



Appeal Decision

Site visit made on 27 November 2024

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2024

Appeal Ref: APP/J1860/W/24/3346002

Land to the rear of 1 & 2 St Gabriel's Terrace, Hanley Swan, Worcestershire.

- 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 P.M.Brooks (Premier Building Ventures) against the decision of Malvern Hills District Council.
 - The application Ref is M/24/00214/FUL.
 - The development proposed is development of 2 detached bungalows to the rear of 1 & 2 St Gabriel's Terrace.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has amended the wording of the final sentence of the first reason for refusal to state that the proposal was contrary to policy "RE 1 of the Hanley Castle Neighbourhood Plan and the Supplementary Planning Document on Design." It has also withdrawn the second reason for refusal following the completion of a S106 agreement to secure the required affordable housing contribution. I have determined the appeal accordingly.
3. The appeal evidence includes two layout plans showing differing parking and access arrangements. The 'Location and Block Plan' reference PBV1 indicates 4 parking spaces on site whilst the plan entitled 'Highways Plan' depicts 6 parking spaces within the site and a widening of the access together with further annotations. It was submitted with the appellant's Statement of Case and the Council had the opportunity to comment on it. I am satisfied that the Highways Plan does not make any fundamental change to the application and addresses comments made by the Highway Authority. The changes are minor and lie within the application site or adjacent land within the same ownership. They are of a nature that could be secured via a planning condition if I were minded to allow the appeal. I am therefore satisfied that the plan meets the substantive and procedural tests set out in the *Holborn Studios* judgement¹ and have determined the appeal on the basis of that plan.

Main Issues

4. The main issues are:

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

- Whether the proposal would provide acceptable living conditions for future occupants with regard to outlook and daylight, and the effect on the living conditions of adjoining residents with particular reference to privacy, amenity space, daylight, sunlight and outlook;
- whether the proposed development makes suitable provision for the parking of vehicles including its effect on pedestrian safety; and
- the effect of the proposed development on the character and appearance of the site and its surroundings.

Reasons

Living conditions

5. South Worcestershire Development Plan 2016 (SWDP) policy SWDP 21 expects all development to be of high quality design and sets out a number of criteria which developments need to address. Criterion iv requires that new development should provide an adequate level of privacy, outlook, sunlight and daylight and should not be unduly overbearing. The reasoned justification to the policy further indicates that new development should not have an unacceptable detrimental impact on the amenity of existing or new residents resulting from the new development.
6. Each bungalow would have a window serving a study in the side elevation directly facing the adjacent boundary. The study would be a habitable room and the window would be the only source of natural light for that room in each bungalow. On the eastern plot, plot 1, the window would face directly onto the existing close boarded fence which separates the site from the adjoining houses. There would only be a narrow gap between the face of the window and the fence. The narrowness of the gap, coupled with the height of the fence and adjacent planting, would severely restrict the amount of daylight reaching the room. The window would face east and the narrowness of the gap would also prevent direct morning sunlight from reaching the room, the outlook of which would be dominated by the fence. The lack of natural light and poor outlook would cause substantial harm to the living conditions of future occupiers of the bungalow.
7. The equivalent window in the western plot, plot 2, would face directly onto, and across, the boundary with the adjoining garden. This would allow users of the garden to look directly into the study window from a very close distance causing a substantial loss of privacy to the users of the study. Moreover, the position of the window adjacent to the boundary would also permit direct views from the study into the garden which would reduce the privacy of the garden as a result. The plans indicate proposed native hedge planting along this western site boundary. Whilst over time, a hedge might grow to sufficient height to prevent the mutual loss of privacy, the resulting obstruction of both sunlight and daylight to the window would cause the same adverse impacts on the living conditions of future occupants as identified for plot 1.
8. The appeal site has previously benefitted from planning permission for a bungalow. Although this scheme has side windows in the western elevation serving the kitchen and lounge which face towards the boundary, those rooms also have other windows in the northern and southern elevations which would enable daylight to reach the rooms should the side facing windows be

obstructed. The only window facing the eastern boundary would serve a bathroom, which is not a habitable room. The approved scheme therefore is not a comparable situation to the appeal proposal. It does not justify the harm that would be caused to the occupiers of the proposed bungalows by the extremely close position of the study windows to the site boundaries.

