



Appeal Decision

Site visit made on 26 September 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09.10.2023

Appeal Ref: APP/C4235/W/23/3315831

48 Brinnington Road, Portwood, Stockport SK1 2EX

- 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 Steve Broadway against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/085693, dated 21 June 2022, was refused by notice dated 11 November 2022.
 - The development proposed is described as "demolition of single-storey garage, site clearance and erection of a 2-bedroom, 2-storey detached house".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's second reason for refusal within the decision notice refers to a Supplementary Planning Guidance titled "Recreational Open Space Provision and Commuted Sum Payments". However, it is actually a Supplementary Planning Document titled "Open Space Provision and Commuted Payments", adopted 2019 ('the Open Space SPD'). I have therefore determined the appeal on this basis.

Main Issues

3. The main issues are:
 - a) the effect of the proposed development on the living conditions of the occupiers of neighbouring properties and future occupiers of the proposed dwelling, with particular reference to garden sizes; and
 - b) whether the development is required to provide a commuted sum in respect of the provision of recreation and amenity open space, and if so, whether it has been secured.

Reasons

Living Conditions – Garden Sizes

4. It is proposed to demolish the existing detached garage and erect a two-storey, 2-bedroom dwelling that would front onto Yates Street. The garden area for 48 Brinnington Road would be restricted to the existing enclosed yard area to the rear of the property which would equate to 19.5sqm while the garden area for the proposed dwelling would equate to 37sqm. The Design of Residential Development Supplementary Planning Document adopted 2007 ('the Residential SPD') states that except in exceptional circumstances, small family

housing of 2-3 bedrooms would be required to have a minimum garden size of 75sqm, or 50sqm for terraced properties. Consequently, the resulting garden areas for the existing and proposed dwellings would not comply with the minimum figures specified in the Residential SPD.

5. However, the Residential SPD states that minimum garden sizes are to allow for sufficient space to accommodate anticipated future extensions without having a prejudicial effect on the amenity of existing and future residents. Furthermore, it states that exceptional circumstances will exist where it can be justified that careful innovative design rather than a blanket application of numerical space standards addresses the requirement for private amenity space.
6. The appeal site comprises a detached garage and off-street parking area to the rear of No 48. While associated with No 48, I do not consider this forms part of the property's private garden area due to its function. Furthermore, No 48 has an enclosed yard immediately to the rear that forms the private garden area and the appeal site and yard are separated by an alleyway that provides a right of access to other properties in the terrace. Although below the Residential SPD's 50sqm garden size for terrace properties, the extent of the yard is historic, and the proposal would not affect its size.
7. The surrounding area is predominantly characterised by two-storey terraced dwellings arranged around narrow streets in a grid-iron pattern. The dwellings that front onto Brinnington Road mostly have long rear gardens that extend to Yates Street to the rear. This is contrary to the small garden/yards that are prevalent within the surrounding area. The proposal would follow the predominant characteristic of the surrounding area which, in my opinion, justifies a relaxation of a blanket application of numerical space standards. Furthermore, the appellant has stated they would be agreeable to the Council's suggested condition removing permitted development rights for extensions, alterations and outbuildings. Therefore, the garden is not required to be of a size to accommodate anticipated future extensions.
8. The Council has raised concern that the garden area is also required to accommodate bin and cycle storage, which would reduce the amount of usable amenity space. However, the submitted drawing demonstrates that this can be accommodated, and the resulting space would exceed the size of existing gardens in the immediate area.
9. In reference to the first main issue, the proposed development would not have an adverse effect on the living conditions of the occupiers of neighbouring properties or future occupiers of the proposed dwelling, with particular reference to garden sizes. It would therefore comply with Policies CS-4, H-1 and SIE-1 of the Stockport Metropolitan Borough Council Local Development Framework Core Strategy Development Plan Document, adopted 2011 ('the CS') which, amongst other things, seek to ensure that new developments respond to the townscape character of the local area, reinforcing local identity and distinctiveness in terms of layout, scale and appearance and provide good standards of open space for the occupants of new housing. It would also comply with the Residential SPD and the National Planning Policy Framework ('the Framework') which, seek to achieve high quality design.

