



Appeal Decision

Site visit made on 6 August 2025

by **H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2025

Appeal Ref: APP/Y3940/W/25/3363270

Land at the rear of 40 The Borough, Downton, Salisbury SP5 3ND

- 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 A Cooper against the decision of Wiltshire Council.
 - The application Ref is PL/2024/07405.
 - The development proposed is erection of a new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A unilateral undertaking (UU) made as a deed under Section 106 of the Town and Country Planning Act 1990, signed 31 March 2025, was submitted. The UU secures the dwelling as a self-build dwelling with its initial occupation by the appellant as a principal residence for a period of no less than three years. I have determined the appeal on this basis.
3. The appeal was submitted with amended plans, references 1061-02B, 1061-03C and 1061-06C, which show a number of changes in relation to windows, the extent of hardstanding and the omission of the blue line around No 40 The Borough. Where amendments are proposed, regard should be had to the principles established in 'Wheatcroft'¹ and Holborn Studios² - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. As the plans detail relatively minor amendments, and the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take them into account. I shall therefore determine the appeal on the basis of the plans referred to on the decision notice, as well as the amended plans submitted as part of the appeal.

Main Issues

4. The main issues in the appeal are the effects of the proposal on:
 - the character and appearance of the site and surroundings;
 - the heritage significance of the Grade II listed building, No 40 The Borough and the Downton Conservation Area (the CA);

¹ Wheatcroft Ltd v SSE [1982]

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823

- the living conditions of neighbouring occupiers, with particular regard to privacy;
- the River Avon Special Area of Conservation (SAC); and
- the New Forest Special Protection Area, New Forest Special Area of Conservation and New Forest Ramsar Site (the New Forest Protected Sites).

Reasons

Character and appearance

5. The appeal site is situated to the rear of No 40 The Borough, which is an end-of-terrace thatched roof cottage, extended to the side and rear. The appeal site is formed from what would have been the garden to serve No 40, though the evidence suggests that the ownership of the two has been separated. On the ground, the garden area now available to occupiers of No 40 is a small space enclosed by a parking area at the far end and the driveway spanning one side of it. The evidence suggests that some of the works to separate the gardens may be unauthorised, though I have focussed on the merits of the appeal as detailed in the plans before me. The appellant's evidence also refers to the appeal site being cluttered by dilapidated green houses, polytunnels and a poor quality garage, though these features were no longer in existence at the time of my visit.
6. This area of Downtown is largely characterised by street-fronting terraces and dwellings set apart by the wide street with generous grassed spaces within it. It has a strongly linear character and strong building lines with characterful cottages, many of which open out directly onto the street with a typical north-south orientation with rear elevations opening onto long, narrow rear gardens. Front gardens are irregular and where they feature, are modest in size. Despite the tight urban grain, street trees are also a regular and positive feature of the area.
7. The appeal proposal seeks to introduce a dormer-style dwelling behind No 40, accessed via the driveway to the side of the dwelling. It would be a backland form of development that would undermine the strongly defined street layout and leave a small, contrived garden space for No 40 relative to the size of that extended dwelling. Though there are a few anomalies within the street pattern, particularly at No 44 and 54, they are not recent additions and are each in the style of dwellings found in the surrounding area. The appeal proposal would be a more obvious backland form of development.
8. Additionally, the proposed dwelling would have a boldly linear form. Its first floor windows would be limited in scale and largely obscure glazed so as to minimise the potential for overlooking, save for those facing to the west, towards the rear gardens of dwellings in that direction.
9. In terms of the finer grain design aspects, the dormer windows on the west elevation would appear out of scale with the squatter openings on the ground floor and the two garage door openings on the north elevation would do little to give the dwelling any visual connection with the street. Whilst it is suggested the dwelling would appear as a workshop as may be expected in such a position, I do not find that its scale, form, contemporary style and the inevitable addition of domestic paraphernalia would combine to such an effect.