9. The National Model Design Code states that access to external private space is important for people's wellbeing and the National Design Guide indicates that amenity spaces should have a reasonable degree of privacy. This is also recognised in the Hanley Castle Parish Building Design Guide 2017 (the Parish Design Guide) which underlines the importance of good design of the external areas surrounding a building, including gardens, boundaries and car parking.
10. A narrow triangle of amenity space would be retained for No 2 St Gabriel's Terrace. This would taper significantly in width towards the southern boundary. Whilst the area of space available to No 2 might be big enough to accord with the Council's guidance, the size and shape of the space, when combined with its position adjacent to the existing and proposed parking areas and the loss of privacy from the study window in plot 2, would not provide an attractive or private space for occupiers of No 2. The amenity space available to No 1 St Gabriel's Terrace would be restricted to a small front garden facing towards the road and a strip of land adjacent to the site access. The strip adjacent to the access is proposed to be reduced in width as part of the proposal to improve the access. It would therefore be less than in the approved scheme. Whilst the spaces are enclosed by a hedgerow and fence respectively, neither space is sufficiently enclosed to remain private from, or undisturbed by, passing pedestrians and vehicles. The effect of the proposals on the level of private amenity space available to the occupiers of Nos 1 and 2 St Gabriel's Terrace would therefore cause a moderate level of harm to the living conditions of their occupiers.
11. Although not part of the development plan, the South Worcestershire Design Guide Supplementary Planning Document 2018 (SPD) provides guidance on residential amenities. Whilst it does not specify a guideline distance between the windows in a new dwelling and an existing dwelling, for rear extensions to existing dwellings it does indicate that rooms with a window should maintain a distance of 5m per storey between the window and the adjoining boundary. Whilst the proposal is not for an extension, this guidance indicates the general level of separation considered acceptable to maintain privacy. The proposed study windows conflict with this guidance.
12. The dwellings at Nos 1 and 2 Hillview Drive have ground floor windows facing towards the site. The distance between the windows and those in the proposed bungalows, coupled with the intervening fences, is great enough to maintain sufficient privacy to both of the existing dwellings. It is also sufficient to ensure adequate privacy to the occupiers of the proposed bungalows. Although the windows in No 2 Hillview Drive would permit restricted views into the rear gardens of the bungalows, they are sufficiently far from the more private parts of the gardens next to the rear of the buildings to prevent direct overlooking.
13. Whilst the windows in Nos 1 and 2 Hillview Drive are also within 5 metres of the boundary and have fences close to them, they partly project over the fence which allows some light to reach them. Moreover, in the case of No 2,

nor are they the sole source of daylight for the room they serve. Walmer Lodge also has windows facing the appeal site, however the fence and wall along the boundary with the site, in conjunction with the distance to the proposed bungalows, would prevent a loss of privacy or harm to the outlook from Walmer Lodge.

14. The roof of the bungalow on plot 1 would be clearly visible above the fence along the eastern boundary. However, its ridge would be set further into the site with the roof pitch sloping away from the boundary. Combined with the distance from the rear of the adjoining houses, this would be sufficient to prevent a harmful overbearing effect on, or loss of sunlight to, the neighbouring properties.
15. Nevertheless, I conclude that the proposed design of the development would have an adverse effect on the living conditions of the occupiers of Nos 1 and 2 St Gabriel's Terrace and the future occupiers of the proposed development. This would conflict with SWDP policy SWDP 21 in relation to neighbouring amenity and policy RE 1 of the Hanley Castle Neighbourhood Plan 2019 (the NP) regarding sympathetic design.

