



Appeal Decision

Site visit made on 17 May 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2022

Appeal Ref: APP/D1835/W/22/3291431

18 Cavendish Street, Worcester WR5 3DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Peel against the decision of Worcester City Council.
 - The application Ref 21/00215/OUT, dated 11 January 2021, was refused by notice dated 21 January 2022.
 - The development proposed is described as "outline for a single detached dwelling to rear of 18 Cavendish Street with access from Waverley Street."
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr R Peel against Worcester City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The planning application the subject of this appeal was submitted in outline with all matters reserved. I have therefore determined the appeal on this basis and taken all plans submitted to be for illustrative purposes only.

Main Issues

4. The main issues are the effect of the proposal on:
 - The living conditions of existing occupiers of 18 Cavendish Street and future occupiers of the proposed dwelling, with regard to private amenity space;
 - Flood risk safety; and
 - The character and appearance of the area.

Reasons

Living Conditions

5. The appeal site is located to the rear of 18 Cavendish Street (No 18). The existing rear garden of No 18 consists of a small lawned area with planted borders set between the host property and its rear garage. The appeal site comprises the rear most part of the existing rear garden. The proposal would therefore divide the existing rear garden into two separate areas, resulting in a significantly reduced rear garden area for the host property.

6. Due to the constrained size of the appeal site and the retained rear garden of No 18, the proposal would not provide an adequate amount of private amenity space for the two dwellings.
7. The proposed reduction in garden area for No 18 means that it would not be large enough to provide sufficient space for the needs of a family, such as a range of garden activities, including sitting out, and space for children to play. The proposed dwelling would also have insufficient garden area for future occupiers to accommodate the needs of occupiers for bin storage, clothes drying and space for outdoor seating.
8. In addition, the garden areas to each dwelling would be likely to be overlooked by the occupiers of the adjoining dwelling when using their garden. This is because the garden areas would be located next to each other with close range views. Direct views of the adjoining garden area would also be likely from the rear windows of the host property and from windows in the proposed dwelling. This would result in insufficient levels of privacy within the garden areas that would be unacceptably harmful to the living conditions of existing and future occupiers.
9. Although there are examples elsewhere of garden plot division, these are generally larger plots than the appeal site. The South Worcestershire Design Guide Supplementary Planning Document adopted March 2018 (SPD) refers to 'usable' private amenity space for new dwellings (p.44). The proposal would harmfully reduce the amenity space for No 18 and would not provide adequate private amenity space for the proposed dwelling. For the reasons given above, this would be harmful to the living conditions of existing and future occupiers.
10. There is a public park within a short walking distance of the appeal site that would provide recreational space. However, the SPD is clear that developments must provide some form of 'private' amenity space. As the park is a public space it would be shared with other people and is therefore not a private space. In addition, as the proposed dwelling would be separate from the host property, it is unlikely that there would be an access route through the appeal site for the occupiers of No 18. Therefore, walking distance to the park would increase from what is currently experienced for the occupiers of No 18.
11. The appellant has suggested that an existing store at the rear of No 18 could be removed if the garden area of No 18 is considered too small. Be that as it may, neither the detailed floor plans of No 18 nor a mechanism to secure this removal are before me. In any event, any increase in the size of the garden area of No 18 would not overcome the harm in relation to the size of the garden area of the new dwelling or that resulting from overlooking.
12. Consequently, the proposal would not provide adequate living conditions for existing occupiers of 18 Cavendish Street and future occupiers of the proposed dwelling, with regard to private amenity space. As such, it is contrary to Policy SWDP 21 of the South Worcestershire Development Plan adopted February 2016 (SWDP), which amongst other things, seeks to ensure developments are of high quality design that integrate effectively with their surroundings in terms of form and function, including good layout and design. The proposal would also fail to comply with guidance in the SPD, which amongst other things, seeks to ensure developments provide a good quality of life for residents by adequate provision of usable private amenity space.

13. In addition, the proposal fails to accord with relevant policies in the National Planning Policy Framework (the Framework) which seek to promote health and well-being, and a high standard of amenity for existing and future users.

