area is characterised in part by its long terraces and the proposal would complete the Clifton Street frontage. In addition, the detailing of the buildings would help reassert its Victorian style.
20. The listed Kingshill House is distinct from the appeal site and has its own grounds which form its setting. I have not been made aware of any historic or cultural connection with the appeal site and the proposal would not harm its setting. The Council had no objection on this aspect.
21. I therefore find that the proposal would preserve and enhance the character and appearance of the Conservation Area. Consequently, the proposal would accord with Policy EN10 which seeks to conserve and where appropriate enhance the significance of heritage assets and Paragraph 199 of the Framework which requires that great weight is given to the conservation of heritage assets.

Biodiversity

22. A field survey was undertaken in December 2020, which is not at the optimal time of year for noting the presence of species. Nonetheless the survey looked at the potential for species, the particular habitat present and characteristics of the site.
23. The submitted ecological assessment refers to the appeal site as an 'urban garden', in part cultivated and in part informally managed. The grassland is recorded as species poor. The rear of the site includes a rock outcrop where the above assessment notes there has been substantial cutting back of vegetation. Similarly, the submitted arboricultural report also confirms that there has been considerable tree pruning. Thus, the site has been prone to disturbance and vegetation clearance which would limit the significance of any flora and the habitat on the site.
24. The adjacent Kingshill Road forms a discouraging barrier to the movement of wildlife due to its wide tarmac expanse and busy vehicular traffic. Similarly, this is also the case at the other boundary, Clifton Street, albeit it is less busy but is nonetheless wide with parked cars. The garden to the north is largely segregated by a brick boundary wall and the neighbour's extension. There is a local nature reserve at Radnor Street Cemetery approximately 222m to the north, however there are many houses and a road in between which would impair the connectivity with the appeal site. Thus, the site is constrained in its relationship from other ecosystems, which would limit its potential value.
25. The ecological assessment considered the potential habitat for bats on the site, including the rock outcrop and trees but no likely openings were found, and similarly no potential roosts were identified in any trees. Indeed, there is a tall street light adjacent to the site and the likely spillage and glare would be across the site's frontage. The report concludes that there is a negligible risk to bats. Additionally, no evidence was found of current badger activity and that would be unlikely within such an extensive residential area.
26. The site has been cultivated and used as garden, which would limit the likelihood of any significant wildlife interest. Additionally, the site has constrained connectivity for the movement of wildlife, disturbance from roads and there is no official record of any notable or protected species on the site. Therefore, considering all of the above, a full survey at the optimal time would not be warranted.
27. The submitted arboricultural report shows that the predominance of the existing trees are to the rear of the site, away from the siting of the proposed buildings. Similarly, the submitted layout shows that the majority of the trees on the site would be retained and the ones being removed are to the front of the site which are small. The survey also shows the opportunity for new planting to the side of the site. The rock outcrop would also remain.
28. The ecological appraisal makes specific recommendations on tree planting particularly for birds. The report also makes recommendations for biodiversity including bat and bird boxes, wildflower mix, reptile hibernaculum, invertebrate habitat and a living green wall on a proposed retaining gabion. I find that the above together with the purposely selected tree/shrub planting would all potentially lead to a net gain.

29. I therefore conclude that the proposal would not be harmful to the existing ecology and there would be opportunities for a more diverse habitat to be created, the details of which could be secured by condition.
30. The proposal would not therefore be in conflict with Policy EN4 of the LP and Paragraph 179 of the Framework, in so far as they seek to protect and enhance biodiversity.

Surface water

31. The site currently has grass and vegetated surfaces which absorb surface water run-off and help lower lying parts of Swindon in adverse weather, although the submitted drainage strategy and SUDs Statement show that past flooding has been considerably distant from the appeal site.
32. The report advocates porous block surfaces for the access and a tank below ground for the water run-off from the houses. This would slow the discharge of water run-off during peak events.
33. An addendum shows the potential use of hydrobrakes and the passage of surface water in the event of rainfall in excess of the site's permeability.
34. It is evident from the strategy that measures can be put in place and a condition would allow the submission of further details to ensure measures would have sufficient capacity.
35. I therefore find that the proposal in terms of surface water disposal would not be harmful.
36. The proposal would not therefore be in conflict with Policy EN6 of the LP and Paragraph 167 of the Framework, in so far as, they seek to control surface water run-off, require development to provide a drainage strategy and seek to avoid increasing flood risk elsewhere.

