

Appeal Decision

Site visit made on 14 August 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2024

Appeal Ref: APP/J3720/W/24/3338262

Land to rear of: Midways, School Lane, Tiddington, Stratford-upon-Avon, Warwickshire CV37 7AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Wreford of JFSW Two Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref is 23/01662/FUL.
 - The development proposed is erection of 1no. dwelling house and creation of new vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.
3. Amended plans have been submitted with the appeal as an alternative if the proposal were found to be unacceptable. The alterations include changes to the facing materials to include black timber cladding and brickwork, as well as alterations to window sizes and positions. The proposed drawings also suggest changes to the roof form and alterations to boundary treatments. Cumulatively, those changes would result in a fundamental change to the application and to accept them would cause procedural unfairness to interested parties. The appeal has therefore been determined on the basis of the plans on which the Council based its decision.

Main Issues

4. The main issues are:
 - The effects of the proposal on the character and appearance of the area;

- The effects of the proposal on the living conditions of the occupants of neighbouring properties, with particular regard to the outlook and light of properties to the south, and;
- Effects on surface water flooding.

Reasons

Character and Appearance

5. The Stratford upon Avon Town Design Statement 2002 (the DS) distinguishes between three distinct parts of Tiddington, which include the Historic Core straddling the B4086 and the Riverside Area, which extends from the Historic Core to the river. The appeal site lies within the Riverside Area which is described as comprising low density individually designed properties with substantial gardens.
6. In contrast to the more vibrant and dense pattern of development on the B4086, Dark Lane has a more rural character. It comprises a narrow highway bound to its western side by properties set back from the road behind deep grass verges. Its eastern side similarly comprises grass verges, but which are steep with continuous boundary fencing above, giving an appreciation of the rear gardens and plot sizes of properties on School Lane behind. Together these attributes contribute positively to the more open and verdant character of Dark Lane and the Riverside Area as described within the DS. While the appeal site has been separated from Midways by fencing, it nonetheless shares the qualities which contribute positively to this local distinctiveness. It lies at the most southern part of the Riverside Area character area, and its openness helps to provide contrast and distinction from the development to the south.
7. The proposal would introduce a two storey development close to the road edge and a distinctly residential frontage onto Dark Lane as a result of its access, parking areas and fenestration. This would be heavily at odds with the established character on the eastern side of Dark Lane. The building would occupy much of the plot width and its width would be accentuated by its horizontal elements including its two storey flat roof form. This would erode the spacious and open character of the plot and of this side of Dark Lane and undermine the attributes of the character area defined by the DS.
8. The appellant considers the proposal should be considered in the context of the denser development surrounding the main road to the south and the Historic Core as defined by the DS. The appellant also acknowledges the grain of development on Dark Lane to be different to the wider area, and density of the surrounding development to be substantially less than the levels described in the Council's Development Requirements Supplementary Planning Document (SPD). However, as above, this part of Dark Lane has characteristics akin to the Riverside Area and forms part of its distinctive character rather than an anomaly. The SPD states that while development should make efficient use of land, the overriding objective should be to create an attractive development that is appropriate to its context irrespective of the numerical density. While the proposal would appear more akin to the developments on smaller plots to the south, it would cause harm

to the character of Dark Lane and a dilution to the character of the character area and its boundaries, which the DS describes as being distinct.

9. The appellant refers to development at Eynon, Tiddington Road¹ where a plot was subdivided to provide two dwellings. I do not have details of that development, but the Council comment that it was different to this proposal and site. As such it cannot be established that the circumstances are the same. I also observed an outbuilding and double gates further north along Dark Lane, within one of the gardens of School Lane. However, this is a low level building which appears as a subordinate garden structure, and the access gates are a continuation of the boundary fencing. Therefore these have very different visual effects to the appeal scheme. Neither have the extensions to Midways resulted in a comparable change which would provide reason to alter the above assessment.
10. The Council raise concern for the detailed design of the proposal, although it is not critical of its modern architectural approach. Given the varied character of properties in the area, and the mixed palette of local materials, the proposal has the ability to comprise an interesting building and high quality design. However, this would not override the above concerns relating to the siting and positioning of the development, given its context.
11. In conclusion on this main issue, the proposal would cause harm to the character and appearance of the area. It would conflict with policy CS.9 of the Stratford-upon-Avon District Core Strategy 2011 to 2031 (the CS), as well as policies H5 and BE2 of the Stratford-upon-Avon Neighbourhood Development Plan 2011-2031 (the NP), which require, among other things, development to enhance the sense of place and reflect the character and distinctiveness of the locality.