Parking

16. Access from the site to the highway, the B4209, would be via a shared drive which also gives access to an informal parking area to the rear of St Gabriel's Terrace which serves those dwellings. A garage has been removed to allow access to the site which, together with the access to the site, reduces the capacity of the existing parking area.
17. The Council's evidence indicates that 12 parking spaces would be required to meet the Worcestershire County Highways Streetscape Design guidance for the proposed and existing dwellings. The Highways Plan proposes 6 spaces to serve the bungalows but does not demonstrate how the spaces would be allocated or how parking for Nos 1 to 4 Gabriel's Terrace would be retained.
18. I noted from my site visit that the existing surfaced parking area is not marked out. I also saw that the available parking and manoeuvring space is constrained by a telegraph pole located in a central part of the surfaced area. Even with 6 spaces accommodated on the appeal site, I have not seen evidence to demonstrate how the remaining 6 spaces could be laid out in the existing parking area. Nor has it been demonstrated how sufficient safe manoeuvring space would be provided within the existing car park to allow vehicles to access the highway in forward gear.
19. As a consequence, whilst the access is proposed to be widened to allow a two way flow of vehicles, there would be a likelihood of vehicles parking in the widened access way, on the adjacent verge between it and No 1 St Gabriel's Terrace or on the grass verges along the B4209. This would further restrict manoeuvring space and increase the risk of conflict between pedestrians walking through the access way to the proposed bungalows. Parking on the verge of the B4209 would restrict the visibility of drivers exiting the site which would make it harder for drivers to see oncoming vehicles and vice versa. As a result, from the evidence before me, the development would result in substantial harm to the safe movement of vehicles accessing the site and adjoining parking area.

20. The footway along the B4209 runs between the verge and the front boundaries of the adjacent dwellings. There would be sufficient visibility where the widened access way crosses the footway such that, despite the additional use of the access way generated by the proposal and the risk of additional parking on the verge, pedestrian safety would not be harmed. I am also satisfied that the intervisibility between the parking area and the access for the proposed bungalows could be safeguarded by a condition preventing fencing or planting which might obscure visibility if I were minded to allow the appeal.
21. Although planning permission has been granted for a single bungalow on the site, the layout of the two schemes is significantly different. From the evidence before me, the approved scheme does not demonstrate how the parking for the approved bungalow and the existing houses would be accommodated. Therefore, I cannot conclude that the proposed scheme would not have less impact on the parking arrangements than the approved scheme.
22. Therefore, for the reasons given, the development would not make suitable provision for the parking of vehicles in conflict with the requirements of SWDP policy 21 regarding safe access to the highway and NP policy RE 1 which requires designs to respect the connections between people and places.

Character and appearance

23. The Parish Design Guide, which is referred to in NP policy RE 1, highlights the various modern developments which have taken place in the parish. It refers to Hanley Swan as having "a medley of house types and construction." I saw this on my site visit and noted other backland developments in the vicinity of the site including Hillview Drive and Jasmine Close.
24. Policy SWDP 21 sets out various criteria to ensure that development is of high design quality. These include, amongst other things, the development complementing the character of the area and the identity of the settlement and its scale, height and massing being appropriate to its setting. This approach is reflected in less detail in NP policy RE1 which indicates that unsympathetic designs which fail to respect the connections between people and places or are inappropriate to their location will not be supported.
25. Although the site is not prominent in the street scene due to its location behind St Gabriel's Terrace, the northern elevations of the bungalows would still be visible from the road via the site access and from the car park serving the terrace. The narrow gap between the proposed bungalows and between them and the side boundaries, together with the proposed parking spaces in front of the bungalows, would give the site a tight, cramped appearance. It would also severely restrict the opportunity for landscaping to soften the appearance of the development as required by criterion xii of policy SWDP 21. The adverse effects on living conditions which I have already identified are a consequence of the lack of space between the buildings and site boundary and further indicative of its cramped nature. These visual and physical impacts demonstrate that the proposals would not represent the high quality, sympathetic design which the development plan and National Planning Policy Framework (the Framework) promote. They would cause a moderate level of harm to the character and appearance of the site and its surroundings.

