

Development Management Report

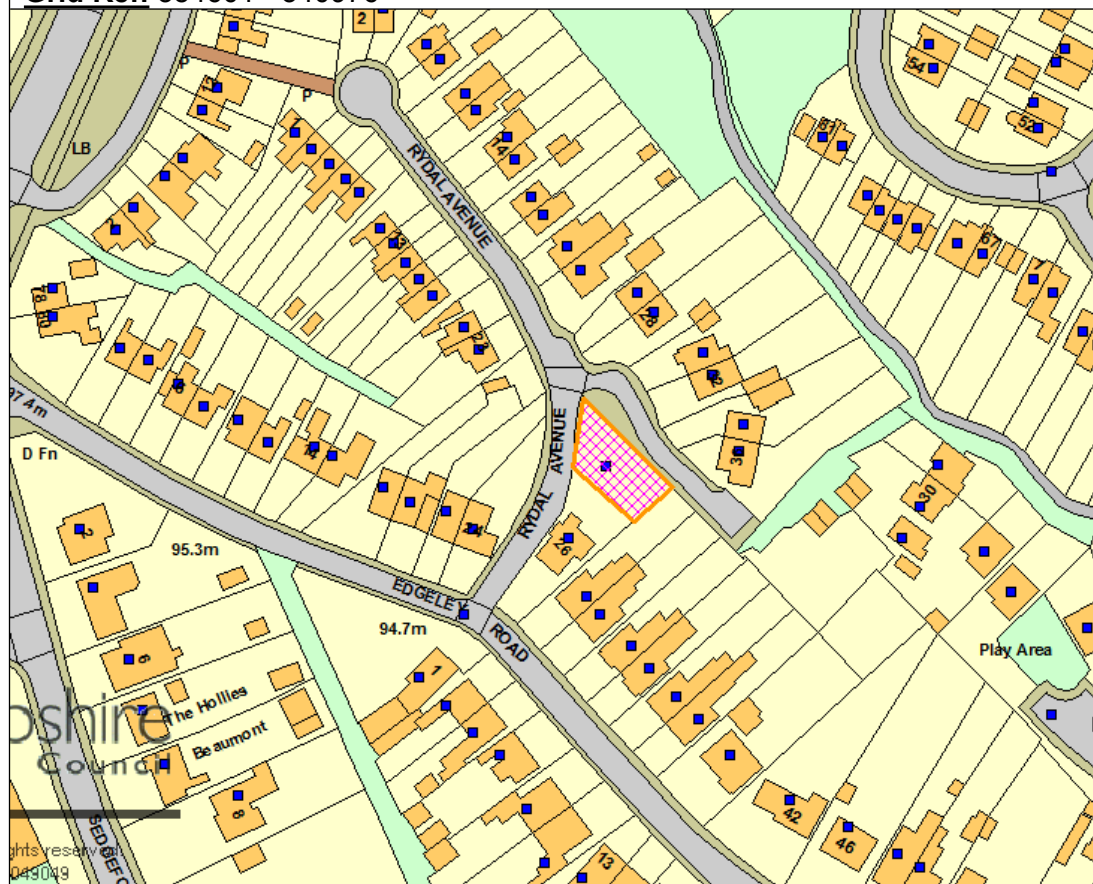
Responsible Officer: Tim Rogers

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Summary of Application

<u>Application Number:</u> 15/03326/FUL	<u>Parish:</u> Whitchurch Urban
<u>Proposal:</u> Erection of a detached dwelling	
<u>Site Address:</u> Proposed Dwelling Rear Of 26 Edgeley Road Off Rydal Avenue Whitchurch Shropshire	
<u>Applicant:</u> Hawk Developments Ltd	
<u>Case Officer:</u> Sue Collins	<u>email:</u> planningdmne@shropshire.gov.uk

Grid Ref: 354601 - 340976



Recommendation:- Grant Permission subject to the conditions set out in Appendix 1.

Recommended Reason for Approval

REPORT**1.0 THE PROPOSAL**

- 1.1 This application seeks planning permission for the erection of a detached dwelling on land that was formerly part of the rear garden to 26 Edgeley Road. Access is to be created off Rydal Avenue.
- 1.2 Two previous applications have been made for a dwelling on this site. The first was withdrawn and the second refused and this was later dismissed on appeal.

