



## Appeal Decision

Site visit made on 10 January 2019

by [REDACTED] **BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 February 2019

**Appeal Ref: APP/Z0116/W/18/3209005**

**36 Hampton Park, Redland, Bristol BS6 6LH**

- 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 [REDACTED] against the decision of Bristol City Council.
- The application Ref 18/01164/F, dated 5 March 2018, was refused by notice dated 24 May 2018.
- The development proposed is construction of a one bed house, sunken into existing rear garden.

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. During the course of the determination of the application that led to this appeal revisions were made to the scope of the proposed development reducing the amount of bedrooms it would provide from two to one. Accordingly, in the banner heading above, I have used the description of development as it appears on the Council's Decision Notice rather than the form of words included in the application form<sup>1</sup>. I note also that the description as used above appears on the appeal form.
3. The appellant submitted a set of revised plans with their appeal<sup>2</sup> (the Revision A Plans), which were not before the Council when it made its decision on the application that led to this appeal. Nevertheless, a proposed lower ground floor plan<sup>3</sup>, also with a "Revision A" suffix, reflecting the alteration of the proposal from a two to one bedroom dwelling is included on the list of plans on the Council's Decision Notice and clearly formed a basis for the Council's determination of the application, and reflected the change to the scope of the proposal to comprise a one-bedroom dwelling. The Revision A plans reflect the minor change to the overall depth of the proposed development shown on the lower ground floor plan which was considered by the Council, which would achieve a slightly greater separation distance from the back wall of the proposed development to the rear boundary of the appeal site than the

<sup>1</sup> Which is "Construction of a two-bed house, sunken into existing rear garden. Removal of existing garden shed"

<sup>2</sup> 1645(L)20 (Rev A)-Proposed Section AA; 1645(L)10 (Rev A)-Proposed Site Plan; 1645(L)12 (Rev A)-Proposed ground floor plan; 1645(L)15 (Rev A)-Proposed north elevation; 1645(L)17 (Rev A) Proposed south elevation;

<sup>3</sup> 1645(L)16 (Rev A)-Proposed east elevation

<sup>3</sup> 1645(L)11 (Rev A)

superseded scheme, but in all other respects reflect the scale, design, overall layout and fenestration pattern as originally presented to the Council.

4. As the Council clearly considered the application on a slightly scaled down footprint as envisaged in the Revision A iteration of the lower ground floor plan, I consider the Revision A plans not to result in a material change to the proposals as presented at application stage. Consequently, I consider that no prejudice would occur to the interests of any parties in my consideration of the content of the Revision A plans in my assessment of the planning merits of the appeal.
5. The new National Planning Policy Framework (the Framework) was published after the date of the Council's decision on the application that led to the appeal, and supplants the version of the document relevant at that time. As the Framework is a material consideration in planning decisions from the date of its issue<sup>4</sup>, I will take it into account in my assessment of the appeal's merits. I also acknowledge that reference has been made to the new version of the Framework in the appellant's submissions.

## **Main Issues**

6. The main issues in this appeal are firstly, whether the proposed development would preserve the character or appearance of the Whiteladies Road Conservation Area, including with reference to its effects on adjacent trees; and secondly, the effects of the proposed development on the living conditions of its future occupants in terms of outlook.

## **Reasons**

### *The Conservation Area*

7. Situated close to a bend in Hampton Park between the flanks of Nos 34 and 36 and their gardens, the bulk of the appeal site is roughly wedge-shaped to the rear and is connected to the road by a narrow strip. To the rear, the appeal site slopes down to a considerably lower level than the road, though it is at a level slightly higher than adjacent gardens, from which it is separated by fences. Of a broadly open character, with a shed close to the top of its slope adjacent to its boundary with No 36, the appeal site is accurately described within the application form as a "garden" although I note that it is not currently accessed by the residents of either of the adjacent buildings and, according to the Council's Officer Report, was separated from No 36 under the terms of a previous planning permission.
8. Although buildings to the rear are more varied in terms of their age and style, the appeal site is in the midst of a row of semi-detached buildings with a marked consistency of scale, elevational treatment, and set-back from the street, coupled with, on the whole broadly comparable garden depths. Taken together the strong uniformity of the architecture, the predominantly well-vegetated front plots, and the mature trees visible to their rears are aspects of Hampton Park which add a sense of order and spaciousness to the immediate streetscene, and contribute to the character and appearance of the Whiteladies Road Conservation Area, within which the appeal site sits. Indeed the significance of the Conservation Area derives, to a considerable degree, from the cohesive spacing and designs of its constituent buildings. In its current

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<sup>4</sup> As set out in paragraphs 2 and 212 of the Framework

form the appeal site adds to this sense of spaciousness and its shed is typical of ancillary structures related to domestic properties.