Flood Risk

14. The access to the appeal site off Waverley Street is located within Flood Zone 2, with the remainder of the site located within Flood Zone 1. Consequently, there is a risk of flooding in and around the locality of the site.
15. A sequential test of the proposed dwelling has not been undertaken by the appellant, which is a requirement of Policy SWDP 28 of the SWDP. The Council has advised that the proposal would be categorised as 'more vulnerable' in accordance with Annex 3 of the Framework.
16. Although South Worcestershire Land Drainage Partnership did not object to the proposal, they did recommend imposing a number of conditions, if permission were to be granted. One of these would require the proposal's floor levels to be set no lower than 0.6m above the 1% river flood level plus 35% climate change allowance with flood proofing techniques where appropriate.
17. In my view, such a condition would be necessary to minimise the risk of flooding to the proposed dwelling. However, this would require the floor level of the proposed dwelling to be raised, meaning that it would likely be higher than the floor level of the existing garage. Given this and in the absence of any details regarding the height, siting and external appearance of the proposed dwelling, I am not satisfied that the required flood risk mitigation could be provided without this having a detrimental knock-on effect on the character and appearance of the area and on the living conditions of nearby residents.
18. The appellant claims that they have lived at No 18 for at least 15 years, during which time they have not experienced the garage being flooded. This may be so, but technical advice has been provided by South Worcestershire Land Drainage Partnership and based on the evidence before me, I consider that the proposed dwelling would be at risk from flooding in the absence of suitable mitigation measures.
19. The Council also suggested a condition relating to a flood warning and evacuation plan, including details of the procedure for evacuation of persons. This condition would be necessary to minimise the flood related danger to future occupiers of the proposed dwelling. However, as the proposal would segregate the proposed dwelling from No 18, it is likely that the two properties would be in separate ownership. Therefore, there would be no right of way across third party land, which would result in no means of safe access onto Cavendish Street for the occupiers of the proposed dwelling. Even if an emergency escape route was provided across third party land at No 18, this would result in a further reduction of No 18's usable private amenity space.
20. I note that the appellant has suggested imposing a condition so that the proposed dwelling would be an annexe to the host property. However, such a condition would not overcome the raised floor level issue.
21. The lack of detail regarding the proposed dwelling means that it has not been demonstrated that it could be built in a manner that would be appropriately flood resistant and resilient such that, in the event of a flood, it could be brought back into use without significant refurbishment, without detriment to

the character and appearance of the area and on the living conditions of nearby residents. Furthermore, the evidence has not demonstrated that safe access and escape routes can be delivered within the control of the future landowner, as part of an agreed emergency plan.

22. Consequently, the proposal fails to accord with Policy SWDP 28 of the SWPD, which, amongst other things, seeks to minimise the impacts of flood risk. In addition, the proposal would fail to accord with paragraph 167 of the Framework where it seeks to ensure development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment.

Character and Appearance

23. The appeal site comprises the host property's single garage, parking space, wooden shed and part of the rear garden area. Access to the site would be from Waverley Street, where there is an existing dropped kerb serving the garage. Opposite the site is a public park with a children's play area. The surrounding area is predominantly residential in character.
24. This stretch of Cavendish Street includes dwellings with rear garden plots that back onto Waverley Street. The majority of these dwellings have single-storey detached garage units at the end of their rear gardens with vehicular access onto Waverley Street. Within the vicinity of the appeal site there are some dwellings fronting Waverley Street, to the rear of dwellings on Cavendish Street.
25. No 18 itself is a brick built detached dwelling with a flat-roofed rear extension. It is set on higher ground than the rear garden area. The existing garage and shed are noticeable, set back from the host property's rear building line, being located at the end of the rear garden. Given this context, and subject to scale, the proposal's positioning in a similar location to the garage unit and shed, would be satisfactorily detached from the host property. It would not appear cramped or contrived on the appeal site, as it would not be significantly different to the built form that is experienced now.
26. The appellant has also referred me to approved plans for an enlarged garage unit (ref: 21/00784/HP). A dwelling of similar scale, height and mass to these approved plans would not constitute an over-development of the appeal site. In addition, the proposed dwelling would have an appropriate separate relationship to the host dwelling, and also, given its setting, subject to scale and appearance, the proposal would not be out of character with the surrounding built form.
27. I conclude that the proposal would not be harmful to the character and appearance of the area. It therefore, accords with the relevant aims and requirements of Policy SWDP 21 of the SWPD. Amongst other things, this policy seeks to ensure development has regard to local distinctiveness and harmonises with the character of its surroundings.

Other Matters

28. The appellant has drawn my attention to other examples of dwellings sited to the rear of dwellings on Cavendish Street facing Waverley Street with segregated rear gardens and claims that a precedent has already been set for development on both road frontages. However, some of these examples are

sited on more spacious plots than the proposal before me and are not directly relevant to the proposal. Moreover, I do not have details of the planning history of these other sites. In any event, I must determine the proposal before me on its own merits.

29. The proposal would make a small contribution to the delivery of housing in the area on a site that is accessible to a range of services, facilities and sustainable modes of transport.
30. In addition, the proposal would make efficient use of land by concentrating development in a sustainable area and reducing the need to travel. However, none of these modest benefits would outweigh the harm that I have identified.
31. I note that the appellant has provided details of alternative parking spaces to serve the dwellings. Whilst this is noted, parking concerns have not been raised by the Council who considered that the matter could be adequately dealt with by the imposition of a suitable worded planning condition.

Planning Balance and Conclusion

32. Though the proposal would not be harmful to the character and appearance of the area, it would be harmful to the living conditions of existing and future occupiers with regard to private amenity space and it has not been demonstrated that the proposed dwelling could acceptably be made flood resistant and resilient. It is therefore contrary to the development plan as a whole and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. The appeal should therefore be dismissed.

Helen Smith

INSPECTOR