

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL AGAINST REFUSAL OF PLANNING PERMISSION

Demolition of existing dwelling and replacement with a 4 bedroom house with a detached garage and a 2 bedroom bungalow at 28 Lodge Road, Havant, PO9 3LL

APPEAL NO. APP/X1735/A/13/2211227

LPA APPLICATION NO. APP/13/00841

GROUND OF APPEAL

AND

STATEMENT OF CASE

1.0 INTRODUCTION

- 1.1 This appeal is against a planning application that was made following refusal of a similar previous scheme that was for three units. The previous application (13/00064) is the subject of a separate appeal (APP/ X1735/A/13/2208899) that is currently with the Planning Inspectorate. The refusal was on similar grounds and so the appellant's approach to the grounds and statement of case is similar in both cases.
- 1.2 This statement draws primarily on the reasons for refusal set out in the Notice and looks to the officer's published report for the local planning authority's reasoning in reaching its decision. In addition the statement addresses issues raised by consultees and other third parties where they are on the public record.

2.0 GROUNDS OF APPEAL

Refusal Reason 1:

- 2.1 The refusal reason cites only one local plan policy - CS16 of the Havant Borough Local Plan (Core Strategy) 2011 - which is concerned with achieving high quality in the design of development. It is a criteria based policy which requires specific analysis of the scheme design against a series of objectives. Such analysis is largely subjective but can be tested against published good practice and examples of schemes that exist elsewhere which have similar characteristics. The broad principle of developing backland sites is one that is clearly acknowledged as being acceptable and is illustrated by the numerous examples of similar forms of residential development that have been approved in the area in the recent past (see appendix 1).
- 2.2 Analysis of the policy criteria with reference to the advice in the Borough Design Guide (December 2011) SDP, comparison with schemes built elsewhere and in the context of acknowledged good practice, demonstrates that the LPA is incorrect in its assessment. The scheme has been carefully designed to fit comfortably into the existing character and layout of the locality and would not be detrimental to the amenities of the area. The street scene that will exist following the completion of the development is shown in the submitted drawings (212.07/15). This, together with the site layout (212.07/13), demonstrates that the completed development will not be detrimental in any respect to the existing character and appearance of the area but will in fact enhance it..
- 2.3 The design quality is well above the level set out at paragraph 56 of the NPPF which asks for 'good design'. It is also clear from NPPF paragraph 64 that the test to be applied is that permission should be refused only if the development is *"...of poor design..."* The scheme is designed to be well above the level of design quality that the NPPF requires and grasps the *"...opportunities available for improving the character and quality..."* of the area.

Refusal Reason 2:

- 2.4 This Refusal Reason also cites Policy CS16 and refers specifically to the relationship with 26 Lodge Road, 12 Brookside Road and the future occupiers of the new house. The proposed driveway and hardstanding will not, as the LPA claim, be detrimental to the interests of the occupiers of the adjoining dwellings, both new and existing.
- 2.5 The proximity of the drive and hardstanding is not unusual and is indeed a common relationship that can be observed in many developments elsewhere. Examples of similar development configurations can be observed at Bedhampton Hill, Lower Road, Glebe Park Avenue, Firlands Rise, Beverley Grove, Park Lane and Leigh Road all of which are within

the PO9 post code area (Appendix 1). Indeed, the arrangement whereby access to parking is alongside boundaries to rear gardens is illustrated in design literature such as in figure 8.12 of Manual for Streets (DCLG/DfT 2007) as acceptable practice and is used extensively at the award winning Poundbury development in Dorchester. (Appendix 2).

- 2.6 A robust boundary structure that can be controlled by a planning condition will reduce any risk that use of the proposed drive will cause unacceptable negative impacts on the occupiers of the existing neighbouring dwellings. Such an approach is recommended by the Council's Design Guide SPD at paragraph 5.22. The scheme is not contrary to local planning policy C16.
- 2.7 The other aspect of the relationships that are proposed relates to the proximity and aspect of the proposed bungalow. Analysis demonstrates that there will be no unacceptable impact.

