
Appeal Decision

Site visit made on 22 October 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal Ref: APP/V4250/W/24/3346318

20 Elmridge, Leigh, Wigan WN7 1HN

- 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 Benjamin Batrak against the decision of Wigan Metropolitan Borough Council.
 - The application Ref is A/23/96109/FULL.
 - The development proposed is the demolition of an existing detached garage to accommodate the construction of 1no dormer bungalow in the garden plot of 20 Elmridge, Leigh, façade alterations to No 20 and extended dropped kerb.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. While I have determined an appeal¹ under s195 of the Act at the same time as I have considered this s78 appeal, I have dealt with each appeal separately.

Main Issues

3. The main issues are the effect of the proposal on: (a) the character and appearance of the area; (b) the living conditions of the occupants of 22 Elmridge, with regards to privacy and outlook; and (c) the risk of flooding.

Reasons

Character and appearance

4. The appeal site comprises 20 Elmridge, a detached two storey dwelling, and its associated garden, detached double garage, and driveway. The surrounding area is characterised by open-plan landscaped plots comprising a mix of detached bungalows and two storey homes. Properties in the area are typically set back from the road and display a coherent use of materials.
5. Principle 1 of the Design Guide for Residential Development Supplementary Planning Document (SPD) recognises the need to make the most efficient use of land available to us by increasing residential densities. However, the SPD goes on to explain that the benefits of higher density development must not be delivered at the expense of the quality of the existing environment.
6. The proposal would see the existing spacious plot subdivided into two, with each plot having its own off-street parking and front and rear gardens. The detached garage would be demolished and replaced by a detached dormer bungalow that would respond to the building lines of No 20. The new dwelling would be sited further away from No 22, but its scale and massing would be greater than the existing garage. The proposed dwelling would have a scale

¹ Appeal Ref: APP/V4250/X/24/3338397

and massing somewhere between that of a true bungalow and a two-storey dwelling. Although variation can be acceptable, the dormer windows and front entrance do not reflect the characteristics of properties in the area. Nor would the fenestrations be similar in terms of their type, size, spacing, and proportion. The use of suitable materials could, however, be controlled through a planning condition.

7. The sub-division of the plot and the introduction of the dormer bungalow of the scale and massing proposed would result in a cramped form of development that would erode the existing spacious plot as the road bends. The plot's spacious context is amplified by the spaciousness of the plot on the opposite side of the road. Although some neighbouring dwellings are relatively close together, this is often where their scales are similar or there is an open character nearby to offset the proximity of built form. The proposal would not provide that counterbalance due to its proximity to Nos 20 and 22.
8. The proposed continuation of the existing tall boundary fence from the north-eastern corner of No 22 to the shared access and part way along it would harmfully detract from the open plan character of the site and its surroundings. Shrubs would soften the appearance of a section of the fence, but they would not alter its harmful effect when considered with the proposed dormer bungalow in an area characterised by open plan landscaped plots.
9. I and another Inspector have determined appeals under s195 of the Act relating to a proposed outbuilding for a purpose incidental to the enjoyment of the dwelling. Both appeals have been dismissed. As such, there is no real prospect of either scheme occurring. No alternative schemes using permitted development rights for a building incidental to the enjoyment of a dwellinghouse have been put before me.
10. The dormer bungalow at 175 The Avenue is in an area with dormer bungalows, unlike the appeal site, and did not seem to have the same positive open-plan character prior to No 175 being built. It does not therefore justify the proposal's effect. Nor does the bungalow at 2a Elmridge, as I do not know the circumstances of how this dwelling came to be or the reasons why planning permission was granted. While permitted development rights may have been exercised and they may have caused change to the character and appearance of the area, those rights apply to every home subject to any conditions or limitations. The extension at 18 Elmridge has not, unlike the proposal, resulted in the subdivision of the plot or caused harm to its open-plan character. No 18 does not therefore justify the proposal's harmful effect.
11. I conclude that the proposed development would harm the character and appearance of the area and conflict with Policy CP10 of the Wigan Local Plan Core Strategy (LP), Policy JP-P1 of Places for Everyone (PfE), the SPD, and paragraph 131 of the National Planning Policy Framework (the Framework). Together these policies, among other things, seek new development to respect the character and identity of the borough and its locality in terms of siting, size, scale, and details and to integrate effectively with its surroundings.

Living conditions

12. To the east of the appeal site is a shared access leading to the driveways of Nos 22 and 24. Both properties are true bungalows. No 22 has an L shaped layout with a gable elevation facing the appeal site and the tall boundary fence that separates the two. This elevation of No 22 contains a window near its

corner with the return elevation, which contains two windows with a view out onto No 22's driveway. A bedroom window is to be found in the northeast elevation facing the driveway and the rear boundary of the appeal site.