10. The appellant's submission includes an Arboricultural Impact Assessment which confirms the removal of the remaining birch tree within the site and protection measures to the existing trees within the garden of No 40. Reference is also made to additional hedge planting and 14 replacement trees which could be secured by condition. The Council does not maintain an objection specifically on the issue of trees or related effects on the appearance of the area and I find no reason to reach an alternative conclusion in this regard.
11. Taking the above points together, I find the proposal to be harmful to the character and appearance of the area, contrary to, in particular, policy 57 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy) which requires a high standard of design and for developments to enhance local distinctiveness and relate positively to the existing pattern of development.

Heritage significance

12. The area in which the site lies is within the CA. The *Downtown Conservation Area Appraisal and Management Plan* (CAAMP) (2008) describes the CA as a whole and also separates it into distinct character areas, such as the area of The Borough which includes the appeal site. The broader characteristics of the CA include its distinctive settlement layout and the contrast between the intimate village core and the spacious Borough; its valley floor setting which comprises areas of flood plain and former water meadow systems; the deep, narrow plots often backing onto open countryside; its mature, tree-covered setting; important roofscape views; continuous building lines providing good enclosure; the significant number of thatched buildings and the extent of high quality eighteenth century brickwork.
13. The CAAMP also describes that the settlement pattern, particularly that of the Borough, has seen limited change since inception and where some 20th century housing has evolved at odds with it, it should not be seen as justification for compounding the errors of the past. The appeal site lies within this area which is particularly significant for the survival of its historic settlement pattern. This settlement pattern, despite the limited aforementioned anomalies, is evident at the appeal site with a deep, relatively narrow plot consistent with the building width. The original host dwelling, No 40, is also one of the surviving vernacular thatched buildings described in the CAAMP. The appeal site is, therefore, characteristic of the CA and contributes positively to it.
14. No 40 is a Grade II listed building³ in its own right, though one of many in this well-preserved CA. Its significance primarily lies in its contribution through remaining historic fabric and architectural form as an early C18 vernacular cottage of two storeys, of Flemish bond brick and thatched roof, which has group value with its adjoining neighbour and a number of other similar buildings in the area. Notwithstanding that the recent extension has affected it to a degree, the significance of the building is partly derived from its setting as part of a picturesque composition of buildings with a strong building line around a wide-set street with large green verges. The form and layout of the rear garden as an original long, narrow burgage plot also gives significance to the building and the plot layouts are still relatively coherent when appreciated on the ground. Therefore, the appeal site contributes to the heritage significance of No 40.

³ List Entry Number 1355715

15. The appeal proposal would introduce an uncharacteristic dwelling into the rear garden of No 40, and despite its position close to the eastern boundary, would materially undermine the legibility of the burgage plot layout, irrespective of whether the site is formed from one burgage plot or two. The new dwelling would appear to overcrowd the plot in close proximity to No 40 and urbanise the modest spaces in between. Though it has been noted that the siting of No 44 appears different to the typical burgage plot, it has existed for some time and where harm has already occurred, this in itself does not justify further harm.
16. As such, for the reasons outlined above, the appeal proposal would fail to preserve the significance of No 40 The Borough and would fail to preserve or enhance the character or appearance of the CA. It would therefore conflict with policy 58 of the Core Strategy which seeks to conserve and where appropriate enhance designated heritage assets and their settings in a manner appropriate to their significance.
17. Under the terms of the National Planning Policy Framework (the Framework), the harms in each case would be of a less than substantial nature. The harm to the significance of the CA would be at the lower end of the spectrum of such harm given the site size and more modest contribution it makes to the wider CA. The significance of No 40 would be harmed to a greater degree, whilst still less than substantial, closer to the medium level of such a spectrum.
18. The Framework requires the public benefits of a proposal to be weighed against less than substantial harm to the significance of any affected designated heritage assets. In this case, whilst there would be no specific heritage benefits, the scheme would deliver a single self-build dwelling which is a public benefit capable of attracting modest weight in favour of the scheme. On balance, I find that this public benefit would outweigh the less than substantial harms outlined above.

