
Appeal Decision

Site visit made on 15 December 2014

by Victoria Lucas-Gosnold LLB MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 January 2015

Appeal Ref: APP/L3245/A/14/2227586

Land to the rear of 18 Cambrian Drive, Oswestry, Shropshire, SY11 1HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Leslie Evans against the decision of Shropshire Council.
 - The application Ref 14/01939/FUL, dated 25 May 2014, was refused by notice dated 23 July 2014.
 - The development proposed is a single dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the development proposed on the character and appearance of the area;
 - The effect of the development proposed on the living conditions of neighbouring occupants, with particular regard to privacy and outlook; and
 - Whether the development proposed would provide acceptable living conditions for future occupants, with particular regard to levels of outdoor amenity space.

Reasons

Character and appearance

3. The appeal site currently forms part of the rear garden area associated with No. 18 Cambrian Drive (No. 18). There is a single storey garage on the site. No. 18 is situated close to the junction of Cambrian Drive with Western Drive. Although the property immediately next to the appeal site on Western Drive is detached, the majority of dwellings close to the appeal site are two storey detached dwellings. There are also some bungalows further along Cambrian Drive but these do not form part of the immediate visual context within which the appeal site is seen.

4. Most dwellings close to the appeal site are set back from the highway behind a small front gardens and the majority have large rear garden areas. This is particularly evident when looking across the appeal site towards the rear of dwellings along Cambrian Drive, where the large plot sizes can be seen from public viewpoints in the highway. The character of the area is therefore defined by two storey dwellings set within large, spacious plots.
5. The appeal proposal would see the construction of a two bedroom, detached dwelling. It would be positioned at the far end of No. 18's rear garden in the approximate location of the existing single storey garage. The site is approximately 11 metres by 13 metres in size. The proposed dwelling would front onto and gain access from Western Drive. Although accommodation would be provided on two levels, the first floor accommodation would comprise rooms in the roof space. The proposed dwelling would therefore be one and a half storeys in height with rooflights inserted in the front roof slope. An application for a proposed two storey detached dwelling on the appeal site was previously refused by the Council in 2013.
6. The proposed dwelling has been orientated within the site so as to respect the defined building line of dwellings along Western Drive. However, due to the confines of the site, this has resulted in the rear elevation of the proposal being situated approximately 2 metres from the rear boundary of the site. Although I have had regard to the illustrative streetscene submitted with the appeal documents, when considered in conjunction with the other plans submitted, they do show that there would be little space about the proposed dwelling. The proposal would therefore have a cramped appearance which would harmfully detract from the more spacious pattern of development in the area.
7. Although there is an existing garage on the appeal site, this building is low-key in appearance and is of relatively modest proportions. It is therefore not seen as an incongruous feature in the streetscene. The appeal proposal would be considerably larger than the existing garage and would also have a more domestic appearance, for example the insertion of windows facing towards the highway. Therefore, even taking account of the existing situation, I consider that the appeal proposal would be harmful for the reasons I have described above.
8. The proposed dwelling would be constructed in materials that would reflect the local vernacular. I note that the Council did not object to the proposal in this regard, subject to conditions. However a lack of harm in this respect is a neutral consideration and does not outweigh the harm that I have identified.
9. Accordingly, the proposal would be harmful to the character and appearance of the area. The proposal would therefore conflict with policy CS6 of the 'Shropshire Local Development Framework: Adopted Core Strategy (Adopted March 2011) (CS) which, among other things, seeks to ensure that all development is appropriate in scale, density, pattern and design taking account of the local context and character.
10. The proposal would also conflict with paragraph 64 of the National Planning Policy Framework (the 'Framework') which states that permission should be refused for development of poor design that fails to take the opportunities

available for improving the character and quality of an area and the way it functions.

Living conditions: neighbouring occupants

11. As previously stated, the proposed dwelling would be situated approximately 2 metres from the rear boundary of the site which also serves as the side boundary of No.20's rear garden. The shared boundary comprises a conifer hedge which is between approximately 2 and 2.5 metres high¹. The proposed dwelling would be approximately 2.75 metres high at the eaves and would have a ridge height of approximately 5.5 metres.
12. I acknowledge that the eaves height of the dwelling proposed would not be significantly higher than the existing boundary hedge. However, even if I were to take the appellant's best case in terms of the maximum height of the hedge, the ridge height of the dwelling would be approximately 3 metres higher. The footprint of the dwelling proposed would be approximately 8 metres by 6.5 metres. The proposal would therefore be higher than the existing hedge, in close proximity to it and would extend for approximately 8 metres in length along the side boundary of No. 20's rear garden area.
13. For these reasons, I consider that the proposal would dominate the outlook of No. 20's garden and would have an overbearing effect as a result. This would be harmful to the living conditions of the occupants when using their garden area to sit out in or relax. This would be the case even taking account of the existing garage on the appeal site as the proposed dwelling would be considerably taller and wider. This would therefore be materially different to the existing situation and does not therefore outweigh my concerns.
14. A condition could be attached, were the appeal to succeed, requiring the retention of the existing boundary treatment or a suitable alternative of a similar height. However, in my view this would not sufficiently screen the proposal from the garden of No. 20 such that it would overcome the harm that I have identified.
15. The proposal would be situated to the rear of No. 18's garden and its western elevation would face towards the existing dwelling. The plans show that there would be a small utility room window and access door in that elevation. As such, this window would not serve a main habitable room. It would therefore be reasonable to consider imposing a condition requiring this window to be obscurely glazed, were the appeal to succeed. As such, I am satisfied that no additional overlooking would occur as a result of the utility room window or access door proposed.
16. The proposed patio area would be situated at the side of the dwelling, close to the shared boundary with No. 18. The plans show that a 1.8 metre close boarded fence would be erected along the shared boundary. A condition could also be put in place to ensure that the proposed fence is erected and retained. I consider that the proposed fence would screen views of No. 18 from future occupants of the dwelling proposed from views from the outdoor amenity area.

¹ Although the submitted plans show the hedge to be 2 metres high, the appellant has stated in his grounds of appeal that it is actually 2.5 metres high.

17. Although the proposal would result in the reduction of some of the private outdoor amenity area associated with no. 18, I am satisfied that the resultant space would be of a sufficient size to allow the occupants to continue to enjoy their garden area. However, I do have concerns that the proposed siting of the dwelling would be in close proximity to No. 18 and that it would have a harmful, overbearing effect on the occupants of that dwelling as a result when using their rear garden for activities such as children playing or entertaining.
18. The Council's decision notice refers additionally to the effect of the proposal on the occupants of Nos. 22 and 24 with regard to outlook. However, these dwellings would be separated from the dwelling proposed by the full width of No. 20's rear garden. I am therefore satisfied that a suitable separation distance would be provided between the proposal and Nos. 22 and 24 such that there would be no harm in this regard.
19. The Council's decision notice also refer to the effect on the living conditions of Nos. 20, 22 and 24 Cambrian Drive with regard to privacy. However, the submitted plans show that no windows or rooflights are proposed in the rear roof slope. I have previously described how the small window in the east / side elevation would not serve a habitable room. Additionally, it would be situated below the height of the existing boundary treatment. Given the circumstances I have described, I am therefore satisfied that the proposal would not result in a harmful loss of privacy for the occupants of Nos. 20, 22 and 24.
20. The occupant of No. 16 Cambrian Drive has also raised concerns as to the effect of the proposal on their living conditions. However, given that the appeal site is on the opposite side of the street to No. 16, I consider that the separation distance proposed would ensure that the appeal scheme would not be harmful in this regard.
21. Drawing matters together, I have found that the proposal would not be harmful to the living conditions of neighbouring occupants with regard to privacy or outlook with specific regard to the occupants of Nos. 22 and 24. On the other hand, I have found that the proposal would be harmful to the living conditions of the occupants of Nos. 18 and 20 with regard to outlook. Policy CS6 of the Council's CS seeks to ensure that all development safeguards residential amenity. The Council's policy approach is consistent with paragraph 17 of the Framework which states, among other things, that planning should always seek to secure a good standard of amenity for all existing occupants of land and buildings. Both local and national policy therefore confirms the importance of protecting the amenity of existing occupants. I therefore consider that the harm I have identified which would occur to the occupants of Nos. 18 and 20 as a result of the appeal proposal does clearly outweigh the lack of harm which I have identified in other respects.
22. The appellant owns No. 18 and rents out the property. I note he has referred to a previous appeal decision which he advises indicates that previous Inspectors have taken the view that if an appellant is prepared to accept a diminution of the amenity of their own property then that is a matter for them. Specific details of that appeal are not before me.

Nevertheless, the protection of the living conditions of existing occupants, regardless of who owns the lands and buildings in question, is a proper planning concern. Additionally, I have determined this appeal on its own merits with regard to the particular circumstances of the case.

23. Accordingly, I conclude that the development proposed would be harmful to the living conditions of the occupants of Nos. 18 and 20 Cambrian Drive, with particular regard to outlook. The proposal would therefore conflict with policy CS6 of the Council's CS and paragraph 17 of the Framework (as set out above).

Living conditions: future occupants

24. The proposed amenity space that would be provided for future occupants of the dwelling would be approximately 2 metres in width along the rear of the site. There would also be a small patio area to the side of the dwelling at the rear of the parking area proposed. A lawn would also be provided at the front of the dwelling, however as this would front directly onto the highway, this space would be capable of being overlooked and does not therefore form part of the private amenity space associated with the proposal.
25. There would therefore be a very small area of private amenity space provided for future occupants. Due to its close proximity to the rear and side boundary it would be likely to be dark and gloomy as a result of the shading effect of the existing conifer hedge and the proposed side boundary fence. The plans submitted with the application also show that part of this area would be used as a bin store which would reduce the size of the amenity area proposed still further.
26. Although future occupants of the dwelling proposed may be at different stages in their lives (whether elderly or single, young professionals) it is likely that they will still desire an area to sit out in and relax, garden or perhaps to erect a small shed for the storage of garden tools or a bicycle. The amenity area that would be provided with the dwelling proposed would not be of a sufficient size to accommodate these needs and would be unacceptable as a result.
27. The appellant has stated that nobody would be forced to live in the dwelling proposed. However, ensuring that the living conditions of future occupants is acceptable is a proper planning concern, as confirmed by both national and local policy. I therefore attach limited weight to this consideration.
28. The proposal would therefore not provide acceptable living conditions for future occupants. The proposal would therefore conflict with policy CS6 of the Council's CS seeks to ensure that all development safeguards residential amenity. The proposal would also conflict with paragraph 17 of the Framework which states, among other things, that planning should always seek to secure a good standard of amenity for all future occupants of land and buildings.

Other Matters

29. In my determination of this appeal, I have had regard to the Framework's presumption in favour of sustainable development (paragraphs 14 and 49). I acknowledge that there would be sustainability benefits associated with the

proposal. Specifically, the appeal site is within the built up area of Oswestry where there is a range of services, facilities and employment opportunities available. As such, the Council does not dispute that the site is within a sustainable location.

30. One additional dwelling would also be provided. Although the appellant has described it as 'affordable' rented accommodation there is no specific mechanism before me such a completed s. 106 agreement that would secure this. In the context of planning, the term 'affordable housing' has a specific meaning, as defined by Annex 2 of the Framework. Therefore, although the proposal may be intended to be 'low cost' it does not meet the definition of an 'affordable' house for the purposes of planning policy.
31. Policy CS11 of the Council's CS seeks to ensure that all new open market housing makes appropriate contributions to the provision of local needs affordable housing. There is also no specific mechanism before which would secure a financial contribution towards the provision of local needs affordable housing. This is therefore a matter which does not weigh in favour of the appeal scheme.
32. I acknowledge that the proposal may comply with some limited aspects of policy CS6 relating to standards for water use, sustainable design and construction; climate change and adapting to changing lifestyle needs; and high quality design in relation to landscaping, car parking provision, land stability and ground contamination. Given the small scale of the proposal, it would also be unlikely to have a disproportionate demand on local infrastructure. However, even if the proposal were to comply with these elements of the policy, a lack of harm in these respects is a neutral consideration and does not therefore outweigh the harm that I have identified above. I am in agreement with the appellant that the criteria relating to traffic generation is not a relevant consideration to this appeal.
33. Additionally, in conjunction with the development proposed, it is intended to provide a new parking space for the occupants of No. 18. The Council has not raised any specific concerns regarding the proposed access or construction of hard standing in relation to this. Based on the information before me, the proposed access would also be acceptable, subject to conditions. This is also however a neutral consideration.
34. Drawing matters together, I have identified several sustainability benefits that would be associated with the proposal. Specifically, the site is within a sustainable location and one additional house would be provided. I have also identified several neutral considerations where a lack of harm does not weigh in favour of the proposal, including issues relating to climate change, water use, sustainable design, access, car parking, access, landscaping, the effect on local infrastructure and traffic generation.
35. On the other hand, I have found that the proposal would be harmful to the character and appearance of the area; the living conditions of the occupants of Nos. 18 and 20 with regard to outlook; and would not provide acceptable living conditions for future occupants with regard to outdoor amenity space. Additionally, the proposal would not be for an affordable dwelling and would fail to secure an appropriate contribution to the provision of local needs affordable housing. I therefore conclude that the harm that I have identified

does significantly and demonstrably outweigh the limited benefits associated with the appeal scheme.

36. I note that the appellant has also referred to quotes from Council officer's reports where they have referred to criteria listed within policy CS6 where not all of the words contained within the policy have been repeated. Whilst that may be so, policy CS6 is clearly a general policy covering a fairly wide range of issues under the broad heading of 'sustainable design and development principles'. As such the matters listed within the policy will not be relevant to every development. Therefore the absence of specific words when the Council is referring to its own policy requirements may not necessarily indicate support for the proposal in these respects, or indeed that the omitted words can be considered to be any less important for policy purposes.

Conclusion

37. For the reasons given above, I conclude that the appeal should be dismissed.

Victoria Lucas-Gosnold

INSPECTOR