Living conditions of the intended occupants

37. Part of the appeal site edges into an Air Quality Management Area, which is based around Kingshill Road. This follows a February 2018 finding that Nitrogen Dioxide levels were high. The Council in accordance with the Local Air Quality Management Policy Guidance (LAQM.PG16) has produced a Draft Air Quality Action Plan. The report identifies road traffic as the primary source and various traffic management measures are under consideration: the two key priorities are to reduce traffic flow and facilitate more sustainable travel. Kingshill Road is orientated away from the prevailing wind and is enclosed by houses, so the air does not dissipate. LAQM.PG16 highlights the human health impairment from Nitrogen Dioxide.
38. An air quality survey was submitted with the planning application but did not include analysis from the nearest monitoring point, which recorded excessive nitrogen dioxide levels. The appellant's statement of case recognises this omission and states a commitment to provide mechanical ventilation with appropriate nitrogen dioxide air filtration.
39. The Council acknowledge the suggested condition but express concern that the details have not been provided and it would not mitigate pollutants in the garden areas.

40. A suitably worded condition could require that comprehensive details of the ventilation and filtration are approved by the Council. Thus, the manufacturers technical specifications could be worked into a scheme by the appellant's specialists in collaboration with the Council Officers. A condition could require installation prior to occupation and maintenance thereafter. Both such conditions would meet the tests in paragraph 56 of the Framework.
41. Whilst the air would be less fresh from this mechanical ventilation than that from natural ventilation and require the closure of windows, it would achieve satisfactory air quality. This would remedy the air quality intake into the buildings and is one of the potential measures highlighted in the Air Quality Planning Practice Guidance (PPG) and Air Quality Management (IAQM) planning guidance.
42. The garden areas would be to the rear and so would be shielded by the two storey walls and roofs of the new buildings. Moreover, the gardens would be more likely to be used as setting rather than for extensive periods of time and therefore would be less critical than the interior. Purposeful planting of particular trees would also help air quality as suggested in the PPG.
43. The proposal itself would lead to a minimal increase in traffic bearing in mind the numbers using Kingshill Road and so would not materially exacerbate air quality.
44. I note the concerns from local residents about road noise, but the interior noise would be addressed by non-opening windows and appropriate glazing. This would be capable of being controlled by condition.
45. I therefore conclude that the proposal, would provide acceptable living conditions for the intended occupants. The proposal would not conflict with Policies DE1 and EN7 of the LP, in so far as, they seek to protect amenity in terms of light, privacy, outlook, noise, disturbance, smell, pollution and protect people from emissions of pollutants. The Air Quality Action Plan from 2019-2024, relies upon the published 2018 draft which is intended for consultation rather than a finalised document. The actions promoted include signage, restrictions on heavy vehicles and promotion of alternative means of travel. The proposal would not be in conflict with the aims of the Action Plan because of the accessible location for the occupants.
46. Paragraph 185 of the Framework requires new development is appropriate for its location taking into account the effects on health. Paragraph 186 of the Framework highlights Air Quality Management Areas, within which any new development should be consistent with the local air quality action plan. The Local Air Quality Management Policy Guidance (LAQM.PG16) highlights the significance of Nitrogen Dioxide to human health and similarly the Air Quality Planning Practice Guidance (PPG). The proposal would not be in conflict with the above policies and guidance subject to appropriate conditions.

The living conditions of the occupants of the adjacent dwelling No. 85

47. No.85 has windows fronting Clifton Street and the original part of the building has no side windows towards the appeal site. A single storey offshoot has been built to the rear and appears very close to the line of the common boundary. This offshoot has glazing in the door facing towards the frontage. There are also side windows which overlook the appeal site, which is open at this point. I

- understand that the extension is used as a kitchen and the proposal has potentially shadowing and privacy implications.
48. Firstly, in terms of shadowing the submitted layout shows that one of the neighbouring windows and the entrance door would be close to the proposed buildings. This would result in some overshadowing but the extension is not deep so some daylighting would remain. The other window would be away from the buildings so would also provide some daylighting. I therefore find that the overall overshadowing impact would be very limited.
49. Secondly there is potential overlooking between the gardens of the new dwellings and the neighbouring windows, as the common boundary is open at the present beyond the extension. A new boundary would ensure privacy, although the precise detail would need consideration to allow some lighting to the window. The Council recommend a condition on the submission of boundary treatments, and the details could be decided by the parties at that stage, if I was minded to allow the appeal.
50. Similarly, a privacy screen is shown on the submitted layout which would deter overlooking between the neighbouring windows and the rear of the new buildings.
51. The decision notice also refers to the visual dominance of the proposal. However, the buildings would be sited largely to one side of the neighbouring facing windows, and more tangentially rather than directly in view. Consequently, the proposal would not be significantly overbearing.
52. I therefore conclude that the proposal would lead to some overshadowing to No. 85, albeit that harm would be very limited. In this respect the proposal would be in conflict with Policy DE1 of the LP which seeks to protect daylighting and similarly, the SRD Guide. The proposal would not be in conflict with the policy in terms of privacy.