13. The rear elevation of the habitable room windows in the proposed dwelling would be around 16.6 metres from the bedroom window in the northeast elevation of No 22. That would be below the interface distance set by the SPD, and given the outlook from the bedroom window in No 22 and the height of the proposed dwelling, this relationship would have an unacceptable adverse impact on the outlook of the occupiers of No 22. Furthermore, an unacceptable adverse impact on the outlook from No 22's bedroom would be caused by the continuation of the existing tall boundary fence from the north-eastern corner of No 22 to the shared access and part way along it. The proposed fence would be closer to No 22's bedroom window than the proposed dwelling and the existing detached garage serving No 20. The partial open aspect retained by the shared access would not prevent that harm from arising.
14. The height of any fence, wall, or other means of enclosure erected using permitted development rights to the side and rear of the existing detached garage would be limited to a metre above ground level where it is adjacent to a highway used by vehicular traffic, such as the shared access. There is therefore no real prospect of the proposed situation occurring without the benefit of planning permission.
15. Although there would not be any loss of privacy experienced by the occupiers of No 22 or the proposed dwelling due to the intervening boundary treatment, the use of each room on the upper floor of the proposed dwelling, and the proposed use of obscure glazing, I do not consider that the interface distance set by the SPD could be reduced to the extent that is proposed here, as the proposal would still cause an unacceptable impact.
16. Although the proposal would provide adequate garden space for the occupiers of No 20 and the future occupiers of the proposed dwelling, despite my findings on the first main issue, I conclude that the proposal would cause an unacceptable adverse impact on the living conditions of the occupants of No 22, with regards to outlook. Despite my finding about privacy, the proposal would conflict with LP Policies CP10 and CP17 and the SPD which jointly, among other things, seek development to be planned and designed so that it does not have an unacceptable adverse impact on amenity and quality of life.

Flood risk

17. Framework paragraph 165 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The appeal site lies within flood zone 3. Land here has a high probability of flooding from rivers and the sea.
18. A Flood Risk Assessment (FRA) has been submitted. Framework paragraph 173 confirms that development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests) it can be demonstrated that several criteria are met.
19. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding. This is important given that the proposed development falls into the more vulnerable flood risk classification.

20. The FRA contends that the proposal is an extension to the existing residential area that the site lies within, and that area already benefits from effective flood defences and means of managing flood risks at the site. On that basis, the FRA considers that the sequential test is passed.
21. I disagree. The FRA does not consider locating the proposed development in any lower risk areas. Figure 1 of the FRA confirms there are areas with a low or medium probability of flooding near to the appeal site. While the precise catchment area could be drawn wider, this is a starting point. In any event, neither zone, as shown on Figure 1, has been considered to locate the proposed development on reasonably available sites. Even if this had been undertaken, the FRA does not then go on and assess other reasonably available sites in high-risk areas, such as flood zone 3.
22. The Planning Practice Guide (PPG) confirms that existing flood risk management infrastructure should be ignored and the reasons for doing so. The PPG also says that the same infrastructure should be ignored when considering the spatial variation of risk within medium and high flood risk areas to identify the lowest risk sites in these areas. It is only after carrying out these steps that the role of flood risk management infrastructure in the variation of risk within high and medium flood risk area can be considered².
23. Hence, the FRA does not provide sufficient information to determine whether the appeal scheme could be located in an area with a lower risk of flooding. As the sequential test has not shown that there are not any reasonably available, lower-risk sites, appropriate for the proposal, the exception test is not a tool to justify developing in those flood risk areas. Hence, I have not gone on to consider the exception test or the criteria in Framework paragraph 173.
24. The Framework is clear in paragraphs 168 and 173 that development should not be permitted as the proposal has not considered directing the development away from areas at highest risk of flooding so that flood risk is minimised. As such, I conclude the proposal would be in an area with the highest risk, and insufficient information has been submitted to assess whether it could be in an area with a lower risk of flooding to pass the sequential test. Therefore, the proposal conflicts with LP Policy CP16 and PfE Policy JP-S5 as the development would not be located to minimise the impacts of current and future flood risk.

Other Matter

25. Although planning conditions could be imposed to secure satisfactory details in respect of drainage, landscaping, parking, access, and EV charging points, and I have no concerns about the proposed changes to No 20, these matters do not alter or outweigh the identified harm on the main issues.

Conclusion

26. Although the proposal would add to the supply and mix of housing in a modest way and bring with it modest economic benefits, these matters do not alter my conclusion that the proposal conflicts with the development plan, and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
27. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

² PPG Paragraph: 024 Reference ID: 7-024-20220825