



Appeal Decision

Site visit made on 18 March 2025

by **P Brennan BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

Appeal Ref: APP/U3935/W/24/3357262

Land Adjacent to 71 Bevisland, Swindon SN3 6AN

- 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 Oxenham against the decision of Swindon Borough Council.
 - The application Ref is S/24/1030.
 - The development proposed is the proposed erection of 1No dwelling (class C3) and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published in February 2025. The parties have been provided with the opportunity to comment on the implications of the revisions to their cases. I have taken account of the revised Framework, and any comments made, in my determination of the appeal.

Main Issues

3. The main issues are:
 - The effect of the proposed dwelling on the character and appearance of the area, and
 - The effect of the proposal on the living conditions of neighbouring residents with regard to outlook, sunlight, daylight, and privacy.

Reasons

Character and appearance

4. The appeal site is an area of open space comprising grass and a mature tree. It is situated in a corner position at a bend in the road, between numbers 71 and 72 Bevisland, within a large open-plan estate. The modest houses surrounding the site are primarily two storeys with a garage and driveway to the front and a private garden to the rear, in a perimeter pattern of development. They are generally of similar design and the street is characterised by evenly spaced pairs of semi-detached buildings that are aligned in an ordered manner. The dwellings throughout the estate often frame small areas of green open space in a generally open plan layout.

5. Opposite the appeal site is a large area of linear green open space with mature trees. This forms part of a wider and significant group of connected structural linear open space running through the estate. The estate is characterised by both the structural open space and the smaller green pockets. Due to its open aspect and relationship to adjacent open space, the appeal site makes a positive contribution to the character and appearance of the area.
6. The proposed dwelling would be sited adjacent to number 72, with its private garden being to the side, enclosed with a 1.8m fence at the back of the footway, fully occupying the area of incidental open space. Whilst I acknowledge the site's ownership, its function as a pocket of green open space plays an important role in the character and appearance of both Bevisland and the wider estate. Its loss would cause harm to, and be out of character with, the openness of the street and the wider estate.
7. Furthermore, the proposed siting of the dwelling would be contrary to the prevailing pattern of development. Its rear elevation would abut the shared boundary to the rear, where the other dwellings have rear gardens, and its garden to the side would be at the back of the footway and enclosed by a tall fence. These characteristics would be at odds with the established pattern of development to the detriment of the character and appearance of the area.
8. The proposed dwelling would be of a slightly different design to its neighbours and, whilst this would not in itself cause harm to the character and appearance of the area, it would not overcome the harm identified above.
9. For the above reasons, I conclude that the proposed development would conflict with the rhythm and openness of the street scene and surrounding open space and would have a harmful effect on the character and appearance of the surrounding area. Accordingly, I find conflict with Policy DE1 of the Swindon Borough Local Plan 2026 (SBLP), the Residential Design Guide Supplementary Planning Document 2016 (RDG) and the Framework with respect to matters of character and appearance. These policies, amongst other things, seek development that achieves high quality design that contributes positively to local character with regard to its surroundings, context, and amenity.

Living Conditions

10. As identified above, the proposed dwelling would be sited adjacent to the side boundary of number 71 and occupy the length of this entire plot. The separation distance between 71 and the rear elevation and corner of the proposed dwelling would be minimal. Due to this close proximity, a jarring and dominant form would be introduced, which would be of a scale that would dominate views to the rear. Whilst the proposed dwelling would be sited lower than number 71, at two storeys in height, it would be visually overbearing in this particular position. This relationship would be unacceptably harmful to the outlook of the existing occupiers at number 71.
11. In terms of sunlight, the most affected property also appears to be number 71. The Council's RDG¹ identifies that new development must ensure that a minimum of 50% of each private space receives at least 2 hours sunlight on the spring equinox. The RDG also identifies separation distances to ensure solar access to

¹ Paragraph 6.10 of the Residential Design Guide Supplementary Planning Document 2016

rooms and gardens all year round². When a 45-degree angle is applied in plan form to affected habitable room windows, the policy identifies a separation distance of 12m must be maintained. The proposal falls significantly below this required separation distance.

