



Appeal Decision

Site visit made on 17 October 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2023

Appeal Ref: APP/Y3940/W/23/3315794

Land off Waiblingen Way, Devizes SN10 2BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Khan against the decision of Wiltshire Council.
 - The application Ref PL/2022/07041, dated 8 September 2022, was approved on 27 January 2023 and planning permission was granted subject to conditions.
 - The development permitted is the construction of one detached dwelling and associated infrastructure.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan - Drawing No. 01 Rev A
 - Proposed Site Layout - Drawing No. 03/2P Rev 2
 - Protected Species Survey Report - April 2022 by CE Cotswold EnvironmentalFor avoidance of doubt, the approval of Drawing No. 03/2P Rev 2 relates only to the provision of the access from the public right of way and no other development as shown is approved by virtue of this permission.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Wiltshire Council against Mr Khan. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the Council made its decision, on 5 September 2023, a revised version of the National Planning Policy Framework (the Framework) has been issued. However, the only substantive revisions relate to national policy for onshore wind development in England, and the changes to national planning policy do not materially affect this appeal. I have taken the Framework into account in reaching my decision.
 4. Although the outline planning permission granted was for one house, the original application was for two houses. In appeals like this case, it is the original application that is before me, and I have powers to consider the matter afresh and deal with the application as if it has been made to me in the first instance. I shall therefore consider the scheme for two semi-detached houses.
 5. The description of development given in the banner heading is taken from the decision notice granting planning permission. However, I have omitted the words that do not refer to an act of development.
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6. As this scheme is in outline seeking permission, I recognise that the indicative layouts are intended solely to demonstrate the potential for the scheme to adequately accommodate the development proposed. The Planning Practice Guidance¹ says that where details have been submitted as part of an outline application, they must be treated as forming part of the development for which the application is being made. Conditions cannot be used to reserve these details for subsequent approval. The exception is where the applicant has made it clear that the details have been submitted for illustration purposes only. As noted above, scale and access are not reserved matters and the plans submitted that show details of these matters form part of the appeal scheme and are considered as such.
7. The Council has provided an appeal statement to outline the main issues regarding the appeal scheme. I have had regard to this and the other evidence before me, including my site visit, when forming the main issues below.

Main Issues

8. The main issues are whether condition 1 is reasonable and necessary with regard to (i) the effect of the proposed development on the character and appearance of the area; and (ii) whether the proposed development would provide suitable living conditions for future occupiers, with particular regard to garden space.

Reasons

Character and appearance

9. The appeal site comprises two rows of brick-built garages with low mono-pitched roofs at the end of Waiblingen Way within a predominately residential area. There are well established trees to the northeast and southeast boundaries of the site.
10. The site lies adjacent to two-storey blocks of flats, which are interspersed with public open space and are set back from the highway by open areas of grass. Dwellinghouses within the locality are typically two-storey terraced dwellings set back behind medium sized front gardens. There are also other rows of similar styled garages.
11. Buildings and rows of terraced houses are generally punctuated by clear gaps. Whilst the context of flats and terraced dwellings are relatively plain in appearance, there is a cohesive rhythm of buildings, and due to the pattern of development the locality has a relatively open and spacious feel.
12. Having regard to the context of the site and, despite the existing presence of garages, whilst acknowledging that layout, appearance and landscaping are reserved, it is apparent from both the indicative layout provided and from my site visit that the proposed two-storey dwellings would be unable to be suitably accommodated within the appeal site. Moreover, I am cognisant that the appellant has stated that it is hard to imagine how else two units could be erected on the site.

¹ 005 Reference ID: 21a-005-20190723

13. Having regard to the depth and width of this plot, the proposed development would appear cramped within this setting. This is evidenced by the small gardens.
14. The proposal would introduce substantial built form onto the site, which would provide a cramped aspect within views from the street. As a result, the development would be out of keeping with the areas prevailing built pattern and would erode the open and spacious feel. This would have adverse impacts to the character and appearance of the area, especially where the proposed houses would be visible from the street.
15. I note the appellant's explanation that the Council has granted planning permission for a single dwelling on the site and their view that the appeal scheme would result in less than a seven percent increase in scale of development. Nevertheless, this would not overcome the harm I have identified, which arise from the proposal's scale, constricted plot size and relationship with the adjacent block of flats.
16. The fact that the local built vernacular is ordinary, and the site is not within a heritage area does not undermine the value of the character and appearance of the locality. Whilst the appellant has referred to other schemes having been approved in the same estate, little evidence to demonstrate the relevance of these cases to the current proposal and how it should, in the appellant's opinion, support a grant of planning permission in this appeal has been supplied. In any event, I have considered the appeal on its merits.
17. The appellant contends that two dwellings would be a better use of the site. Whilst Core Policy 57 of the Wiltshire Core Strategy (Adopted January 2015) (the WCS) seeks to ensure that an efficient use of land, this should take account of the characteristics of the site and the local context to deliver an appropriate development. Moreover, paragraph 124 of the Framework advises that planning policies and decisions should support development that makes efficient use of land, taking into account, amongst other things, the desirability of maintaining an area's prevailing character and setting.
18. For these reasons the proposal would be contrary to Core Policy 57 of the WCS which, amongst other things, seeks to ensure a high standard of design and that development responds to the existing pattern of development and townscape. The proposal would also conflict with Chapter 12 of the Framework which requires high quality design.