Living conditions of neighbouring occupiers

19. The proposed dwelling would have its principal elevation with entrance door and most glazed openings oriented to face west, towards No 38. There would be four large dormer windows extending up from eaves level in this elevation, the majority of which would serve bedrooms. These windows would allow views towards the garden of No 38. Whilst the appellant offers a condition to secure a 1.8 metre high timber garden fence and hedging on this boundary by way of a condition, this would not prevent overlooking of the garden by so many windows and in such close proximity and would thus, result in harm to the living conditions of occupiers of No 38.
20. The proposed dwelling would take its access from a driveway which has been constructed along the side of No 40 and which would be shared between the two dwellings. Notwithstanding the Laurel hedge which has been planted around the garden, the regular passing of people and cars along the driveway and using the parking area would allow occupiers and visitors to the proposed dwelling views into the garden which would undermine the enjoyment of this contrived and cramped space.
21. Glimpses towards windows in the side and rear of the extension, including towards the double bedroom doors with Juliet balcony on the rear of the extension, would also be regularly gained by people using the driveway and parking area. Whilst internal privacy measures could be utilised to provide occupants with a greater

degree of privacy, these would only be necessary as a result of the proposal itself, whereas the existing incidental overlooking due to the built up nature of the area is not as directly intrusive.

22. I note that alterations to the plans would secure obscure glazed and fixed windows and rooflights at first floor level on the north, south and east elevations which would be capable of being secured by condition. However, these measures would not overcome the harm I have identified to the occupiers of No 38 or 40 The Borough. The proposal therefore conflicts with policy 57 of the Core Strategy which seeks to ensure that new development avoids impacts on the amenities of existing occupants with regard to privacy, overshadowing; vibration; and pollution.

River Avon SAC

23. The appellant's Statement acknowledges that the site is within the catchment area of the SAC which is designated under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) for its pristine chalk river system that supports a diverse variety of species, including plants, fish, and snails. Development within the catchment that increases overnight stays, increases the number of people in the catchment for commercial attractions and/or intensifies agricultural development can harm the integrity of the SAC due to its vulnerability to the effects of pollutants which may enter the river, particularly phosphates. As the proposal includes permanent residential accommodation, significant effects on the integrity of the SAC are likely and cannot be screened out. An Appropriate Assessment under the Habitats Regulations is therefore necessary.
24. The appellant's evidence does not seek to quantify the effects of the current proposal in terms of nutrient outputs or indicate what amount of mitigation would be necessary to achieve nutrient neutrality. The submitted UU does not seek to secure mitigation either. However, it is inferred that the appellant would offer mitigation by way of a Grampian condition, thus, there is at least an acceptance that some amount of mitigation is necessary for the development to avoid harm to the integrity of the SAC.
25. There are no details before me at this stage about what precise level of mitigation is necessary or how that would be secured at a future stage. No detail is provided about the potential nutrient mitigation site from which sufficient credits could be obtained, whether sufficient credits are available and any timescale for their availability. In such circumstances, the condition offered is not precise or relevant to the development being permitted and consequently fails the tests outlined in paragraph 56 of the Framework.
26. Furthermore, the Planning Practice Guidance outlines⁴ that a positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 is unlikely to pass the test of enforceability. Whilst it may be possible to use such a condition in exceptional circumstances where there is clear evidence that the delivery of the development, potentially of a complex nature, would otherwise be at serious risk, or in conjunction with an obligation, the test of necessity needs to be met. No such considerations have been advanced in this case.

⁴ Paragraph: 010 Reference ID: 21a-010-20190723

27. As such, absent of the necessary details on the level of mitigation necessary or how such would be secured at this stage, adverse effects on the integrity of the SAC cannot be prevented. As such, the development conflicts with policies 50 and 69 of the Core Strategy which, amongst other things, seek to avoid and reduce potential environmental effects on the River Avon SAC.