The main issues in the appeal were:

- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on the living conditions of the occupiers No 26 Edgeley Road with particular reference to outlook and light and the occupiers of No 28 Edgeley Road with particular reference to privacy; and
- whether the proposed development would be at risk of flooding.

The Inspector concluded that:

- The size of the dwelling on the plot would result in only a small area of front garden which would not reflect the wider townscape and would be contrary to the existing urban grain. As such the development would appear cramped and the site would appear over-development. This would have a detrimental impact on the character and appearance of the area.
- The proposed dwelling would be similar in scale and mass to other semi-detached and terraced houses but not with detached dwellings in the area which are more substantial. The incongruous nature of the development would cause harm to the character and appearance of the area.
- The proposal would reduce the level of privacy enjoyed by occupiers of No. 28 Edgeley Road in the rear garden. The dwelling would not have an overbearing impact on No 26 and it would result in only limited loss of light.
- Agreed the site is not at significant risk of flooding. It would be possible to ensure adequate flood mitigation measures were incorporated into the scheme.

2.0 SITE LOCATION/DESCRIPTION

- 2.1 26 Edgeley Road is located within a residential area of Whitchurch and it occupies a corner position at the junction of Rydal Avenue. The side boundary of the dwelling extends along Rydal Avenue. A boundary hedge defines the majority of the back garden from the highway. The rear garden abuts the highway to the rear

which provides access for further dwellings off Rydal Avenue.

- 2.2 The pattern of development along Rydal Avenue is primarily for semi-detached and terraced dwellings set back from the highway with long narrow gardens.

3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION

- 3.1 The Town Council have objected to the proposal on the grounds of garden grabbing and lack of access.

The Local Member has requested that the application be presented to the Planning Committee for consideration given the appeal decision and the continued objection from the Town Council and the Chair of the Planning Committee, in discussion with the Principal Planning Officers has agreed that the issues raised are material and should be discussed at committee.

4.0 COMMUNITY REPRESENTATIONS full details of the responses can be viewed online

4.1 Consultee Comments

- 4.1.1 **Affordable Housing Officer:** No objection. The submitted proforma indicates the correct level of contribution and/or on site affordable housing provision.

- 4.1.2 **Drainage:** No objection. Further details will need to be submitted for approval and these can be conditioned should planning permission be granted.

- 4.1.3 **Welsh Water:** No objection subject to the inclusion of the recommended conditions on any planning permission that may be granted.

- 4.1.4 **Town Council:** Objects: On the grounds of garden grabbing and lack of access.

4.2 Public Comments

- 4.2.1 One letter of representation has been received.

- The site will have an overbearing impact on the neighbouring property
- It will result in a loss of privacy and light to the neighbouring property
- The area is a flood water risk and development could affect neighbouring properties.
- Traffic and parking is an issue on Rydal Avenue.
- Construction traffic would exacerbate the current problems on Rydal Avenue
- The mature Sycamore Tree in the corner of the site will be affected by the development.

5.0 THE MAIN ISSUES

- Principle of Development
- Design, Scale and Character
- Impact on Residential Amenity
- Drainage
- Highways
- Trees

6.0 OFFICER APPRAISAL

6.1 Policy & principle of development

- 6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.
- 6.1.2 In this case the site is located within the defined development boundary for Whitchurch both in the current North Shropshire Local Plan and the emerging SAMDev. Whitchurch is identified as a Market Town with Policy CS3 of the Shropshire Core Strategy identifying this as an area for substantial development in recognition of its accessible location on the highway and rail network. Development will also maintain and enhance its vibrant town centre balancing business with new housing.
- 6.1.3 The Affordable Housing Officer has confirmed that a contribution will be required and that the amount shown on the proforma is correct. The applicants will be required to complete a S106 Legal Agreement to secure the payment.
- 6.1.4 Whilst an objection has been made to the proposal on the grounds of garden grabbing, this was not considered an issue with the previous the appeal. Whilst the NPPF does try to dissuade from development being undertaken on garden areas, it is not a complete ban and where acceptable this can be undertaken. Therefore the main issues relate to the scale and design of the proposal and its impact on the residential amenities of the area. Other issues will also be considered further in this report.

6.2 Design, Scale and Character

- 6.2.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and construction principles are incorporated within the new development. Policy 7 'Requiring Good Design' of the National Planning Policy Framework indicates that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.
- 6.2.2 The previous scheme that was refused on appeal was for a dwelling that measured approximately 6.3 metres by 7.9 metres by 8.8 metres high to be constructed approximately 1.7 metres from the boundary and 9.2 metres from the rear wall with 26 Edgeley Road. A copy of the proposed block plan is attached for information.

- 6.2.3 The Planning Inspector at the appeal commented that the site is in a prominent position on Rydal Avenue with the surrounding area being predominantly residential in nature. “Although the houses vary in age and design, a characteristic feature is that they are set back from the road in long narrow plots. This gives a spacious suburban character to the area.” It was considered that although the overall size of the plot is similar to some others in the area, the plot is wider but shorter than is the norm. As a result of the limited depth of the plot the dwelling would have been positioned close to Rydal Avenue, particularly in the western corner. As such a small area of front garden would not be in keeping with the wider townscape and therefore contrary to the existing urban grain. The Inspector concluded that it would cause the development to appear cramped and the site over-developed. As such it would be detrimental to the character and appearance of the area.
- 6.2.4 With regard to the scale and design of the dwelling the Planning Inspector noted that although some of the terraced and semi-detached dwelling are of similar scale and mass, the detached dwellings in the area are generally quite substantial properties. Therefore the scheme for the dwelling assessed at appeal would not be in keeping with the prevailing character of detached dwellings in the area and therefore out of keeping. This would be further emphasised by the prominent corner location of the site.
- 6.2.5 The Inspector did comment that the design and materials did reflect some of the architectural details found in the area and in addition the mature tree and some of the hedging would be retained which would be in the favour of the scheme. However he concluded that these did not outweigh the detrimental impact of the proposal on the character and appearance of the area. A copy of the Appeal Decision is attached for further information.
- 6.2.6 The current proposal is for a building that measures 7.865 metres by 5.165 with a maximum height of 7.6 metres from the finished floor level. The reduced footprint has enabled the dwelling to be repositioned on the plot so that it is set further back from Rydal Avenue than the previous scheme. This allows for a front garden space to be provided together with a parking area. Whilst the front garden may not be as deep as some along Rydal Avenue it is comparable with the majority. It is therefore the opinion of Officers that this now overcomes this concern that was raised by the Planning Inspector.
- 6.2.7 The external appearance of the building has been kept relatively simple with brick and tile as external materials. A two storey bay window has been included to reflect the style of the 20th century buildings along Rydal Avenue. It was the opinion of the Planning Inspector and is the consideration of Officers that this style reflects that of other dwellings in the area and is therefore acceptable.
- 6.2.8 It is accepted by Officers that the scale is not as substantial as other detached dwellings which are located within Edgeley Road. However, along Rydal Avenue there are only semi-detached and terraced dwellings. Therefore by being similar in scale and mass to these would be in keeping with the character of Rydal Avenue. The large detached dwellings in Edgeley Road date from the late 19th early 20th Century and set the character for that area and are not found in Rydal Avenue. These are more modern 20th century dwelling which also vary in style. It

is the opinion of officers that the new proposal will not have a detrimental impact on the character of this part of Rydal Avenue. As such the development is considered by officers to be in accordance with policy CS6 of the Shropshire Core Strategy.

6.3 **Impact on Residential Amenity**

6.3.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity.

6.3.2 A local resident has raised concerns that the development will have an overbearing impact and reduce privacy and light to the adjacent property.

6.3.3 The size and position of the dwelling have significantly changed from that previous submitted. Copies of the current site plan and the one assessed as part of the appeal are attached for information. The height of the proposed building has been reduced by approximately 1 metre from the previous proposal and it has been moved approximately 1 metre further away from the rear of 26 Edgeley Road. In addition by redesigning the internal layout of the dwelling no habitable room windows at first floor level would provide views to the dwelling at 28 Edgeley Road. In connection with 26 Edgeley Road it may be possible for a narrow angled view of the side elevation from the first floor front bay window however this would be no more than would be currently viewable from the public highway.

6.3.4 It is noted from the Planning Inspectors report that his only concern regarding impact on residential amenity was the loss of privacy to 28 Edgeley Road. The size and location of the building was considered not to have either an overbearing impact or cause an unacceptable loss of light. Therefore by reducing the height and moving the dwelling further away from 26 Edgeley Road this would reduce the impact on the residential amenities of this property even more.

6.3.5 In view of the above it is considered by Officers that the proposal will not have an unacceptable impact on the residential amenities of the neighbouring properties. Therefore the proposal is in accordance with policy CS6 of the Shropshire Core Strategy.

6.4 **Highways**

6.4.1 Concerns have been expressed by the Town Council and a local resident in connection with traffic, access and parking arrangements. It is stated that currently there are issues with on-street parking and residents being able to gain access to their dwellings.

6.4.2 Rydal Avenue is an unclassified highway that ends as a cul-de-sac and as such it is not used as a through route for vehicles. Therefore only local traffic will use the highway and whilst there may be some periods of the day when more traffic is likely, it would not necessarily be considered excessive.

6.4.3 Two parking spaces have been provided to the front of the property which is located on the outside of a bend giving ample visibility in both directions particularly given the level of use of the highway. Overall whilst there may be some additional traffic this would not be significant or to such a degree as to

cause issues regarding highway safety.

6.5 **Impact on Trees**

6.5.1 Policy CS17 of the Shropshire Core Strategy requires consideration to be given to the impact of development on the natural environment.

6.5.2 A concern has been raised regarding the impact the development will have on the existing mature sycamore in the corner of the site.

6.5.3 The block plan submitted with the application shows the intention to retain this tree. By providing a parking area under the tree canopy most of the roots would be protected particularly from damage during the course of the construction works. However to ensure that this tree is fully protected a condition is recommended to be included on any planning permission granted requiring a scheme for its protection to be submitted for approval prior to works commencing on site.

6.5.4 As such it is the opinion of officers that the sycamore tree can be protected from the development and as such be maintained for its landscape value within the street scene.

6.6 **Drainage**

6.6.1 The NPPF and policy CS18 of the Shropshire Core Strategy require consideration to be given to the potential flood risk of development.

6.6.2 A local resident has raised concerns regarding the flood risk and the potential impact the development may have on this and his property.

6.6.3 An FRA has been submitted with the application as part of the site falls within Zone 2 Flood Risk Area. The application has been considered by the Council's Drainage Engineer and no objection has been raised. It has been recommended that full details of the drainage scheme for the development be submitted for approval. However this can be the subject of a condition attached to any planning permission that may be granted.

6.6.4 In view of the above it is considered that an appropriate drainage system can be installed to meet the requirements of the NPPF and policy CS18 of the Shropshire Core Strategy.

7.0 **CONCLUSION**

7.1 In the opinion of Officers it is considered that the proposed development is acceptable in its design and scale and that it will not have a detrimental impact on the character and appearance of the surrounding area. In addition the proposal will not have an unacceptable impact on the residential amenities of the area. Therefore the proposal is in accordance with the NPPF, policies CS3, CS6, CS11 and CS17 of the Shropshire Core Strategy and the SPD on the Type and Affordability of Housing.

In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

8.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.
- The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 Human Rights

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

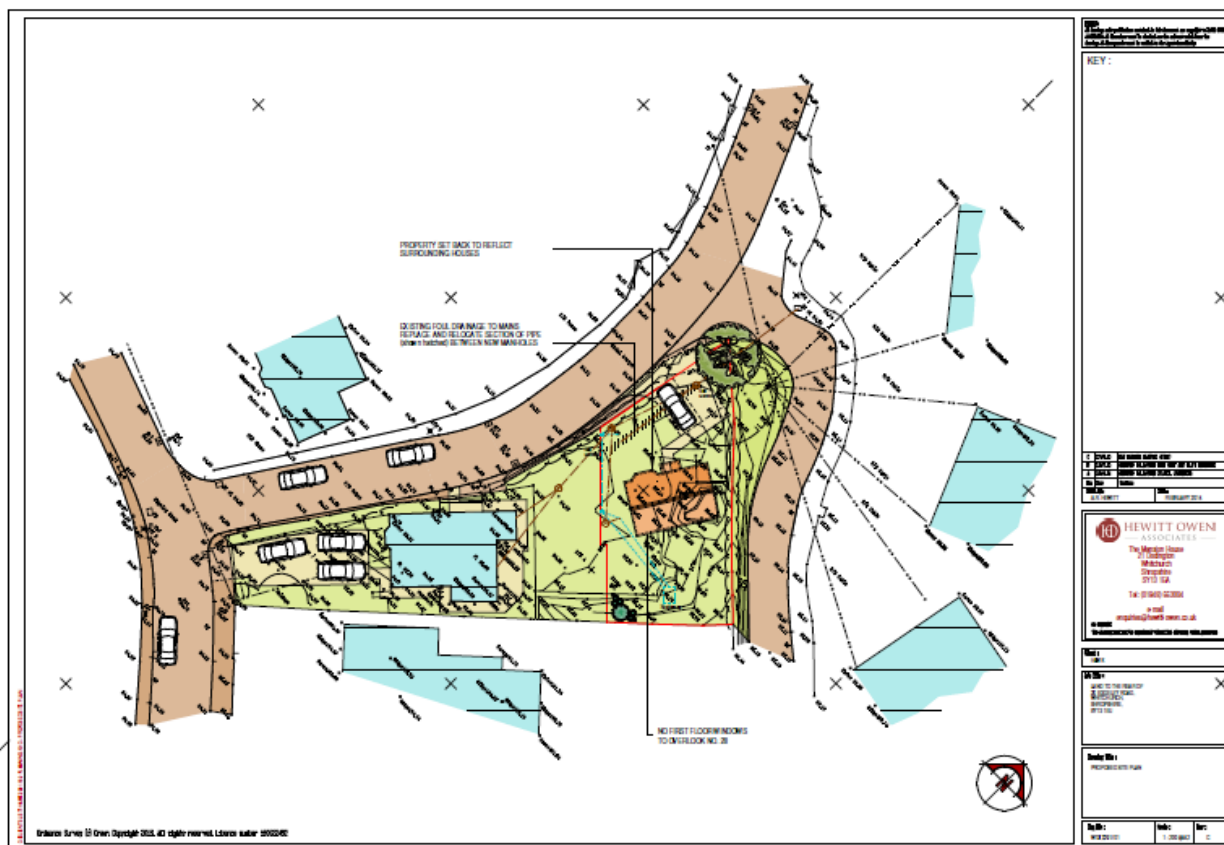
This legislation has been taken into account in arriving at the above recommendation.

8.3 Equalities

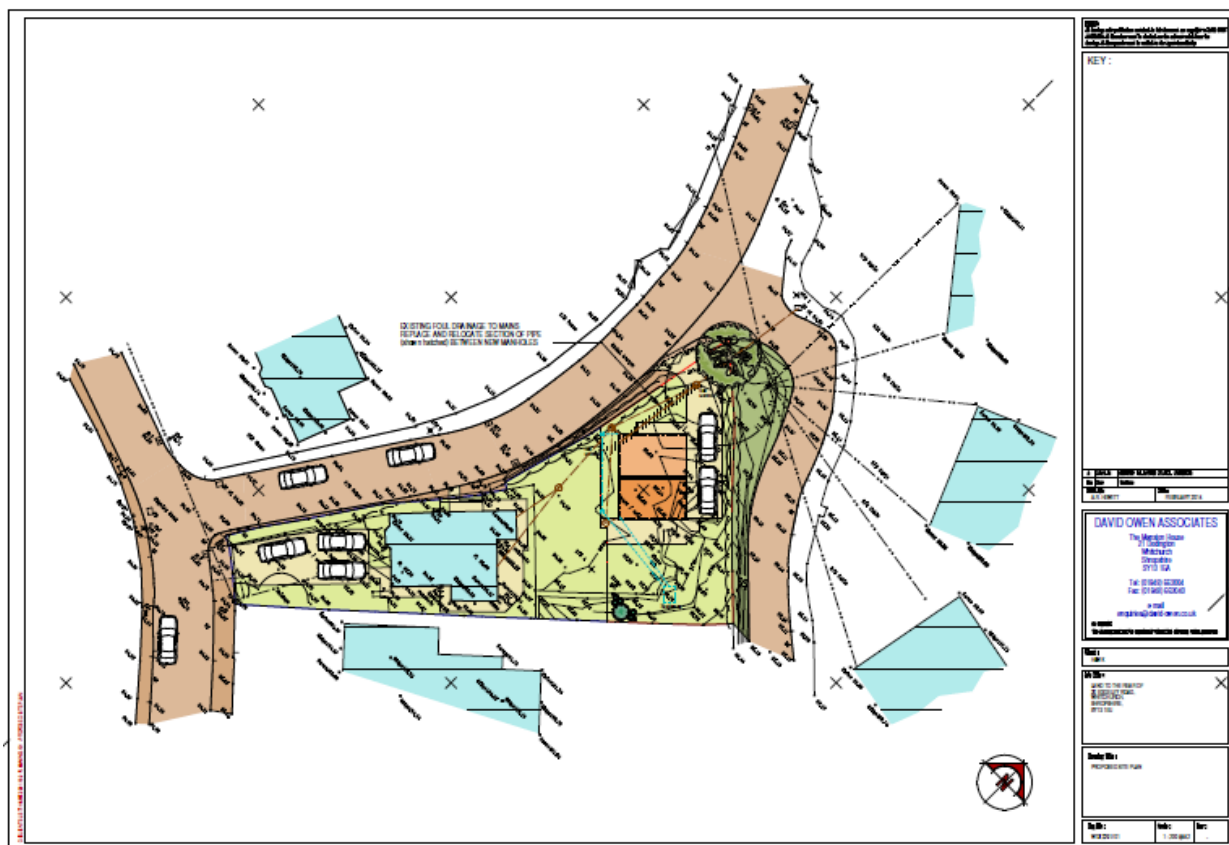
The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 FINANCIAL IMPLICATIONS

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.



Current Site Layout Plan



Appeal Site Layout Plan



Appeal Decision

Site visit made on 1 June 2015

by **Alison Partington BA (Hons) MA MRTPI**

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

Decision date: 5th June 2015

Appeal Ref: APP/L3245/W/15/3007022

26 Edgeley Road, Whitchurch, Shropshire SY13 1EU

- 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 Hawk Developments Ltd against the decision of Shropshire Council.
 - The application Ref 14/03131/FUL, dated 11 June 2014, was refused by notice dated 1 October 2014.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of the occupiers No 26 Edgeley Road with particular reference to outlook and light and the occupiers of No 28 Edgeley Road with particular reference to privacy; and
 - whether the proposed development would be at risk of flooding.

Reasons

Character and appearance

3. The appeal site is situated to the rear of No 26 Edgeley Road, in a prominent position on Rydal Avenue. The surrounding area is predominantly residential in nature. Although the houses vary in age and design, a characteristic feature is that they are set back from the road in long narrow plots. This gives a spacious suburban character to the area.
4. Although the overall size of the plot is not dissimilar to some others in the area, the plot is wider but shorter than is the norm. Due to the limited depth of the plot, the proposed dwelling would be located close to Rydal Avenue, particularly its western corner. Such a position, with only a small area of front garden would not reflect the wider townscape and would be contrary to the existing urban grain. As a result the development would appear cramped and the site

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would appear over-developed. This would have a detrimental impact on the character and appearance of the area.

5. The proposed development would consist of a modestly sized two storey detached dwelling. Whilst some of the semi-detached and terraced houses in the vicinity are of a similar scale and mass, the other detached dwellings in the area are generally quite substantial properties. As a result the proposed house would not reflect the prevailing character of detached dwellings in the area and would appear out of keeping. The incongruous nature of the proposed development would be emphasised by the site's prominent corner location.
6. The design of the dwelling would reflect some of the architectural details found on dwellings in the area and would utilise similar materials. In addition, it would retain the existing mature tree and some of the hedging around the site which are both attractive features. Whilst these points favour the scheme, they do not outweigh the identified harm that would be caused to the character and appearance of the area.
7. Overall, I consider that the proposed development would be detrimental to the character and appearance of the area. Accordingly it would be contrary to *Policy C6 of the Shropshire Core Strategy (adopted March 2011)* (SCS) which requires development to have a high quality of design, which amongst other things takes account of the local context and character.