Living conditions

19. Two dwellings within the appeal site would mean that the plots would be relatively small particularly having regard to the context of dwellinghouses in the locality. Whilst this is an indication of a cramped form of development, the garden space remaining would be usable and relatively private for the future occupiers. The area provides adequate space for unencumbered sitting out amongst other things, and I noticed children's play areas are accessible close to the appeal site. In addition, I have not been provided with any policy which sets out a minimum amount of private garden space. As such, this is not in itself a reason to dismiss the appeal.
20. I am also satisfied that the resulting standard of external space would be acceptable and would not present a poor environment, even if the dwellings

were to be occupied by families. As such, it would provide suitable living conditions for future occupiers, with particular regard to garden space.

21. For these reasons, with regard to this main issue the proposal would not conflict with Core Policy 57 of the WCS where it seeks to ensure that appropriate levels of amenity are provided.

Other Matters

22. Whilst the submitted evidence refers to a previous planning permission² for a two-bed detached bungalow on the appeal site, I have not been provided with specific details of that scheme. I am unable therefore to make any meaningful comparison between the proposals and I have little substantive basis to consider that the appeal scheme would be more sympathetic than the previously approved scheme. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.
23. As the appeal has been made where the Council has granted planning permission subject to conditions, I do have it within my powers to reverse or vary any part of the decision. However, I am satisfied in all other respects that the proposal would not be unacceptable and so I have no basis to disagree with the Council's decision.

Planning Balance

24. There would be benefits with the construction of two dwellings in a location with good access to facilities and services to serve the day to day needs of prospective residents. Given the small number of units proposed, the contribution would be limited, and I give this factor modest weight. There would be benefits arising from the construction period and future spend of occupants giving support to local services and facilities. Nevertheless, as construction benefits would be short term, and given the scale of the proposal with the provision of one additional unit within the site, these factors attract little weight.
25. The proposal would significantly harm the character and appearance of the area. The Framework advises that the creation of high-quality buildings and places is fundamental to what the planning process should achieve. It also states that developments should be sympathetic to local character. Paragraph 219 of the Framework is clear that the weight to be given to local policies depends on their consistency with the Framework.
26. The proposed development would conflict with Core Policy 57 of the development plan and it as a whole. I give the conflict with this policy substantial weight as it is generally consistent with the Framework.
27. The Council accepts that it is not possible to demonstrate a five-year housing land supply at present. The appellant states that this is a marginal shortfall of around 4.5 years. This is not disputed by the Council.
28. The application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed, as outlined in paragraph 11d)i. Therefore, the

² Ref PL/2022/02555

presumption in favour of sustainable development outlined in Paragraph 11d)ii of the Framework is engaged.

29. The proposal would align with the aims of the Framework to significantly boost the supply of housing and that small-scale developments can make an important contribution to meeting the housing requirement and different types of need (paragraphs 60 and 69). As a proposal for two dwellings there would be modest benefit.
30. There would be economic and social benefits from the build and occupation of the dwellings as well as support for local services, facilities and the community. I have taken account of the appellant's view that the proposed development would remove poor quality garages from the site and increase the amount of soft landscaping and result in biodiversity net gain. The appellant suggests this could be considered an efficient use of the site and would contribute to the provision of smaller more affordable units of accommodation. Such benefits would be minimal given the size of the development, and I give each limited weight.
31. A finding of no harm in relation to living conditions for future occupiers weighs neither for nor against the appeal scheme.
32. I give significant weight to the harm that would occur to the character and appearance of the area. The proposal would be contrary to the Framework where it seeks to ensure proposals are sympathetic to local character (paragraph 130).
33. Overall, having considered the above factors, the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Conclusion

34. I have considered all matters that have been raised, but none would demonstrate that condition 1 is not reasonable and necessary. Reverting back to the originally submitted plans would have an unacceptable effect on the character and appearance of the area.
35. The proposal would conflict with the development plan and the Framework as a whole. There are no material considerations of such weight that indicate the decision should be made other than in accordance with the development plan. Condition 1 complies with the tests for planning conditions that are set out in paragraph 56 of the Framework. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

J White

INSPECTOR