New Forest Protected Sites

28. The proposed development site lies within the 13.8km zone of influence (Zoi) for the New Forest Protected Sites which are designated under the Habitats Regulations for its range of important ground nesting bird species and supporting diverse habitats. New residents from housing development within the Zoi of the New Forest Protected Sites threaten disturbance to ground nesting birds through increased recreational usage. As the proposal would add to the recreational pressures, it would be likely to harm the integrity of the New Forest Protected Sites without mitigation.
29. The *Wiltshire Council New Forest Protected Sites Recreational Impacts Mitigation Scheme* (2022) has been prepared to address recreational impacts through funding alternative recreational areas to reduce pressure on the New Forest. The Strategy identifies a sum that is to be paid per residential dwelling to offset the adverse impact of development. Whilst the appellant has agreed to pay this sum, no obligation has been provided to link the payment to delivery of the scheme. Instead, a Grampian condition has been offered to address this issue as well.
30. For the reasons outlined above in connection with the River Avon SAC, a Grampian condition would lack the robustness of an engrossed planning obligation. As such, adverse effects on the integrity of the New Forest Protected Sites cannot be prevented and conflict arises with policies 24 and 50 of the Core Strategy in relation to the need to avoid adverse effects on the integrity of European nature conservation sites and conserve and enhance the unique character and environment of the New Forest National Park.

Planning Balance

31. The Self-Build and Custom Housebuilding Act 2015⁵ places a duty on councils to maintain a local register of people and groups who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding projects, and to place a duty on certain public authorities to have regard to those registers in carrying out planning and other functions. The appellant's evidence suggests that the Council is failing in its duty to provide sufficient plots to meet the demands and refers to an appeal⁶ in which an Inspector found a considerable level of under-delivery against a high level of demand. In this context, the delivery of a single self-build dwelling secured by way of UU attracts weight as a public benefit of the scheme.
32. The Council cannot currently demonstrate a five year supply of housing land with appropriate buffer as required by the Framework. The evidence suggests that the position is around 2.03 years' worth, which is less than half of the five year requirement and thus, a considerable shortfall. The provisions of paragraph 11 d) of the Framework apply in circumstances where there is an undersupply of housing land.

⁵ As amended by the Housing and Planning Act 2016

⁶ Appeal reference APP/Y3940/W/23/3317252

33. In this case, the appeal proposal would be situated in a location where the development plan supports the principle of new housing. There are no locational policies constraining the delivery of housing to which reduced weight should be attached.
34. The public benefits would result from the provision of a single dwelling in a sustainable location in the context of a considerable undersupply, and its economic contribution through the construction phase and beyond. As the dwelling would be a self-build, weight is also added to the way in which it would help to address the high need for this type of housing.
35. However, I have found that the proposal would harm the integrity of the SAC and New Forest Protected Sites which are protected by footnote 7 of the Framework. In such circumstances, the provisions of paragraph 11 d) of the Framework are disengaged and these harms form a strong reason for refusing the proposal.
36. If an Appropriate Assessment had concluded that such effects on integrity were adequately offset through robustly secured mitigation, I am still of the view that the harms to the character and appearance of the area, to the living conditions of neighbouring occupiers and to the significance of designated heritage assets would still significantly and demonstrably outweigh the totality of public benefits that would be generated by the scheme in any event.

Other Matters

37. A number of representations have been submitted in support of the scheme, covering matters such as the positive contribution that it would make to the housing stock and comparability of the garden sizes left for No 40 to those elsewhere in the surroundings. I have taken these into account in reaching my decision.

Conclusion

38. In this case, the public benefits and other points advanced in favour of the scheme do not outweigh the conflict with the development plan when taken as a whole. As such, the decision should be made in accordance with the development plan and the appeal should fail.

H Nicholls

INSPECTOR