Living Conditions

8. The rear elevation of the proposed dwelling would face the rear garden of No 28 Edgeley Road and would be approximately 9.5m from this boundary. Although No 28 has a number of mature trees and shrubs along this part of the boundary, these do not provide a complete screen. As a result direct views into the bottom part of this property's garden area would be possible from the first floor bedroom window. Notwithstanding the fact that, in a suburban context, first floor windows are often afforded some views into neighbouring gardens, the proposal would increase both the level of overlooking and the perception of being overlooked. As a result it would significantly reduce the level of privacy enjoyed by occupiers of this property in their garden.
9. The rear elevation of No 26, which includes a number of habitable and non-habitable windows, faces towards the appeal site. However, the proposed dwelling would be positioned so that the windows mainly face the garden area rather than the side elevation of the property. From the habitable windows in particular, the proposal would only be seen at an angle. As a result the dwelling would not have an overbearing impact on the occupiers of this property. Moreover, the location of the dwelling to the north east of No 26 means that any loss of sunlight to the house or property would be limited.
10. All in all, although I consider the appeal scheme would not result in a loss of outlook and light to No 26 Edgeley Road, I have found that it would unacceptably harm the living conditions of No 28 Edgeley Road with particular reference to privacy. As such it would conflict with Policy CS6 of the SCS which amongst other things seeks to ensure that development protects residential amenity.

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Flooding

11. As a result of the reason for refusal relating to flooding, a Flood Risk Assessment (FRA) was submitted at appeal stage. This states that the red line boundary is very close to Zone 2 on the indicative flood plain but is situated in Zone 1. However, the Council have indicated that a small part of the site projects into Zone 2. I note that the FRA states that the Environment Agency agree that no flooding appears to be present within the red edge boundary and it is concluded that the site is not at significant risk of flooding.
12. From the evidence before me, had the proposal been acceptable in other respects, I consider that it would have been possible to ensure adequate flood mitigation measures were incorporated into the scheme. As a result it would be possible to ensure the development was not contrary to policy CS18 of the SCS which requires development to integrate measures for sustainable water management to reduce flood risk.

Conclusion

13. Despite my findings regarding flooding and the impact of the proposal on the living conditions of No 26 Edgeley Road, these matters do not outweigh or negate my strong concerns about the effect of the proposal on the character and appearance of the area, and the living conditions of the occupiers of No 28 Edgeley Road. As a result of these matters, I consider that the appeal proposal would be unacceptable.
14. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR

10. Background

Relevant Planning Policies

Central Government Guidance:

West Midlands Regional Spatial Strategy Policies:

Core Strategy and Saved Policies:

National Planning Policy Framework
CS3 - The Market Towns and Other Key Centres
CS6 - Sustainable Design and Development Principles
CS11 - Type and Affordability of housing
CS17 - Environmental Networks
SPD Type and Affordability of Housing

RELEVANT PLANNING HISTORY:

14/00935/FUL Erection of dwelling with attached single garage WDN 7th May 2014
14/03131/FUL Erection of 1No dwelling REFUSE 1st October 2014
15/03326/FUL Erection of a detached dwelling PDE

Appeal

15/02242/REF Erection of 1No dwelling DISMIS 5th June 2015

11. Additional Information

View details online:

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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Cabinet Member (Portfolio Holder) Cllr M. Price
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Local Member Cllr Gerald Dakin

Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91(1) of the Town and Country Planning Act, 1990 (As amended).

2. The development shall be carried out strictly in accordance with the approved plans and drawings Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES

3. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.

Reason: To ensure that the external appearance of the development is satisfactory.

4. No development shall take place until a scheme of foul drainage, and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (which ever is the sooner).

Reason: The condition is a pre-commencement condition to ensure satisfactory drainage of the site and to avoid flooding.

5. No ground clearance, demolition, or construction work shall commence until a scheme has been submitted to and approved in writing by the local planning authority to safeguard trees to be retained on site as part of the development. The approved scheme shall be implemented in full prior to the commencement of any demolition, construction or ground clearance and thereafter retained on site for the duration of the construction works.

Reason: To safeguard existing trees and/or hedgerows on site and prevent damage during building works in the interests of the visual amenity of the area, the information is required before development commences to ensure the protection of trees is in place before ground clearance, demolition or construction.

6. The development hereby permitted shall not be brought into use/occupied until the car parking shown on the approved plan W13/2291/01 C received on 27th August 2015 has been provided, laid out and hard surfaced.

Reason: To ensure the provision of adequate car parking, to avoid congestion on adjoining roads, and to protect the amenities of the area.