



Appeal Decision

Site visit made on 24 August 2022

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2022

Appeal Ref: APP/J4525/W/22/3300797

Land at rears of Bede Street, Benedict Road and St Andrews Terrace, Roker, Sunderland SR6 0PB

- 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 Kevin McVey against the decision of Sunderland City Council.
 - The application Ref 21/02941/SUB, dated 26 December 2021, was refused by notice dated 12 April 2022.
 - The development proposed is described as the erection of dormer bungalow (Use Class C3) including new boundary walls and open access driveway. Resubmission of refused application 20/01812/FUL with revised plans and elevations, roof lowered to 4.95 metres with daylight/sunlight study.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged the BRE Site Layout Planning for Daylight and Sunlight – a guide to good practice (2022) has been published. I am satisfied that the main parties have been given an opportunity to address any implications of this on the submitted evidence and make any further comments.
3. The appellant has submitted an updated ecology report which post-dates the Council's decision. I am satisfied that the Council has had the opportunity to comment on this through the appeal process and I have taken this evidence into account in arriving at my Decision.
4. The appeal site falls within 6km of 2 designated Natura 2000 sites: the Northumbria Coast Special Protection Area (SPA) and the Durham Coast Special Area of Conservation (SAC). Given my statutory duty under the Habitat Regulations (2017) I address this matter later in my Decision.

Main Issues

5. The main issues are the effect on:
 - the living conditions of neighbouring properties on Benedict Road and St Andrew's Terrace, with particular regard to outlook, daylight and sunlight; and
 - the appeal site's habitat and local wildlife.

Reasons

Living conditions

6. The appeal proposal comprises an 'L' shaped dormer bungalow positioned in the corner of the appeal site where properties on Benedict Road and St Andrew's Terrace meet. Its third side is bound by a rear lane serving the rears of dwellings on Bede Street. The site itself is a vacant, overgrown triangular shaped piece of land which is contained by a mix of walls and fences.
7. The bounding residential properties on Benedict Road and St Andrew's Terrace tend to have short private rear outdoor spaces with outbuildings and off-shoots. However, the appeal site currently conveys a sense of space between the surrounding existing buildings. This currently provides neighbouring residents with some visual relief to their already limited outlook which is a consequence of the otherwise densely built up urban grain of this particular neighbourhood.
8. The proposed dwelling will run along the rear party boundaries with Nos 28, 29 and 30 St Andrew's Terrace and Nos 15 and 17 Benedict Road either in part or in totality. For the most part, the proposed roof plane will slope away from the surrounding properties. Nonetheless, the proposed roof pitch is very steep, and the ridge line and roof plane are unbroken. The resulting roof will remain clearly visible above the existing party boundary enclosures. Crucially, the resulting separation distances between these existing properties and the appeal proposal are very short. Consequently, in terms of the effect on existing levels of outlook, the appeal proposal's roofscape will appear as an overbearing and oppressive built mass when viewed from those particular surrounding properties.
9. The appellant's evidence predicts the proposal's impact on existing levels of daylight as a range. In the best case scenario presented, the appeal proposal is unlikely to have a substantial effect on the diffuse skylight currently enjoyed by the occupants of the existing neighbouring dwellings. In the worst case scenario presented, Nos 15 and 17 Benedict Road will experience a reduction which the appellant describes as a "borderline pass". The appellant has interpreted these findings as a negligible impact in either scenario. However, I find that the resulting change to the existing daylight conditions for the occupiers of these 2 dwellings is not trivial given the existing baseline daylight conditions currently enjoyed.
10. In terms of sunlight and shadowing, the appellant's evidence demonstrates that some of the surrounding dwellings will experience variable increases in existing levels of overshadowing to both their internal and external areas as a direct consequence of the appeal proposal. In particular, the updated assessment demonstrates that at 10am there will be an increased incidence of shadow in external rear areas of No 29 St Andrew's Terrace and to a lesser degree No 30 St Andrew's Terrace. At noon and 2pm the increased incidence of overshadowing for these 2 properties will remain. At 6pm that increase in shadowing will cease.
11. However, at that time of day there will be an increased incidence of shadowing up to first floor level and across the entire rear elevation of Nos 15 and 17 Benedict Road. The appellant's evidence recognises that this particular effect represents the most extreme change overall, describing it as being in the range

of a moderate to severe impact, but within accepted tolerances of the current regulations. Nonetheless, this change still represents harm to the living conditions of those particular residents.

12. In summary, based on the submitted evidence, I find that the appeal proposal will result in variable reductions in existing levels of daylight and also increased levels of overshadowing for the occupants of 4 neighbouring dwellings. The appeal proposal will also give rise to an overbearing impact to the residents of 5 neighbouring properties in terms of outlook. Crucially, the cumulative effects of these predicted changes constitute a level of harm to the existing living conditions of the occupants of Nos 15 and 17 Benedict Road which is unacceptable.
13. The submitted evidence confirms that the appellant has attempted to address an Inspector's findings for a previous scheme. It is noted that the Sunderland Residential Design Guide Supplementary Planning Document (2008) recognises that through careful design a lesser separation distance than those specified may be acceptable. However, in this particular instance such flexibility is not justified given the nature and level of harm which will otherwise be imposed on the living conditions of neighbouring residents in respect to daylight, shadowing and outlook.
14. For these reasons, the appeal proposal will cause unacceptable harm to the living conditions of the occupants of Nos 15 and 17 Benedict Road with particular regard to outlook, daylight and sunlight. The change which will be experienced by those other residents is not of a level which amounts to unacceptable harm.
15. Nonetheless, the identified unacceptable harm is contrary to Policy BH1 of the Sunderland Core Strategy & Development Plan 2015-2033 (2020) ("the SCSDP") which requires that development ensures a good standard of amenity for all existing and future occupiers of land and buildings. I attach considerable weight to this conflict.

Site habitat and local wildlife

16. The appeal site currently comprises tall ruderal and semi-improved grassland within an otherwise densely developed area which has been assessed as being a low value habitat. The extent of the habitat which currently exists within the appeal site will be significantly reduced as a consequence of the appeal proposal. However, the mitigation measures set out in the Preliminary Ecological Appraisal (2022) are reasonable and based on up to date evidence which the Council has not challenged. Moreover, it would be possible to secure the proposed on-site mitigation and net-biodiversity gains set out in that document through an appropriately worded planning condition.
17. Therefore, the appeal proposal would not cause unacceptable harm to the appeal site's habitat and local wildlife. Policy NE2 of the SCSDP states that where appropriate, development must demonstrate how it will provide net gains in biodiversity and avoid or minimise adverse impacts on biodiversity and geodiversity in accordance with the mitigation hierarchy.
18. In view of my findings and subject to an appropriately worded planning condition, there is no conflict with this development plan policy. This is of neutral consequence in the planning balance.

Other Matters

19. The appellant considers that the appeal scheme does not present any highway safety issues. However, in maintaining the status quo in that regard this consideration is of neutral consequence. The appellant also considers that the Council has to demonstrate a significant adverse effect and has not done so. However, the evidence before me does not indicate that paragraph 11 (d) of the Framework is engaged in this particular instance. He also states that the appeal proposal does not conflict with the social, environmental and economic objectives of the National Planning Policy Framework ("the Framework"). However, I have found unacceptable harm to the existing living conditions of neighbouring residents. Consequently, no weight is afforded to any of these arguments.
20. I agree that the appeal proposal represents the efficient and effective use of unallocated, vacant land which is located within a settlement where new housing development is appropriate. It will also contribute to the supply of housing in the area. Although there is no evidence before me to indicate that there is a shortfall in either housing land supply or delivery, the appeal proposal will make a very limited contribution to the supply and diversity of the housing stock. Consequently, each of these considerations are afforded moderate weight in favour of the appeal proposal.
21. Given the appeal proposal's proximity to the coastal SPA and SAC, the submitted evidence indicates that the appeal proposal would give rise to indirect impacts on them from increased recreational pressure. However, it is evident that the appellant is agreeable to provide appropriate mitigation by way of a financial contribution to the relevant Coastal Mitigation Service. The Council has not opposed this measure. Nonetheless, in view of the harmful effect the appeal proposal will impose on the living conditions of neighbouring residents and the resulting conflict with the development plan, it is unnecessary for me, as the decision taker, to undertake an assessment under the Habitat Regulations (2017) and of any mechanisms put before me to secure any necessary mitigation.

Conclusion

22. The matters weighing in favour of the appeal proposal do not outweigh the conflict with the development plan when taken as a whole. Therefore, I conclude that the appeal should be dismissed.

C Dillon

INSPECTOR