Other matters

53. I have also had regard to the representations made by local residents concerning highway safety. However, the site has good visibility and so any vehicle manoeuvring would be seen. In addition, Clifton Street is a 20mph zone so speeds would be expected to be low.
54. The proposal is intended to only have parking for visitors. I acknowledge local residents feel that this would be inadequate. However, the site is in close proximity to facilities where the occupants would be able to walk. Similarly, in such an urban area it would be reasonable to expect public transport to be adequate. The proposed dwellings are small and may well be attractive to those who are not car dependent. I note the concerns about parking pressures, but I have not been presented with evidence that there is a significant shortfall and the operation of the residents parking scheme and use of spaces at Clifton Road/Ashford Road for electric charging points are matters of their management.
55. There is a concern about the structural stability of the rear bank. However, the proposed building is to the front of the site and the ground works would be specified at the building regulations stage.

56. There is a comment about waste and recycling bins. However, the submitted layout shows there would be space for such storage.

Planning balance

57. The Council is not meeting its 5 year housing land supply requirement. The application of policies that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development. Therefore paragraph 11(d) of the Framework is not disengaged by 11 d) i.
58. The proposal would detract from the neighbouring kitchen, largely at times of sparse daylight and would not make it unusable. As I found earlier that impact would be very limited.
59. As above, I have found conflict with the Development Plan in terms of the living conditions. However, in all other respects the proposal would be in accordance. The inadequate housing land supply questions the appropriateness of the housing policies but the strategy of protecting living standards is still sound and consistent with the Framework. The adverse impact must be weighed against the benefits of the proposal.
60. Paragraph 8 of the Framework provides the three overarching objectives of the planning system: economic, social and environmental. The proposal would provide 6 dwellings which would have economic benefits from their construction and the residents would be well placed to support local services and facilities. The new dwellings would be a modest contribution towards the 5 year housing land supply requirement. The support to local services would also be a social benefit. The impairment to living standards would be contrary to the social objective, but the impact would be very limited. The proposal would preserve and enhance the Town Gardens Conservation Area. The proposal has the potential to enhance biodiversity, thereby meeting the environmental objective.
61. In the light of the above, I therefore conclude that the adverse impact of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The benefits of the development are a material consideration which would outweigh the conflict with the Development Plan.

Conditions

62. Paragraph 56 of the Framework and the Planning Practice Guidance (PPG) provide the tests for the imposition of conditions. The timing condition and compliance with plans help provide clarity. Slab levels, materials and hard/soft landscaping ensure a satisfactory appearance. The provision of electric charging points is necessary in the interest of the wider environment, promoting a more sustainable mode of transport.
63. A condition is necessary to secure the biodiversity improvements, but the suggested condition is widened to confirm the details of the habitat enhancement measures that could be secured. External lighting would also need to be controlled in the interests of ecology.

64. As I found earlier air quality measures are necessary to provide satisfactory living conditions. Similarly, the requirements for submission of details of boundary treatments are necessary in the interests of living conditions and is so imposed. The implementation and retention of the timber privacy screen is also required to prevent overlooking albeit that its height and detailed construction need to be clarified by submission and approval of details. The Construction Management Plan is necessary to safeguard living conditions bearing in mind the proximity of neighbouring dwellings. A condition to ensure acceptable internal noise limits is necessary to provide acceptable living conditions for future occupiers.
65. The submission of details of surface water management measures are necessary in the interests of managing flood risk. A condition is also required to ensure that the access is provided in the interest of highway safety. The Council's suggested condition 10 seeks to prevent the occupants from having parking permits for use of on street parking. However, it would not pass the test of being reasonable in paragraph 50 of the Framework.
66. The suggested condition 16 requires submission of reports for noise compliance. However, this is unnecessary as it would be up to the Council to investigate any breach and quantify sound levels as part of that process.
67. Conditions 7, 13 and 16 require details at the pre-commencement stage. This is necessary to ensure that the landscaping opportunity is optimised prior to site clearance, living conditions are not harmed as work commences, and the sustainable drainage details are devised prior to any other work so that they are not compromised.