Commuted Sum

10. There is a deficit in open space provision within the Council's administrative area. Therefore, Policy SIE-2 of the CS and the Open Space SPD require a financial contribution to be applied to all new dwellings (including single dwellings) towards the provision of open space for formal and casual recreation and children's play (where relevant) and their maintenance. The proposed development would attract a commuted sum towards formal recreation and maintenance. This is accepted by the appellant however a planning obligation has not been submitted with their appeal.
11. The appellant would accept a pre-commencement condition requiring the payment of the contribution should I be minded to allow the appeal. However, the Planning Practice Guidance (PPG) states that a positively worded condition which requires the applicant to enter into a planning obligation is unlikely to pass the test of enforceability, and a negatively worded condition limiting the development that can take place until a planning obligation has been entered into, is unlikely to be appropriate in the majority of cases. Only in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk (such as in the case of particularly complex development schemes) would a negatively worded condition be acceptable. The proposal before me would not meet this exception. Consequently, the use of a condition to secure a planning obligation for a financial contribution towards the provision of open space would not meet the six tests for conditions as detailed at paragraph 56 of the Framework.
12. My attention has been drawn to the approval of a dwelling at 24 Brinnington Road¹ whereby the officer report stated the development did not attract a financial contribution in respect of Policy SIE-2 of the CS. This was due to the publication of a Ministerial Statement² at the time that proposed changes to national policy to prevent affordable housing and tariff style contributions to be sought from sites of 10-units or less, and which have a maximum combined gross floor space of 1,000sqm. However, this change was subsequently taken forward solely in respect of affordable housing³. Furthermore, the Open Space SPD takes precedence as it was adopted in September 2019, after the approval of the planning application at No 24 and the publication of the Ministerial Statement.
13. In reference to the second main issue, the proposed development would be required to provide a commuted sum in respect of the provision of recreation and amenity open space, and I have no mechanism before me to secure its payment. It would therefore be contrary to Saved Policy L1.2 of the Stockport Unitary Development Plan Review, adopted 2006 and Policy SIE-2 of the CS which, in considering development proposals, will take account of children's play needs and will require, small new residential development to contribute towards the provision of open space for formal and casual recreation and children's play in locations which are accessible to future occupiers. It would also conflict with the Open Space SPD.

¹ Planning Ref DC055287 dated 30 March 2015

² House of Commons: Written Statement (HCWS50) dated 28 November 2014

³ Paragraph 64 of the National Planning Policy Framework (2023)

Planning Balance

14. The Council has stated that it is unable to demonstrate a five-year housing land supply of deliverable housing sites. As such, the relevant policies for the supply of housing should not be considered up-to-date and paragraph 11(d) of the Framework is engaged. It states, "where the policies which are the most important for determining the application are out-of-date, granting permission unless:
- (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".
15. The appeal site is not located within a protected area as defined by Footnote 7 of paragraph 11(d)(i) and therefore the proposal should be assessed against paragraph 11(d)(ii) of the Framework.
16. The provision of one additional dwelling weighs in favour of the proposal and would make a contribution, albeit modest, to the Government's objective of significantly boosting the supply of new homes. The proposal would also provide some short-term employment through the construction of the dwelling. These benefits carry moderate weight in favour of the scheme. Against the benefits is the development's lack of financial contribution to necessitate the delivery and maintenance of formal recreation provision within the area, for which there is currently a deficit. This would be contrary to the Framework's objective of promoting healthy lifestyles through high quality public spaces and encouraging active and continual use of public areas, matters which I give substantial weight.
17. Consequently, I find that the adverse impact of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole. The proposal would not therefore represent a sustainable form of development.

Conclusion

18. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR