



Appeal Decision

Site visit made on 9 January 2025

By G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2025

Appeal Ref: APP/Z0116/W/24/3351142

Land to the rear of 121-131 Highridge Road, Bishopsworth, Bristol, BS13 8HY

- 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 Mrs Lucy Millen of the Millen Group against the decision of Bristol City Council.
 - The application Ref is 23/04057/F.
 - The development proposed is the erection of a pair of semi-detached three-bedroom dwellings.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The applicant has made an application for costs against the Council. This is the subject of a separate decision.
3. The original application was submitted in mid-October 2023 in the terms set out in the banner heading above. Following enquiries and exchanges of correspondence with the Council, which took place over several months, the appellant decided to submit a revised scheme as an amendment to the original.
4. The revised scheme was comprised of two detached dwellings and was submitted in early August 2024. The revised submission was accompanied by amended plans and several reports directed to the amended scheme. The Council, however, did not accept the revised scheme as an amendment and resolved to refuse planning permission for the originally submitted scheme on 22 August 2024. The appeal follows that decision.
5. The appellant requested that the appeal be considered, not on the scheme refused permission, but on the basis of the amended scheme for two detached dwellings. I have considered this request having regard to the principles first established in the *Wheatcroft*¹ case.
6. I find that the revised scheme involves a substantive change to that originally submitted given the changes to the house types proposed, the overall layout and design. The associated and accompanying reports are also directed to the revised scheme, and the Council's planners have clarified that it would need to consult

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]. This decision has since been confirmed in *Wessex Regional Health Authority v SSE* [1984], *Wadehurst Properties v SSE & Wychavon DC* [1990] and *Breckland DC v SSE and T. Hill* [1992].

specialist colleagues/departments on these, which it has not done. I also find that an acceptance of the amended scheme may cause procedural unfairness in that most of those consulted, including several local residents, directed their representations to the scheme originally submitted, or that which was refused permission.

7. Accordingly, given the substantive change in the amended scheme and the procedural unfairness that would arise if it were considered, the appeal shall be concerned with the scheme subject of the Council's decision. However, some aspects of the reports prepared by the appellant for the amended scheme shall be taken into account, since they involve matters common to both schemes. They are therefore treated as if they had been prepared to support various aspects of the appeal.
8. Two local residents indicated that the unmade access track leading to the proposed dwellings and a walkway at the rear of their property was in their ownership. The track and walkway are included within the red line comprising the application site. On enquiry, the appellant responded to the Inspectorate that the residents concerned had been correctly served with notices in accordance with the appeal procedure.
9. However, I find no clear indication on the statutory certificates of ownership accompanying either the original application or appeal that this was done in accordance with normally adopted and required practice. I have therefore considered whether the appeal should be entertained. In circumstances where the owners of the land concerned were clearly aware of the original application and appeal, and have taken the opportunity to make representations, I am satisfied that their interests would not be prejudiced were the appeal to proceed.

Main Issues

10. These are the effects of the proposal on: (a) the character and appearance of its surroundings including whether the character or appearance of the Bishopsworth and Malago Conservation Area (CA) would be preserved or enhanced; (b) the living conditions of nearby residents in Highridge Road and Four Acres with specific reference to noise, disturbance and privacy, and (c) highway and pedestrian safety.

Reasons

Character & Appearance

11. Development on Highridge Road in the vicinity of the appeal site is single fronted with its dwellings facing open land, a common. The appeal site is located behind the properties' rear gardens. It is largely open, with trees lining its boundaries. Some buildings, described by the appellant as garages, are evident on the site and to the rear of the Highridge Road properties. The proposed dwellings would be reached from the highway along an unmade track running between Nos 131 & 133 Highridge Road for a distance of around 70-80m.
12. The access track, and the northern part of the appeal site used for vehicular circulation fall within the boundaries of the CA. For the most part, however, the appeal site lies without, albeit adjoining the CA. It appears that no Character Appraisal has been produced for the CA. However, this part of the CA is characterised by reasonably substantial dwellings on the Highridge Road frontage

with development largely set within areas of open and private spaces, notably the common to the front, long private gardens to the rear, beyond which lie the appeal site and adjacent areas largely open in character.

13. The appellant describes the appeal site as previously developed largely on account of the garages² sited upon it. The garages are small in scale and non-intrusive and occupy a small proportion of the site. The Preliminary Ecological Assessment (PEA)³ described the site as:

The predominant habitat on-site is scrub, characterised by scattered bramble (Rubus fruticosus) and other scrub vegetation. Scrub habitats can provide valuable resources for a range of species, including invertebrates, birds, and small mammals. The ecological value of this scrub is moderate, given its structure, species composition, and management history.