12. The appellant has submitted several sunlight pattern diagrams to attempt to illustrate that the proposed dwelling would not impede the minimum 2 hours of sunlight on the spring equinox at number 71. A hand drawn diagram to attempt to illustrate compliance with the 65-degree visible sky angle (VSA) of the BRE daylight guidance³ referenced in the RDG is also submitted. This uses a 38-degree VSA rather than the 65-degree guideline and seems to apply it incorrectly to the proposed development which is sat to the side of the impacted dwelling rather than its rear. These do not appear to have been professionally produced, and while this is not a criticism of their quality, I cannot be confident on the submissions made that they are sufficiently accurate for me to attribute them with full weight.
13. The appellant's evidence indicates that the habitable rooms would be in shade between 1300, and 1600 hours and the garden would be in shade between 1300 and 1900 hours as a result of the proposed dwelling. Therefore, the minimum of two hours per day of access to sunlight would appear to be met at number 71. Nonetheless, I am unconvinced, based on the appellant's sunlight and daylight evidence that the habitable rooms on the rear elevation of number 71 would not suffer a demonstrable and harmful loss of sunlight as a result of the proposal.
14. Consequently, I find that the rear facing windows of habitable rooms of the adjacent dwelling would be affected by a material loss of sunlight from around midday into the evening on the spring equinox. Sunlight levels would be materially compromised based on both the proximity of the proposed dwelling and the existing situation, which appears largely open and without obstruction.
15. The neighbour's garden would also appear to suffer a loss of sunlight. However, this would be for a limited period of the day and when considering the effect of the reduction of sunlight due to the proximity of the neighbour at number 72, the overall effect would be modest.
16. The proposed development would also impact, albeit to a lesser extent, access to sunlight for the wider row of existing properties adjacent to number 71. With regards to the impact on daylight, the dwelling at number 71 would also be compromised, but to a lesser extent, which due to its proximity would result in an overall shadowing effect on both the garden and rear facing habitable rooms.
17. With regards to privacy, the dwelling has been designed to reflect the site constraints. However, this has resulted in a rear elevation which is largely blank, limiting the extent of overlooking. As such, despite the rear elevation including two windows, these serve two en-suite bathrooms which are non-habitable and could be obscurely glazed. As such, no loss of privacy – actual or perceived - would occur.
18. Consequently, for the reasons set out above, I conclude that the proposed development would be visually intrusive leading to an unacceptable impact on the

² Page 54 of the Residential Design Guide Supplementary Planning Document 2016

³ British Research Establishment's (BRE) Site Layout Planning for Daylight and Sunlight (2011) (BRE 209) – Figure 97 in the Residential Design Guide Supplementary Planning Document 2016.

living conditions of neighbouring residents in terms of outlook and access to daylight and sunlight. Accordingly, I find conflict with SBLP Policy DE1, the RDG and the Framework in regard to matters affecting living conditions. These policies, amongst other things, seek development that achieves high quality design that contributes positively to local character with regard to its surroundings, context, and impact on residential amenity.

Other Considerations

19. The appellant has asserted that the proposed dwelling has not caused objection with respect to its design and regarding ecology, highway matters and on adverse tree effects. However, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
20. The appeal site is within a defined settlement, close to services, where policies seek to make the most efficient use of land and support the provision of new housing in sustainable locations. The proposed development would also provide new ecological habitat features in the form of bat and bird boxes, swift bricks, and bee bricks. Renewable energy features including electric car charging and an air source heat pump would also be incorporated. These benefits carry moderate weight in favour of the proposal.
21. There would be limited social and economic benefits associated with the proposal. An additional unit would make some, albeit little, difference to the overall supply of housing and the economic support an additional household would provide to the local economy, if any, would be minimal.

Planning Balance

22. The SBLP dates from 2015 but the weight attached to it does not hinge on its age. Rather, 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. Whilst new housing development is supported by the Framework, this is on the basis that it does not cause substantial harm. The Framework advocates that new development should function well, add to the overall quality of the area whilst being sympathetic to local character, and provide a high standard of amenity for existing and future users. Therefore, the conflict between the proposal and Policy DE1 should be given significant weight in this appeal.
23. The proposal is not in accordance with the aforementioned policy of the SBLP, with the associated conflict reflecting harm to character and appearance of the area and to the living conditions of occupants of adjacent properties. For these reasons, the development conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
24. It is not disputed that the Council cannot demonstrate a five-year supply of deliverable housing sites. A current housing supply of 4.87 years has been mentioned by the Council, but following revisions to the Framework, this could be even lower. In any event, there is little information before me to clearly demonstrate the actual housing supply position. In these circumstances, footnote 7 of the Framework establishes that the policies which are most important for determining the application are out of date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably

outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

25. As described above, the benefits associated with a single dwelling would be limited, even taking account of the objective of significantly boosting the supply of housing in the Framework and the Council's housing land supply position.
26. Consequently, the adverse impacts of developing the incidental green open space on the character and appearance of the area, and to the living conditions of occupants of neighbouring properties, conflict with policies of the Framework. The adverse impacts would therefore significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

27. The proposal would conflict with the development plan as a whole and there are no material considerations, including the provisions of the Framework, which outweigh the harm identified sufficient to indicate a decision otherwise than in accordance with it. Therefore, for the reasons given above, the appeal should be dismissed.

P Brennan

INSPECTOR