



Appeal Decision

Site visit made on 5 November 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2024

Appeal Ref: APP/T3725/W/24/3342618

66 Montrose Avenue, Lillington, Leamington Spa, Warwickshire CV32 7DY

- 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 Tom O'Sullivan against the decision of Warwick District Council.
 - The application Ref is W/23/0801.
 - The development proposed is erection of two storey, two bedroom detached dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of a two storey, two bedroom detached dwelling at 66 Montrose Avenue, Lillington, Leamington Spa, Warwickshire CV32 7DY in accordance with the terms of the application, Ref W/23/0801, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by Mr Tom O'Sullivan against Warwick District Council. This application will be the subject of a separate decision.

Preliminary Matters

3. The Council has referred to the Warwick District Council Net Zero Carbon Development Plan Document (the Net Zero DPD) which was adopted in May 2024, and therefore since the Council made its decision on the planning application. The appellant has been provided with a copy of the Net Zero DPD and has commented on it. Taking account of the advice in the National Planning Policy Framework (the Framework) regarding the weight to be given to relevant policies, as the Net Zero DPD has been adopted and both main parties have been able to comment on it, I have given full weight to it and neither main party would be prejudiced in me doing so.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of 64 and 66 Montrose Avenue, and 33, 35 and 37 St Andrews Road, with particular regard to outlook, daylight, sunlight, and privacy.

Reasons

5. The appeal site is the side garden to 66 Montrose Avenue, No. 66, it is relatively flat and laid to lawn. The site is open to No. 66 but is enclosed by the side wall and garden wall of 64 Montrose Avenue and a low hedge

boundary with 37 St Andrews Road. The frontage of the site is a low wall with fence and hedge above. The site is surrounded by other two-storey residential properties.

6. No. 66 sits adjacent to the appeal site and has rear windows at ground and first floor which would face towards the proposed dwelling. The outlook from No. 66 would be altered with the new dwelling, however, there would remain a more open outlook to the south, over the gardens of the neighbouring houses and beyond the new dwelling. Consequently, the outlook from No. 66 would continue to be acceptable.
7. The proposed dwelling would reduce the size of the garden for No. 66 but would continue to provide sufficient garden space for both the existing and proposed houses. The proposal would also be close to the remaining garden of No. 66. However, since the previously appealed scheme, the proposed dwelling has been reduced in scale and moved further away from the boundary. The proposed dwelling would not sit directly on the boundary and is, therefore, materially different to the previously appealed scheme.
8. The appellant has also provided a Daylight, Sunlight and Overshadowing Assessment, dated December 2023 (the DSOA) which confirms that over half of the garden to No. 66 would continue to receive at least two hours of sunlight on 21st March and, therefore, would comply with the advice set out in the BRE Guidelines.
9. Even though interested parties have raised queries about the DSOA, I have no evidence to counter the appellant's submission and the conclusions within it. Furthermore, from my own observations on site the dwelling proposed, within this appeal, would be of an appropriate size and distance from the garden of No. 66 to not result in a substantial overshadowing effect over the garden, including the patio area.
10. With regard to the effect on 33, 35 and 37 St Andrews Road, even with the extension to No. 35 which I saw at my site visit, there would be sufficient space between the proposed dwelling and these neighbours to not cause unacceptable loss of light or overshadowing. Even if the proposed dwelling is within 45 degrees of the existing properties the separation distances exceed the eight metres advised in the Warwick District Council Residential Design Guide, May 2018, as sufficient to not result in material harm to light and outlook.
11. Moreover, the proposal would not include any habitable room windows on the first floor of the rear elevation. One bathroom window is proposed which is indicated on the plans as having a top hung opening and obscure glazing. Any overlooking from the ground floor windows of the proposed dwelling would be restricted by existing and proposed boundary treatments. Consequently, the proposal would not cause unacceptable overlooking of any of the properties on St Andrews Road.
12. The proposed dwelling would be positioned behind the line of the rear elevation of 64 Montrose Avenue (No. 64) and neither the proposed dwelling nor No. 64 have windows in the facing side elevations. Along with the lack of habitable room windows on the first floor of the rear elevation of the proposed dwelling, and the existing extension at No. 64, these factors would prevent any loss of privacy, light or overshadowing to this neighbour.

13. The appeal before me, albeit still a two-storey dwelling within the garden of No. 66, is materially different to the previous appeal scheme on the same site and, in my judgement, is of such different to overcome the concerns raised by the Inspector on the previous decision and allow me to reach a different conclusion on this appeal.
14. For the above reasons, I find that the proposed development would not have an adverse effect on the living conditions of the occupiers of 64 and 66 Montrose Avenue, and 33, 35 and 37 St Andrews Road, with particular regard to outlook, daylight, sunlight, and privacy. Consequently, the development would comply with the requirements of Policy RLS1 of the Royal Leamington Spa Neighbourhood Development Plan 2020-2029 and Policy BE3 of the Warwick District Local Plan 2011-2029. Collectively these policies, amongst other matters, support infill development in the Leamington Spa urban area that is of an appropriate scale and does not lead to unacceptable adverse impact on the amenity of nearby and adjacent existing occupiers.

Other Matters

15. The recently adopted Net Zero DPD requires all relevant planning applications, including new dwellings, to be submitted with an Energy Statement to show compliance with the relevant policies. Policy NZC1 requires new dwellings to achieve a minimum of 63% reduction in carbon emissions. Policy NZC2 requires a 10% improvement over the requirements of the Part L 2021 Target for Fabric Energy Efficiency and provide renewable, zero and low carbon energy technologies in new dwellings. Policy NZC4 requires consideration of sustainable construction.
16. As the planning application was submitted before the adoption of the Net Zero DPD an Energy Statement was not included in the application. Neither has one been submitted with the appeal. However, the appellant has provided me with evidence of negotiations with the Council that confirm that both main parties agree that this issue could be dealt with by a condition requiring the submission of an Energy Statement prior to the commencement of the development.
17. Given the timing of the adoption of the Net Zero DPD, that it was not brought to the appellant's attention as an emerging policy, and the scale of the development I find that a condition would be acceptable in this instance. Such a condition would require the development to comply with the above policies and would also comply with the requirements of policy CC1 of the Warwick District Local Plan 2011-2029 which, amongst other matters, requires all development to be resilient to climate change.
18. I acknowledge the concerns raised by local residents in relation to matters including, but not exclusively, the need for the development, effect on the character of the area, loss of garden, the scale and design of the proposal, light pollution, noise, impacts during construction, highway safety, effect on parking, air quality, wildlife, flooding, water and drainage infrastructure, and climate change effects. The Council did not include any of these matters in their reason for refusal. However, I have considered all of these issues in reaching my decision. Based on the submitted plans, the evidence before me, and my site visit, I find no reason to disagree with the Council's conclusions on these matters.

19. Outside the site I saw a support post for telephone lines, two small cabinets, a streetlight, and a bus stop. The bus stop is indicated on the proposed plans as to remain in its current position. Although a bus stopped here would block the proposed driveway this would only be for a short period of time and the proposed access would not prevent a bus from stopping. The telephone post would be relocated further along the pavement so as to be outside of the area required for the driveway. This would be dealt with outside the planning process and neither of these structures, or the cabinets would prevent the development.