14. The largely open area is lined with a mixture of trees and hedgerows. I visited in mid-winter when defoliation was complete. I suspect that when in leaf, the many trees evident would add considerable greenery and value to the scene. The site, along with the open areas on either side, even in winter, acts as a pleasant backcloth to development within the CA, providing what I regard as an attractive open and verdant setting to it.
15. The appellant, in the design, has attempted to minimize the scale and bulk of the proposed dwellings, and having regard to the submitted arboricultural exercise, it seems likely that most of the trees on the site's periphery would be retained, thus allowing an element of screening. Nevertheless, to my mind, the proposals, appropriately described as backland development, would stand out clearly and inappropriately proving visually harmful on account of the marked and significant intrusion into the pleasant and largely open setting of the CA.
16. The appellant points to other examples of backland development in the vicinity of the site granted planning permission by the Council, and points to the requirement for consistency in decision-making. I saw the two examples referred to by the appellant⁴ and in addressing this issue I have had particular regard to the judgements in *North Wiltshire*⁵ and *Mid-Counties*⁶ respectively. That is, previous decisions are capable of being material considerations to be taken into account in the interests of consistent decision-making, unless distinguishable.
17. Not a great deal of detail has been provided regarding the circumstances surrounding the respective permissions. As to the first, that behind No 121, I note that an extant building stood behind that property when the planning permission referred to was granted. The consented building also lies closer to the frontage development than the appeal site and in my view is far less intrusive than would be the appeal proposal as a consequence.
18. With regard to the dwelling built behind No 135, I note that it was granted planning permission contrary to the professional advice of Council officers, who considered that it would harm the character and appearance of the CA. Judging from what I saw, that has indeed proved to be the case given what I regard as the dwelling's

² Local residents dispute the term garages – they say that they were storage buildings used in association with a previous allotment use.

³ Prepared by Britscape Environment Consultants August 2024

⁴ Ref 09/04648/F and 17/01813/F behind Nos 121 & 135 Highridge Road respectively.

⁵ *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137

⁶ *R (Midcounties Co-operative Limited) v Forest of Dean District Council* [2013] EWHC 1908 (Admin)

inappropriate scale for its context, that it goes harmfully against the grain of extant development and is consequently intrusive. I do not consider it appropriate that similar harm should be repeated.

19. I acknowledge the appellant's point that the two examples referred to inform local character, but it is not in a positive manner. The two cases referred to are therefore either distinguishable or provide justifiable reason for not further harming the CA or its setting.
20. In conclusion, I find the proposal to be in material conflict with those provisions of the Bristol Development Framework Core Strategy (CS) Policy BCS21 and the Bristol Local Plan – Site Allocations and Development Management Policies (LP) Policy DM26 & DM27 directed to achieving good quality urban design contributing positively to local character and distinctiveness. A conflict also arises with CS policy BSC22 and LP policy DM31 requiring development proposals to safeguard the setting of heritage assets and to preserve or enhance their character and appearance.

Living conditions

21. The residents most at risk of their living conditions being affected by noise or disturbance are those either side of the proposed access track at Nos 131 & 133 Highbridge Road. The appellant has produced a Noise and Vibration Assessment (NVA)⁷ with specific regard for these properties.
22. Backland development of this type can sometimes give rise to noise and other nuisances, such as intrusive headlights. In this case however, given that the track is already used by vehicles to access garages and parking area, residents alongside the track are familiar with a certain level of activity close by, both within their houses and gardens. I am satisfied that the additional movements likely to be generated by the proposed development would not cause such a level of noise or other nuisance likely to harm living conditions, particularly, as suggested in the NVA, that a new surface would be laid on the track to reduce or suppress noise⁸.
23. Construction activity and the use of the access by construction vehicles has not been specifically addressed by the appellant, other than a suggestion that it could be conditioned to the effect that it should not take place during unsocial hours. Local residents however are extremely concerned with this aspect, particularly having regard to the limited width of the track where it runs past their houses, and the consequent risk of disturbance and possible damage. I share their concerns given the narrowness and length of the track. However, this is an aspect which could be governed by condition and a requirement for a detailed construction management plan in the event of the appeal succeeding. Such a condition could, including other matters, specify and control the type of construction vehicles allowed to use the track.
24. The dwellings would be sited well away from the rear elevations of the dwellings in Highridge Road and Four Acres to the east of the site, but some overlooking of rear gardens would occur. However, a level of mutual overlooking of gardens is

⁷ Prepared by TD Accoustic (sic?), Noise and Vibration Consultants, undated.

⁸ Albeit that the applicant has not adequately addressed whether the owners' consent has been obtained to lay a new surface

inevitable in a suburban location, and I am satisfied that the degree of overlooking involved should not cause harmful loss of privacy to any local resident.

25. I therefore conclude that the proposed development would not harm the living conditions of surrounding residents. Accordingly, no conflict arises with those provisions of CS policy BCS21 or LP policy DM27 designed to safeguard existing residential amenities.