3.0 PLANNING POLICY

National Planning Policy Framework (NPPF)

- 3.1 The basis of planning policy is grounded in the National Planning Policy Framework (NPPF) 2012. It sets out the requirements of Government with which every local planning policy and decision must accord. A 'golden thread' running through the NPPF is the presumption in favour of sustainable development. Sustainable development, whilst being given no clear definition, has three stated dimensions: economic, social and environmental. Seeking sustainable development, the NPPF advises, means pursuing positive improvements in the quality of life of people including widening the choice of high quality homes.
- 3.2 The proposed development is aimed at replacing an existing dwelling that is of an older design of poor quality and which is accepted by all parties as being fundamentally structurally unsound, with two new high quality homes. These will provide accommodation for two families in homes that will be well designed, energy efficient and highly sustainable.
- 3.3 The NPPF is clear that good design is a key aspect of sustainable development. It should take the opportunity to improve the character and quality of an area and the way it functions. The proposal is designed to respect the character of the area through careful siting of the buildings and a thorough attention to architectural scale, detail and the choice of materials. As mentioned above, in addressing the design of new development the NPPF makes it clear that the test as to whether to refuse development relates to *"...poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions"*. The appeal proposal is of a high standard of design and reflects the architectural character of the locality as well as the pattern and grain of development that has evolved in the area. It will replace a poorly designed building with a new building of high quality, thus enhancing the character and quality of the area.
- 3.4 The NPPF requires that in accordance with planning law applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise and due weight should be given to relevant policies in existing plans prepared prior to the publication of the NPPF in March 2012. However, at paragraph 197 the NPPF states quite clearly: *"In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development."* The site location and form of development are highly sustainable and so the presumption in favour applies in this case.

The Havant Borough Core Strategy 2011

- 3.5 The HBCS, adopted in March 2011(which predates the NPPF) provides the most recent local planning policy and its policies are relied upon by the Council in its refusal reasons, which are addressed below. In addition to the policies that are referred to in the refusal reasons are policies that encourage development of the type that the appeal scheme proposes.
- 3.6 New housing is encouraged by Policy CS9 and its construction to Level 3 of the Code for Sustainable Homes by CS14 Efficient Use of Resources. The replacement of a single poorly performing home by two high performing homes is consistent with planning policy.

4.0 STATEMENT OF CASE

- 4.1 The rejection of this proposal by the local planning authority is based on design grounds, as has been outlined above. Both the reasons for refusal are based on subjective assessments of the proposal by the council's planning officers, albeit in the context of the council's policies and guidance. However, these assessments are not robust and do not stand up to proper analysis either in the context of good design practice or the tests established by the National Planning Policy Framework.
- 4.2 The first reason cites 'tandem development' and claims that it is both 'out of keeping' (whatever that may mean) with the character and 'detrimental to the amenities' of the area. To explore what this rather vague summary might mean it is necessary to consider the officer's report and what it may say on these issues. The key passages are contained within Section 7 and are based on the policy criteria under seven headings.

(i) Principle of development.

- 4.3 The report concludes that the development is acceptable subject to other criteria.

(ii) Effect on the character of the area and street-scene

- 4.4 Although the design and principle of the proposed detached house is considered acceptable the report's author takes the view that because there is a further property proposed to the rear it must be a 'discordant' form of development. However, as can be seen from Appendix 1, there are numerous examples of residential development that has occurred in the locality that have taken place on sites to the rear of existing development. The principle of such an approach cannot, therefore, be considered either unacceptable or 'discordant'. Analysis of the various other developments nearby shows that the particular characteristics exhibited by the development in respect of the land to the rear are neither unusual or unacceptable. Indeed, the Council's Design Guide is clear:

"5.25 Havant Borough Council acknowledges that backland and infill developments have a role to play in delivering the council's housing and development targets. However, many of these sites are situated amongst existing neighbours and can create an adverse impact. Development of backland and infill sites should not have an adverse effect on neighbouring properties, should maintain and enhance the existing character and quality of an existing area and should create pleasant and attractive places to live."

Examples documented at Appendix 1:

- Land to the rear of 41 Bedhampton Hill: This development was granted planning permission by the council (Ref.04/52260/005) on land that required private drive access alongside the rear garden of the existing dwelling and includes one single and two 2 storey dwellings that face directly onto the rear of an existing house and a

further dwelling that looks onto the rear garden of one of the new houses. Notwithstanding this, they appear to function well and provide a pleasant environment for all the residents.

- 28 and 28A Bedhampton Hill comprises an existing house (28) fronting Bedhampton Hill with a new single storey dwelling (28A) built behind and which is accessed by a private drive alongside the entire eastern boundary No.28. As with 41 above, there appear to be few, if any, problems with the arrangement.
- 70 to 72B Lower Road is a small group of two storey houses sited close to Bedhampton Hill whilst being accessed from Lower Road by way of a long private drive that passes the full length of the rear garden of No 70. The arrangement appears to function perfectly satisfactorily.
- 5, 7 and 9 Lodge Road are an integral part of the mature Lodge Road development and all face directly towards the rear of 28, 30 and 32 Lower Road, the rear gardens and garages of which gain access from Lodge Road. There do not appear to be any problems either functional or social as a result of this arrangement.
- Glebe Park Avenue and Firlands Rise show how backland sites can be successfully developed with characteristics that include driveways alongside gardens, two storey dwellings facing directly onto the rear of adjoining houses and the juxtaposition of gardens and access driveways so that both can exist in harmony through the judicious use of robust boundary treatments and clever landscape planting.

4.5 In terms of the site specific issues, the proposed bungalow is some 41m from the highway and will not be visible from Lodge Road, Brookside Road or any other public viewpoint, other than over the high boundary hedge that adjoins the public foot[path adjacent the site. The site of the bungalow will be obscured from view by the proposed new dwelling, the existing bungalow (No26) and landscape planting. There is no significant change proposed to the arrangement of driveways which means that the visual appearance, and therefore the perceived character of the street-scene, will remain largely unaffected by the development. The council's analysis under this heading is therefore fundamentally flawed. For character to be affected there must be a significant change to the appearance of the area as a result of the development. In this case the character of the area will remain unchanged.

4.6 It is a fundamental principle of planning policy and practice that the control of development is undertaken in the public interest such that planning decisions to refuse permission should be made only if the public interest is compromised. In respect of the effect on character and street scene, the rear bungalow has little or no impact. The local planning authority acknowledges that the proposed new replacement house is acceptable and so it must follow that there is no material harm to the character of the area and the street scene. Indeed, the replacement of the existing poor quality house of inferior design with a new dwelling of acknowledged high quality will be a positive change that will enhance the character and appearance of the street scene.

(iii) Effect on existing residential properties

4.7 The analysis in the report assumes that it is unacceptable for a single private driveway to be located adjacent the garden of another dwelling. This is clearly not the case as such arrangements are part of the urban fabric of villages, towns and cities all across the country. Indeed, as can be seen in Appendices 1 and 2, they can be found locally, nationally and in the professional literature espousing good practice. The Havant Borough Design Guide SPD acknowledges that design solutions incorporating access and parking to the rear of

dwelling is acceptable and provides advice for such circumstances:

5.22 Private rear boundaries must be masonry walls and not fences to limit the impact of noise and disturbance on residents.

- 4.8 Of particular relevance is 41 Bedhampton Hill referred to above and in Appendix 1 which is less than 100m from the appeal site and is located between the rear gardens of houses fronting Bedhampton Hill and Lodge Road (Nos.15, 17 and 19). This 'backland' development is a successful development that does not distract from the character of the area or cause any unacceptable amenity impacts. It has access adjacent rear gardens and exhibits 'tandem development' characteristics without causing any reason to be concerned about amenity or the area's character.
- 4.9 Other developments located nearby also demonstrate how new development with similar characteristics have been assimilated into the urban fabric without ill-effect as the examples identified above and in Appendix 1 demonstrate. There are houses that both face the rear of other properties and are accessed, either by private drive or public highway, close to the boundaries of other house and their gardens.
- 4.10 The question is raised as to whether the design of the appeal proposal is such that there are likely to be any unacceptable impacts on adjoining properties. Firstly, the proposal is for only one driveway serving one dwelling and so the quantum of activity will be minimal. Secondly, the construction of a robust barrier, as recommended at paragraph 5.22 of the Council's Design SPD will prevent any un-neighbourly interaction and thirdly the limiting of the rear dwelling to single storey ensures that there will be no possibility of either overlooking or overshadowing from it. Indeed, in many cases in the area similar boundaries have only a close boarded fence between the private rear garden of a house and a drive or road providing vehicular access to other properties at the rear. Because of the 'triangular' plot shapes in this part of Lodge Road the distance between the new bungalow's access and No.26 increases as the drive passes further to the rear. At its closest point it is 3m from the existing house with a garage between the dwelling and the boundary. This compares very favourably with the arrangements that can be seen elsewhere and which are considered by the Council to be acceptable.
- 4.11 The closest property to the garden of 28 Lodge Road is 12 Brookside Road. It is at a lower level and at an acute angle to the proposed development. The scheme will include a new fence and the re-planting of the boundary to provide substantial tree and shrub screening. The external rear garden of the property will be made more private than it is now and the first floor bedroom windows will then be protected from view by this new boundary treatment and landscape planting within the site of the proposed new bungalow (Appendix 3). Analysis of the relationships shows that:
- The main habitable rooms of the proposed bungalow face the rear garden, of No.12, not the house.
 - The only bungalow window facing (obliquely) towards No.12 Brookside is that of the kitchen/dining room and the distance between the nearest first floor window of 12 Brookside and that window is 19 metres. There is a retained tree (Tr.12) between the two windows.
 - In addition, the boundary between No.26 Lodge Road and No.12 Brookside is very well planted and is high enough to screen the whole of No.12's garden.
 - A new 1.8m high fence is proposed between the appeal site and the garden of No.26 Lodge Road, which will restrict views of the proposed bungalow from No.12.
 - The proposed bungalow will not overlook any of the garden of No.12.
 - The finished ground floor level of the proposed bungalow will be 13.24m, resulting in

an eaves level of 15.34m.

The Council acknowledges in the report that the bungalow proposal would not result in any loss of privacy or outlook for any adjoining existing dwellings.

- 4.12 The Borough Council's objection lacks any objective analysis and is based entirely on a broad disapproval of the principle of development which has been distorted into a bogus argument about amenity because the principle is clearly acceptable as the evidence demonstrates.

(iv) Consideration of residential amenity of future occupants

- 4.13 Again the Council's analysis assumes that a private drive adjacent a garden is unacceptable in principle. It is not. Evidence is extensive that such arrangements are perfectly acceptable and there is nothing in the case of the appeal scheme that can lead to a different conclusion in this case..
- 4.14 In considering the scheme the Council clearly accept that there will not be any overlooking of the proposed dwellings. The distances between the dwellings, including towards the new bungalow from other dwellings, both proposed and existing, are not unusual or unacceptable. The closest is the rear of No. 12 Brookside Road which sits well below the level of the appeal site and thus the proposed bungalow. This difference in levels means that the proposed bungalow will sit at a similar elevation to the first floor of the adjoining house thus ensuring the effectiveness of boundary fencing and new planting.
- 4.15 As can be seen from the photograph taken looking south-east from the site of the bungalow (Appendix 1) there is currently a fence and landscape planting between the dwellings which effectively screens views into the site. It is proposed that this will be reinforced and where necessary replaced by the landscape and boundary proposals that form part of the appeal scheme. These will be detailed and implemented in accordance with standard planning conditions.
- 4.16 The rear of the proposed house faces the side elevation of the proposed bungalow which has no windows in the key elevation (see Drawing no. 212.07/07B) and so there are no amenity issues raised in that relationship.

(v) Highways implications

- 4.17 There are no highways objections and the appeal scheme accords with the Council's policies for car parking and access.

(vi) Impact on trees

- 4.18 The proposals for tree care and landscape are accepted by the Council. Planning conditions related to the protection of trees, landscape management and the design and provision of new landscape planting will form an integral part of any planning permission and is acknowledged by the appellants as a necessary basis for a planning permission.

(vii) CIL Liability

- 4.19 The appellants acknowledge CIL liability as a consequence of approval of permission.

5.0 CONSULTATION AND THIRD-PARTY RESPONSES

- 5.1 None of the comments of the various consultees raise any objections that should result in the proposals being rejected. Some made more detailed comments and suggestions:

Arboriculturalist:

- 5.2 scheme acceptable subject to conditions;

Hampshire Constabulary:

- 5.3 The police advise on security measures and in this case suggest a type of door lock for the bungalow, locks for the gates and lighting to the private drive.