Conditions

20. The Council has provided a list of conditions that it considers would be appropriate and the appellant has commented on this. I have considered these in light of the Framework and the Planning Practice Guidance, and I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity.
21. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. In order to ensure a satisfactory appearance, I have included a condition requiring the submission of samples of the materials to be used for the external surfaces of the dwelling. To also ensure a satisfactory appearance I have included a condition requiring the submission of hard and soft landscaping details.
22. To ensure that a suitable drainage scheme is provided and maintained I have included an additional condition to this effect. I have also included a condition to require a scheme for water efficiency to be submitted to the Council, so as to reduce the demand on water consumption, as required by policy FW3.
23. In the interests of highway and pedestrian safety I have included conditions to require the access and parking areas to be provided prior to occupation of the approved dwelling and to require the provision of visibility splays. I have also included a condition to require an electric vehicle charging point to encourage sustainability and the use of electric vehicles. However, it is not necessary to have a separate condition to protect the capacity of any drains or ditches as the condition imposed requires the works to be carried out to the Council's specifications.
24. The condition which requires the development to be constructed in accordance with the submitted plans would be sufficient to ensure that the recycling and refuse storage areas, which are clearly indicated on the plans, are provided and this is not required to be covered by a separate condition. Given the scale of the development, whether the future occupants of the property retain this storage in the same location would not be a significant issue. It is also outside the control of the planning decision to ensure that the refuse and recycling containers are provided prior to occupation.
25. In the interests of ensuring that the development would not have an unacceptable effect on the living conditions of the occupiers of neighbouring properties, I have included two conditions requiring the windows in the side and rear elevations to be obscure glazed, and also removing permitted development rights to install any further windows. I have separated out these

two issues into two conditions. However, as the rooflight to the snug area would be high level it is not necessary to require this to be obscure glazed.

26. I have also included a condition to require biodiversity enhancements to ensure no net loss of biodiversity and provide enhancements as required by the Framework and adopted policy.

Conclusion

27. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should succeed, and planning permission should be granted subject to conditions.

K Townsend

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 1045-07 and 1045-06.
- 3) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles, and a foul drainage scheme has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence until an Energy Statement has been submitted to and approved in writing by the Local Planning Authority. This statement shall include details and technical information which demonstrates compliance with DPD Policies NZC1, NZC2(A), NZC2(B), NZC2(C) and NZC4. The development shall be implemented in full accordance with the agreed Energy Statement prior to the occupation of the dwellinghouse hereby permitted.
- 5) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.
- 6) No development above ground level shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of boundary treatments, including full details of the proposed boundary walls, railings, and gates to be erected, specifying the colour of the railings and gates; and details of hard surfacing, which shall be made of porous materials, or provision shall be made for direct run-off of water from the hard surface to a permeable or porous area.

The hard landscaping works comprised in the approved details of hard landscaping shall be carried out within three months of the first occupation of the development and shall be retained in perpetuity.

All planting, seeding, or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No development above ground level shall take place until details of biodiversity enhancements, to achieve a net gain in biodiversity, has been submitted to and approved in writing by the local planning authority. The details shall include a timetable for implementation. The biodiversity enhancements shall be provided in accordance with the approved details and timetable and shall thereafter be maintained for the lifetime of the development.
- 8) The development hereby permitted shall not be occupied until the vehicle parking spaces and highway footway/verge crossing have been provided

in accordance with drawing no 1045-06 and in accordance with the standard specification of the Highway Authority. Thereafter those spaces shall be retained for the parking of vehicles only and the access shall be retained for the lifetime of the development.

- 9) Prior to the first occupation of the dwelling hereby approved visibility splays of 2.4m by 43m shall be provided free of any obstruction exceeding 0.6m in height and shall be retained as such thereafter.
- 10) The development shall not be occupied until electric vehicle charging points have been provided in accordance with details to be submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be installed in accordance with the approved details and shall thereafter be maintained for the lifetime of the development.
- 11) The development hereby permitted shall not be occupied until a scheme showing how a water efficiency standard of 110 litres per person per day will be achieved, based on an assumed occupancy rate of 2.4 people per household, has been submitted to and approved in writing by the Local Planning Authority. The approved works shall be completed in strict accordance with the approved details prior to the first occupation of the dwelling and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with the manufacturer's specifications.
- 12) The dwelling hereby permitted shall not be occupied until the windows at first floor in the northeast and southeast elevations have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the southeast elevation.

*** END OF CONDITIONS ***