Highway and pedestrian safety

26. The appellant submitted a Transport Statement (TS)⁹ and a Vehicle Tracking and Priority Access Plan in August 2024. Although these were related to the revised scheme, parts are relevant to the scheme subject of the appeal.
27. The TS provides that two double garages would be demolished to make way for the dwellings and that consequently the number of vehicle movements envisaged *'remains comparable'* to the current situation. I saw no convincing evidence at my site visit that the garages/buildings referred to either were in use or had been used for some time. Accordingly, I would have expected a TS to have provided an accurate empirical assessment of existing and future traffic generation. To my mind, judging from what I saw and that proposed, it is almost inevitable that the access track would be subject to additional vehicular movements compared with the existing situation.
28. But be that as it may, the TS and associated plan identifies a priority vehicle signage system (PVSS) the primary objective of which according to the TS is to:
- ‘,give priority to vehicles entering the site from Highridge Road thereby preventing vehicles from reversing out onto the main road. This measure is crucial in maintaining safety and reducing the potential for traffic conflicts at the site entrance.’*
29. The system involves the erection of signage at either end of the long access track, and I share the view that a system of this type would be crucial in safeguarding against the prospect of dangerous reversing movements taking place onto the main road at the entrance to the track, putting public safety at risk. However, there is no evidence before me that the appellant has the necessary control on the land to ensure that the signage would be erected. Indeed, the evidence points the other way – the owners of the land have stated in their representations that their consent would be withheld.
30. The appellant has produced a drawing showing a turning head. The TS says:
- The inclusion of the turning head ensures that vehicles can enter the site, turn around, and leave without the need for complex manoeuvres. This feature is particularly important given the narrow width of the access way, as it prevents vehicles from needing to reverse back onto Highridge Road.*
31. The TA also provides:
- Ensuring that the site is accessible to emergency vehicles is a critical component of the development. The access way and turning head have been designed to accommodate the passage of emergency vehicles, including fire trucks and ambulances.*

⁹ Prepared by Britscape, Highway Consultants, undated.

32. The turning head design and the tracking exercise presented however relate to the amended scheme, and not to the scheme subject of the refusal of planning permission and appeal. I am not persuaded on the basis of the evidence before me and what I saw on the site that a suitable turning head could be provided for the scheme subject of appeal which would meet all requirements, as identified by the appellant. Indeed, on the basis of the tracking drawing submitted, I am far from convinced that emergency vehicles could be adequately accommodated, a view at least seemingly partly shared by the author of the TA who says:

‘..the access is significantly constrained for a fire appliance and whilst it technically could access the site we would recommend the installation of a sprinkler system in each dwelling as a fail safe scenario in an emergency.’

33. I acknowledge one aspect of the appellant’s submissions that, given its dimensions, speeds along the access track are likely to be low. Thus, when possible conflict arose between vehicles and pedestrians or cyclists, the risk of accidents would be minimal. However, that does not overcome the serious defects in the proposed access arrangements I have found.
34. On matters concerning public safety I intend to adopt a precautionary approach. In my view, the increased use of the access, without adequate mitigation or safeguards capable of implementation, which has not been satisfactorily demonstrated, would likely give rise to dangerous manoeuvres arising at the site’s entrance off Highridge Road, putting public safety at risk. Accordingly, a conflict arises with the provisions of CS policy BCS10 directed to ensure the provision of safe streets.

Other matters

35. Reference has been made to other development plan policies but those to which I have referred to appear to me to be the most relevant, and, in this regard, I note that LP policy DM26 is not inimical for Backland Development in principle. I have also taken account of the various references to the Framework¹⁰ by both parties, and these have also been considered. Various references were made to case law by the appellant, which have been noted. Where relevant, I have also referred to other guidance by the courts.
36. Several local residents submitted comments and I have already dealt with the most significant planning-related representations. Although the Council raises concerns regarding the development’s compatibility with the heat hierarchy set out in CS policy BCS14 and the potential adverse living conditions of future residents of the development I am satisfied that these issues could be addressed by conditions in the event of the appeal succeeding.
37. My visit took place on what appeared to be a refuse collection day and I saw that the occupants of the other examples of backland development referred to earlier had carried and deposited their recycling bins and containers tidily next to the highway. Although the journey from the proposed development to the highway would be longer than in the other cases, I have no reason to conclude other than any future resident of the proposed development, if built, would do likewise.

¹⁰ The National Planning Policy Framework

38. The development would bring some benefits, notably a small increase in housing accommodation in an accessible location; it would also bring some economic benefits during the construction period. These matters have been taken into account in arriving at my overall conclusions.

Overall conclusions

39. I have found for the appellant in respect of the second main issue identified at the outset, that in respect of neighbouring residents' living conditions. However, I have found against her on the first and third main issues in respect of effect on local character and public safety respectively. These are sufficient reasons to dismiss the appeal.
40. Although the appellant has not specifically referred to the '*tilted balance*' I am aware from other cases of the Council's failure to provide an acceptable supply of housing land in the City. This would be a benefit of the scheme. However, I am satisfied that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
41. Accordingly, the appeal is dismissed.

G Powys Jones

INSPECTOR