26. The details of the materials could be secured via a planning condition, if I were minded to allow the appeal, to ensure they complement the adjoining development. This would not, however, overcome the harm I have identified above.
27. For the reasons given, the proposals would harm the character and appearance of the site and its surroundings in conflict with SWDP policy SWDP 21 and NP policy RE 1 which seek to ensure that new development integrates effectively with its surroundings, complements the character of the area and conserves local distinctiveness.

Other Considerations

28. The recitals to the S106 agreement include a provision for me to be satisfied that the agreement meets the requirements of the CIL regulations. Policy SWDP 15 sets out the thresholds and amount of affordable housing that proposals should provide in order to accord with the development plan. To enable the development to comply with the policy, the agreement secures a contribution of £25,594 comprised of £12,797 for each plot towards the provision of affordable housing in the district. From the evidence before me, I am satisfied that this is fairly and reasonably related in scale and kind to the development; is directly related to it and is necessary to make the development acceptable in planning terms.
29. Set against the harm I have identified, the development would have the benefit of providing two dwellings which would be designed to be accessible for wheel chair users. It would contribute towards the provision of affordable housing in the district, include solar panels to provide energy and provide economic benefit through construction jobs and spending by future occupiers using local businesses. Whilst the economic benefits are modest and attract moderate weight, the Framework indicates that the contribution that a small site such as this makes to meeting the local housing requirement is important as it can be built out relatively quickly. The proposed additional dwellings therefore attract substantial weight. As the proposals would not provide an affordable dwelling on site, the modest contribution towards providing affordable housing off-site attracts moderate weight. Although the development has been designed to be accessible to wheel chair users and would be consistent with the Framework's policy to promote inclusive and accessible housing, this benefit could still be achieved by a more sensitive design. This benefit therefore has moderate weight.

Planning Balance

30. For the reasons given, the proposals would cause harm to the living conditions of future occupiers of the development and occupiers of neighbouring properties and would not make suitable provision for the parking of vehicles. It therefore conflicts with SWDP policy 21 and NP policy RE 1.
31. The SWDP and NP date from 2016 and 2019 respectively but the weight to be attached to them does not hinge on their age. Paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.
32. The Framework seeks to achieve well-designed places. It requires that development which is not well designed should be refused, especially where it

fails to reflect local design policies and government guidance on design. It also requires that developments add to the overall quality of the area, are sympathetic to local character and create places with a high standard of amenity for existing and future users. SWDP policy SWDP 21 and NP policy RE 1 reflect this positive approach and therefore conflict with them should be given substantial weight. The Framework identifies that parking provision contributes to making high quality places and I therefore attach substantial weight to the conflict with SWDP 21 and RE 1 in this respect as well.

33. As there are no policies in the development plan which positively favour development of this kind in this location and as the proposal would be contrary to the policies referred to above, I conclude that there would be conflict with the development plan as a whole.
34. The evidence indicates that the Council cannot demonstrate a five year supply of deliverable housing sites, with the appellant identifying a supply of 3.31 years. In these circumstances, applying footnote 8 of the Framework, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
35. As described above, the benefit of providing additional bungalows to the housing supply has substantial weight albeit that the benefits of construction jobs, support for local businesses, use of renewable energy and the contribution towards accessible and affordable housing provision have moderate weight.
36. Consequently, the substantial harm caused to the living conditions of future occupiers of the development, the moderate harm to occupiers of neighbouring properties and the character and appearance of the site and its surroundings, together with the substantial harm caused by the lack of suitable provision for the parking of vehicles would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

37. The proposal conflicts with the development plan as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

R Kent

INSPECTOR