Living Conditions

12. The building to the south of the appeal site contains commercial uses at its ground floor level and flats above which have windows facing towards the appeal site. The Council's reason for refusal refers specifically to the effects on those flats. While case law has established that a private view is not regarded as a planning matter², the effects on the living conditions of properties should be considered, as set out in the development plan.
13. The proposal would create an expanse of continuous wall in front of those windows, which would vary in height between the single storey and two storey elements. While the development would be visible from those windows and would undoubtedly change their outlook, many of those windows would continue to have a degree of open outlook over the roofs of the development. As such their outlook would not be unacceptably affected.
14. The exception, however, is one first floor window which would directly face the two storey element of the proposal. In views from that window, the development would appear prominent and intrusive. The evidence of the Council and interested parties suggest that window serves a living area. While the property has other windows, including those facing into an internal

¹ 17/03181/FUL

² *Laura C and Others v London Borough of Camden, The Secretary of State for the Environment Transport and The Regions* [2001] EWHC Admin 1116

enclosed patio, I have no strong reason to believe that the affected window on the rear elevation makes an important contribution to the overall living conditions experienced by the occupants. As a consequence of the height and proximity of the two storey element to that window, its outlook would be significantly reduced and oppressive conditions would be created in the room which it serves.

15. As the windows in the back of the flats are north facing, they would not experience an unacceptable loss of sunlight or overshadowing. This is consistent with the findings of the appellant's sunlight pathway analysis. Levels of daylight could, however, be affected given the proximity of the proposal. The appellant has provided a drawing reflecting the vertical sky component (VSC) test, however this lacks analysis and it is not apparent what degree of loss would be experienced by the first floor windows concerned as a result of the proposal. As such, I cannot be satisfied that a harmful loss of daylight would not occur.
16. At ground floor level there is an office window which faces towards the appeal site. While the development would be close to that window, given its use, that it is obscure glazed and currently faces the boundary treatment, the proposal would not have a harmful effect on the conditions of that room. I observed the extensions which have been erected to Midways close to the southern boundary, and which appear to be in front of a window to the south. However, there is not substantive evidence that the circumstances of that relationship are the same as those in this appeal.
17. In conclusion on this main issue, in the absence of evidence to the contrary, the proposal would have a harmful effect on the living conditions of occupants of the flat to the south. This is particularly in relation to the effects of the development on the outlook and daylight experienced by the first floor windows closest to the two storey element of the proposal. The proposal would conflict with policy CS.9 of the CS, as well as policies H5 and BE6 of the NP insofar as they require development to be sensitive to neighbouring uses and preserve the amenities of neighbouring properties.

Surface Water Run Off

18. Dark Lane is identified as being at high risk for surface water flooding, although this does not extend over the site itself. This is supported by many photographs provided by third parties which demonstrate the extent to which the road floods. The proposed development has the ability to contribute to, and potentially worsen, these existing conditions.
19. The appellant has provided a surface water drainage strategy with the appeal. This was not subject to consultation as part of the planning application, however, alone this strategy does not significantly alter the proposal, but provides supporting information and has been submitted in response to the concerns raised by the Council. The document discusses the collection and attenuation of runoff from the roofs of the development, which would in turn be directed to a piped system below the ground and discharged into the existing surface water sewer via a new connection. The report discusses the drainage hierarchy set out in Planning Practice Guidance

and that other preferable options are not feasible in this location. I have no strong reason to doubt these conclusions.

20. The details submitted, however, do not refer to the rest of the site, and how runoff from other parts of the development would be managed so not to add to existing flood risk on Dark Lane. Despite this, given the relatively limited area of the driveway, having regard to the comments of the highways authority and the appellant's suggestions, it is likely that a suitable solution for the management of other areas of the site could reasonably be achieved. I note concerns for the ownership of the sewer to which the development intends to connect, however there is not substantive evidence on this matter to suggest a solution is not achievable.
21. In conclusion on this main issue, subject to conditions which could be imposed if the proposal were otherwise acceptable, the proposal would have acceptable effects on surface water runoff. It would comply with Policy CS.4 of the CS, H5 of the NP and the Framework which require that development does not exacerbate or increase the risk of flooding elsewhere.

Other Matters

22. The Council state that it can demonstrate more than a five year land supply for housing and there is not substantive evidence to suggest that the provisions of paragraph 11d) of the Framework should be relevant to the appeal. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.
23. The proposal would provide a new home which would contribute to the national objective to boost the supply of homes. This could be an accessible unit and would be within an existing settlement and with good accessibility to services and facilities including public transport. There would be economic benefits arising from the construction process and on going expenditure into the local economy by future occupants. In addition, the proposal would incorporate sustainable attributes including allowances for renewable energies and water conservation. However, and even if the site were previously developed land, the extent of these benefits would be limited by the scale of the proposal. As such these benefits do not amount to considerations which would outweigh the conflict found with the development plan.
24. I have had regard to the other issues raised by interested parties, however, it is not necessary to discuss those matters further since they would not change the outcome of the appeal.

Conclusion

25. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR