
Appeal Decision

Site visit made on 25 February 2015

by Mark Caine BSc (Hons) MTPL MRTPI

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

Decision date: 31/03/2015

Appeal Ref: APP/L3245/A/14/2228819

Land to the rear of 25 Longner Street, Shrewsbury, Shropshire, SY3 8RB

- 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 Iain Richards-Anderson against the decision of Shropshire Council.
 - The application Ref 14/01214/FUL, dated 24 February 2014, was refused by notice dated 13 May 2014.
 - The development proposed is a detached dwelling house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - (i) Whether the proposal would preserve or enhance the character or appearance of the Shrewsbury Conservation Area.
 - (ii) The effect of the proposal on the living conditions of neighbouring occupiers, with particular reference to outlook and privacy.
 - (iii) The risk to future occupiers from flooding.

Reasons

Character and appearance

3. The appeal relates to the rear garden area of a mid-terrace residential property that is located on the edge of the town centre and within the Shrewsbury Conservation Area.
4. I have been provided with limited information on the Shrewsbury Conservation Area as a whole, including the Mountsfields Special Character Area, and its significance as I do not have a conservation area appraisal for this heritage asset before me. Nonetheless, in the absence of this information, it was apparent on my site visit that its special interest derives from its mixture of uses and its diverse built form, comprising buildings of varying size, scale, style and age.
5. There is a small public car park directly to the rear of the site and a variety of large modern civic and commercial buildings nearby. Nonetheless, a mixture of two-storey semi-detached houses and terrace houses that are set out in a linear street

- pattern with long narrow rear garden spaces are key features of the layout and appearance of this part of the conservation area.
6. It has been put to me that the proposal would be of a similar scale and constructed in similar materials as the neighbouring houses, and that it would also reflect the modern design of the nearby civic buildings. Nonetheless, by effectively subdividing the rear garden area of 25 Longner Street, and introducing a two-storey detached dwelling, the proposal would increase the built form and density of development across the site. The resultant garden areas provided for the proposal and No 25 would also be significantly smaller than the majority of those found in the surrounding area. As a result of this the proposed development would appear cramped on the site, and out of context with the predominant layout and pattern of development in the immediate vicinity. The neighbouring car park to the rear of the appeal site would also open up views of the proposal from the Frankwell highway where its prominent, incongruous nature would be readily apparent. The existing timber fence would offer little effective mitigation against this impact.
 7. The proposal would therefore not preserve or enhance the character or appearance of the Shrewsbury Conservation Area. The most relevant policies that have been referred to me are CS6 and CS17 of the Shropshire Local Development Framework: Adopted Core Strategy 2011 (Core Strategy). Amongst other matters, these seek to ensure that all development conserves and enhances the natural, built and historic environment taking account of the local context and factors such as density and pattern. The proposal would conflict with the aims of this policy.
 8. Nonetheless, I consider the overall significance of the Shrewsbury Conservation Area to derive from its mixed uses and diverse built form and character. Whilst I have found that the proposal would have a detrimental effect on the character and appearance of the immediate surroundings, this impact would be relatively localised and the harm caused to the character and appearance of the conservation area would therefore be less than substantial.
 9. Where any harm to the significance of designated heritage assets would be less than substantial, paragraph 134 of the National Planning Policy Framework (the Framework) states that this harm should be weighed against any public benefits of the proposal.
 10. The appellant has put forward that the proposal would be constructed to lifetime homes standards and that the site is located in a sustainable location, within walking distance of Shrewsbury town centre, local bus routes and a railway station. However, I do not consider these matters, to the extent that they amount to public benefits, would outweigh the harm that would be caused to the Shrewsbury Conservation Area and its significance as a heritage asset.

Living conditions

11. The proposed dwelling would be clearly visible from the rear windows of No's 23, 25 and 27 Longner Street. However I saw on my site visit that the proposed dwelling would be offset from the shared boundary with No 23 by approximately one metre and that No 25 is set in from the shared boundary with No 27 by around 2.5 metres. I therefore consider that the various intervening distances between the proposal and these properties, and the breadth of open outlook that would be retained from their rear habitable windows to be such that the impact of the proposed dwelling would not be significantly overbearing or lead to an undue loss of outlook.

12. I also recognise that the proposed dwelling has been designed so that there would be no first floor windows within its north and east elevations. I am satisfied that this would ensure that no overlooking of neighbouring properties' rear garden areas would occur from this floor. Nonetheless, the finished floor levels of the proposal would be raised approximately 1.5 metres above the ground level of neighbouring properties and their garden areas to mitigate flood risk. As a result of this the proposal's first floor patio doors and platform for garden/patio space would be at a similar elevated height.
13. The close proximity of the proposed raised platform to the shared boundaries of No 23, 25, and 27 Longner Street's back gardens would result in its users having clear views over the top of the existing boundary fences into these areas. A significant loss of privacy to neighbouring residents would occur. Although I am mindful that a degree of mutual overlooking of garden areas is a common feature in this area, this takes place from neighbouring houses' first floor rear windows which are at relatively oblique angles to them.
14. I therefore conclude that the proposed development would result in a materially harmful effect on the living conditions of the residents of neighbouring properties, with particular regard to privacy. In this regard it would conflict with the aims of Core Strategy Policy CS6 which seeks, amongst other matters, to safeguard residential and local amenity.

Flood Risk

15. There is little firm evidence before me to substantiate that the appeal site is located within a functional floodplain. Nonetheless it is uncontested that the appeal site is situated within Flood Zone 3 of the Environment Agency's Flood Zone Maps. This is the zone at highest risk of flooding.
16. I appreciate that proposed dwelling has been designed to incorporate measures to allow flood rates to pass below its ground floor level. However the aim of the Framework is to ensure that flood risk is not increased elsewhere by steering new development to areas with the lowest probability of flooding. It advises that development should only be considered appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment (FRA) following the Sequential Test and, if required the Exception Test, it can be demonstrated that *...development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to sustainable drainage systems.*
17. Therefore only if no reasonably available sites are available in Zones 1 and 2 should the suitability of sites in Zone 3 be considered, again taking account of flood risk vulnerability, applying the exception test if required.
18. The presence of flood defences and protection barriers, such as those referred to by the appellant, are a consideration for a FRA and the exception test in assessing whether a site which has passed the Sequential Test would be safe for the lifetime of the development. However, the appellant has not submitted a FRA and I have been provided with little substantive evidence to demonstrate that the Sequential Test has taken place and that there are no other reasonably available sites in Flood Zones 1 and 2. Therefore, on the basis of the information before me, the proposal does not pass the Sequential Test and there is no need to consider flood risk further.

19. I therefore conclude that it has not been adequately shown that future occupiers would not be at risk from flooding. As such it would conflict with Core Strategy Policy CS18 which requires FRA's to be submitted alongside development proposals and used as a starting point for understanding the level of flood risk posed to a particular site. The proposal would also not accord with the aims of the Framework in regards to flood risk.

Other matters

20. On my site visit I noted that an electricity substation is located in the car park to the rear of the appeal site and that the proposal would have a similar finished floor level as this. It has also been brought to my attention that recently constructed apartments on Mount Street have been built with a plinth. Nonetheless, I do not have the details of what Flood Zones these developments are located within, or the circumstances that led to them being accepted. Accordingly I cannot be certain that they would be directly comparable to the appeal proposal before me. I have, in any case, determined the appeal on its own merits.
21. I am satisfied that the orientation of the appeal site in relation to the direction of the sun is such that the proposal would not result in a substantial amount of overshadowing to the rear windows or rear garden areas of neighbouring properties. It has also been put to me that a vehicular access already exists to the rear of the appeal site and that it would have little effect on the operation of the car park. Nonetheless I do not consider these matters to overcome the harm that I have identified above.
22. The Council accepts that it does not have an identifiable five-year housing land supply. In reaching my conclusions I have taken into account the appellant's reference to other sections of the Framework and the presumption in favour of sustainable development. However I consider the contribution that this would make towards addressing the undersupply of housing does not outweigh the harm the scheme would cause to the character and appearance of the surrounding area, the living conditions of neighbouring residents and the risk of flooding. It therefore is not sustainable development for which there is a presumption in favour. In reaching my conclusion I have borne in mind paras 47-49 of the Framework and its guidance that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupiers of land, taking account of different roles and character of different areas and to support the transition to a low carbon future taking full account of flood risk (para 17).
23. I have also noted the appellant's reference to a Written Ministerial Statement on 28 November 2014 concerning the provision of affordable housing as recently expressed in the amendment to the Planning Practice Guidance. However, given my findings on the main issues, it is not necessary to consider the question of a S106 as I have found that the appeal must be dismissed on other grounds and the Obligation could only have been neutral in my overall findings. It therefore could not add to any benefits in my overall balancing exercise.
24. For the reasons given above, the appeal is therefore dismissed.

Mark Caine

INSPECTOR