Highways Officer:

- 5.4 No objections are made subject to there being adequate car parking and cycle storage and the first five metres of the drive should be constructed from a non-migratory surface material.

Interested Parties

- 5.5 There have been a number of letters from interested parties which raise matters that are pertinent to this appeal. There is notable local support for the principle of the development of a single replacement dwelling and a new bungalow. There have been various suggestions made regarding aspects of the proposals prior to the application being lodged, which were considered by the appellant and its architect, resulting in changes to the design and layout. Many of the points made by the third-parties are addressed above and are not repeated here. The neighbours in Lodge Road are generally satisfied with the proposals.

12 Brookside Road:

- 5.6 The broad objection alleges 'over-development' but does not suggest any specific reasons why this might be nor examples as to what adverse impacts the proposed development may have on the existing property. Notwithstanding this lack of detail by the objector, analysis of the relationships is included above and this demonstrates that the concerns expressed are unfounded.

10 Brookside Road:

- 5.7 There is very little, if any, direct impact on this property, which is some distance from the appeal site boundary. It is at an acute angle to the proposed new bungalow and is sited at a considerably lower level, such that there is no material harm caused to it.

14 Lodge Road:

- 5.8 This property is approximately 50m from the entrance to the appeal site. Confusingly the writer fully supports the letter from No 24, which supports the appeal scheme, whilst describing the letter as an objection. The thrust of the objection is related to car parking and access, both of which the Council consider acceptable.

24 Lodge Road:

- 5.9 This letter is the most comprehensive of the responses received by the local planning authority from the local area. Mr Tate supports the application but makes some detailed comments and suggestions. The appellant's response is as follows:
- Widening of access: there will be some change to the driveway but it will not be significant and will not affect the highway beyond the site boundary.
 - Permeable surfaces are proposed for the driveway and footpaths.
 - There are no proposals for changing the existing turning head of Lodge Road which functions adequately such that no objection from the Council's highways officers has been made.

- The on-site parking is generous and meets LPA standards. In addition the shared driveway allows vehicles to reverse and turn without having to use the public highway, which is an improvement on the existing arrangement.
- The provision of a garage is not a planning policy requirement as long as there is adequate parking, which there is. As the bungalow does not affect the street scene it cannot affect its character.
- Widening the drive would reduce the amenity land associated with the house. It was an option that was considered but, on balance, rejected as being less satisfactory.
- There is no requirement for a s106 agreement (CIL applies in this case).
- It is acknowledged that the footpath is not a cycleway. The slight widening of the drive will increase the width of the drive at the junction with the footpath and thus increase visibility.
- The appellants have no objection to reasonable conditions aimed at ensuring that neighbouring properties are not unreasonably affected during the construction process.
- The proposed bungalow is some 41m from Lodge Road. It's relative 'invisibility' is a virtue in respect of the street scene as it means that the character of the street will be unaffected. The proposed house has been designed to sit comfortably with its neighbours.
- It is not anticipated that there will be any problems with identifying the bungalow's location providing adequate but discrete house identification is placed at the entrance.

5.10 A further five representations support the proposal

6.0 CONCLUSION

- 6.1 The proposals are consistent with the principles of good design and have been demonstrated not to have any detrimental impact. The implementation of the proposals will bring with it an improvement to the street scene of Lodge Road through the construction of a much better quality house to replace that existing and will add a further new dwelling in a discrete location that will increase the choice of housing available in the area.
- 6.2 The National Planning Policy Framework is clear in stating that there is a presumption in favour of sustainable development and that planning permission must be determined in accordance with an up-to-date development plan. The appeal proposals have been carefully designed to meet the requirements of the adopted local planning policies and those contained within the National Planning Policy Framework. The Council was therefore wrong to refuse planning permission.
- 6.3 The Inspector is respectfully requested to allow the appeal.

APPENDICES

- 1 Photographs and plans: nearby sites exhibiting similar characteristics
- 2 Examples of good practice
- 3 Sketch section Drawing No 212.07/16