Conclusion

68. I therefore conclude that the appeal should be allowed subject to the conditions in the schedule overleaf.

John Longmuir

INSPECTOR

Conditions schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001 B, 100 A, 150 D, 155 B and 160 B received by the Local Planning Authority on 6th November 2020.
- 3) No works shall take place above ground level for the erection of any of the buildings hereby permitted until samples of all of its external facing materials shall have first been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved samples.
- 4) No works shall take place above ground level in relation to the erection of the buildings hereby permitted until a plan indicating the positions, design, materials and type of boundary treatments has been submitted to and approved in writing by the Local Planning Authority. These boundary treatments shall be implemented before any of the buildings are occupied and shall be retained in the approved form.
- 5) The timber privacy screen as annotated on the proposed site plan shall be wholly erected prior to first occupation of any of the dwellings hereby permitted in accordance with details submitted to and approved by the Local Planning Authority. It shall be retained thereafter as approved.
- 6) The development hereby permitted shall be constructed in accordance with slab levels of the building in relation to the existing and proposed levels of the site and the surrounding land that have first been submitted to and approved in writing by the Local Planning Authority. The development hereby approved shall be constructed in accordance with the approved slab levels.
- 7) Prior to the commencement of works on site in connection with the development hereby permitted, a scheme of landscaping to include a planting schedule and timetable of works, shall have first been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the positions, species and crown spread of all existing trees and hedgerows on and overhanging the land, detailing those to be retained, together with measures for their protection during development. The approved scheme shall be implemented as per the approved timetable. Any tree or shrub planted in accordance with the scheme which is removed, dies or becomes diseased within a period of five years from first being planted, shall be replaced by one of a similar size and the same species.
- 8) No works shall take place above ground level in relation to the erection of the building hereby permitted until details of the hard landscaping of the site including the surface treatment of any roadways or other parts of the site which will not be covered by buildings, shall have first been submitted to and approved in writing by the local planning authority in writing. The development hereby permitted shall be carried out in accordance with these approved details.
- 9) Construction work associated with the development hereby permitted shall only take place between 08:00 - 18:00 Monday - Friday and 09:00 - 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

10) Prior to the occupation of the development hereby permitted, details of a scheme for the promotion of biodiversity including bat and bird boxes, reptile hibernaculum, invertebrate refugia, ecological specifically chosen tree/shrubs, wildflowers shall be submitted to the Local Planning Authority for approval. The schedule shall be implemented in accordance with the approved details prior to first occupation and retained as such thereafter.

11) Prior to the occupation of any part of the development, details of electric vehicle charging points shall be submitted to and approved in writing by the Local Planning Authority and no occupation of the development shall occur until the approved details have been completed and thereafter maintained.

12) Prior to the occupation of the development hereby permitted, the vehicular access shall be laid out and constructed in accordance with the approved plan and retained as such thereafter.

13) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall: i. specify the type and number of vehicles; ii. specify the point of construction access and access route to the site; iii. set out details of the parking of vehicles of site operatives and visitors; iv. set out arrangements for the loading and unloading of plant and materials; v. set out arrangements for the storage of plant and materials used in constructing the development; vi. set out arrangements for wheel washing facilities.

14) The proposed residential units shall be designed to meet the indoor ambient noise levels contained in British Standard 8233:2014 (or later versions) which currently require: Resting 35 dB LAeq,16hour Dining 40 dB LAeq,16hour Sleeping 30 dB LAeq,8hour 45dB LAFmax 50 dB LAeq, 16hour in any private external amenity spaces. All the windows shall be first installed as non-openable and maintained as such thereafter.

15) Before any dwelling is first occupied, equipment to control the ventilation and air quality within each dwelling shall be installed in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. All equipment installed as part of the approved details shall thereafter be operated and maintained in accordance with that approval and retained as such thereafter.

16) No development shall take place until details of the implementation, adoption, maintenance and management of the sustainable drainage system shall have been submitted to and approved in writing by the local planning authority. Those details shall include: a timetable for its implementation; and, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime. The sustainable drainage system shall be implemented prior to occupation and thereafter managed and maintained in accordance with the approved details.

17) Details of any floodlighting and other external lighting shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved. Development shall be carried out and maintained in accordance with the approved details thereafter.

End of conditions