9. The proposed development would entail a flat-roofed single-storey structure of an irregular footprint to rear of the site, which would include the appeal scheme's principal habitable rooms. The dwelling would be accessed from an element toward the front of the site, situated between Nos 34 and 36 which would appear single-storey at street level, but of two-storeys to the rear due to the change in levels. The shed currently present at the appeal site would be demolished to make way for the proposed development.
10. The proposed development would be of a diminutive scale in strong contrast to the predominant larger scale of the residential buildings in its immediate surroundings. In contrast to those buildings too it would have a deeper set back from the road, and take up considerably more of its available plot, imparting a more intensively developed character to the appeal site in marked variance to the general development pattern of the dwellings to which it would most closely relate. Whilst the appellant considers the ratio of open space to the footprint of the dwelling achieved by the appeal scheme would be commensurate with those of its surroundings, the unusual, irregular shapes and the disposition of the proposed spaces would be at variance with the more regularly positioned back and front gardens of its neighbouring properties.
11. These aspects of the appeal scheme would result in a development at jarring variance with its surroundings, which would be a discordant element within the generally more cohesive pattern. In arriving at this view I accept that the proposed development would be of limited visibility from the public realm, and I am also mindful of the appellant's view that a more traditional design may not be possible because of the constraints of the appeal site—nevertheless the element that would be discernible from Hampton Park would due to its scale, unusual roof treatment and elevational design appear out of kilter with its surrounding buildings; and the development as a whole would be readily visible from vantage points available from adjacent properties. The proposed development's incongruity in these regards would not be softened, to any material degree, by the use of a green roof. For these reasons the proposed development would cause clear harm to the character and appearance of its surroundings.
12. I saw that a wild cherry tree exists over the rear boundary of the appeal site within the garden of a neighbouring property. This tree is a mature specimen, which due to the height and overall balance of its canopy is a feature that adds to the leafy character and appearance of the streetscene. A pear tree present in the garden of No 34 adjacent to the boundary with the appeal site, whilst not of the scale of the wild cherry, is also a mature specimen that contributes positively to the visual amenity of its surroundings.
13. The appellant submitted an Arboricultural Impact Assessment<sup>5</sup> (the Assessment) with their original application and this has been supplemented by an Addendum<sup>6</sup> at the appeal stage, produced in accordance with the

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<sup>5</sup> Produced by Barton Hyett Associates dated 14 February 2018

<sup>6</sup> Produced by Barton Hyett Associates dated 20 July 2018

relevant British Standard<sup>7</sup>. I note that both trees are categorised as B1 in terms of quality- being fair but not exceptional, and being good specimens with some impairment.

14. The Tree Protection Plan included in the Addendum takes into account the altered footprint of the proposed development as depicted on the Revision A plans. This shows that the rear and flank walls of the proposed development could have the potential to be within, or immediately adjoining the root protection areas, per the British Standard, for these adjacent trees. I note also the discrepancies between the estimated and actual stem diameters of the wild cherry tree, drawn to my attention by a neighbouring resident.
15. However, I consider that specific factors related to the appeal site identified within the Assessment and Addendum, including the difference in levels between the appeal site and the adjoining ones, the former presence of an ash tree at the site, the laurel hedge to its rear, and the existence of boundary treatments could have acted to suppress the root growth of these adjacent trees within the appeal site. Moreover, trial trenches were dug as part of the Assessment which found no significant roots from these trees in the vicinity of the proposed foundations. Taken together, these considerations point to a less extensive rooting area in the vicinity of the proposed development than the British Standard root protection area would indicate.
16. Accordingly, subject to appropriate tree protection measures during construction, I consider that the proposed development would not adversely affect the health or stability of the trees. It follows that the contribution of the trees to the visual amenity of their surroundings would not therefore be unduly impaired as a result of the construction activity related to the appeal scheme. Nevertheless, the lack of harm in these regards is not a positive benefit of the appeal scheme, and thus does not serve to overcome its other harmful character and appearance effects.
17. Consequently, mindful of the duty arising from section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), these considerations, taken together, lead me to the conclusion on this main issue that the proposed development would fail to preserve the character and appearance of Whiteladies Road Conservation Area. For these reasons too, the proposed development would conflict with Policies BCS21 and BCS22 of Bristol's Core Strategy (adopted June 2011); Policies DM21, DM26, DM27 and DM31 of Bristol's Site Allocations and Development Management Policies Local Plan (adopted July 2014)(the DM Policies); and Bristol's PAN 2 Conservation Area Enhancement Statements ( November 1993). Taken together, and amongst other matters, the policies and guidance seek to ensure that development contributes positively to an area's character and identity, reinforcing local distinctiveness; respects the local pattern and grain of development; and safeguards heritage assets. In arriving at this view, I have taken into account the references to Court judgements<sup>8</sup> within the appellant's statement.

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<sup>7</sup> BS5837:2012 *Trees in relation to design, demolition and construction-Recommendations*

<sup>8</sup> *Burroughs Day v Bristol City Council* [1996] 1 PLR 78; *South Oxfordshire District Council v Secretary of State* [1991] CO/1440/89; *South Lakeland District Council v Secretary of State for the Environment and another* [1992] 1 All ER 573;

18. As Policy DM30 of the DM Policies relates to extensions and alterations to existing buildings, although referenced on the Decision Notice, it is not of direct relevance to the subject matter of the appeal. Moreover, given the lack of harm that the proposed development would cause to adjacent trees, subject to adequate protection measures being in place, I can find no conflict with Policies BCS9 and BCS11 of the Core Strategy; Policies DM17 or DM30 of the DM Policies; or the Council's Planning Obligations Supplementary Planning Document (adopted October 2004), insofar as they seek to ensure that trees are protected during the course of development. Neither have any listed buildings or their settings been explicitly identified by the Council in relation to the duty arising from Section 66(1) of the Act for me to form a definitive view on whether any settings would be affected by the proposed development. Nevertheless, the proposed development's lack of statutory or policy conflicts in these regards does not weigh positively in favour of the scheme, and thus does not serve to overcome the harm that I have identified.

#### *Living Conditions*

19. The proposed development would include a high content of glazing in its flank and this would serve the living room. The bedroom would also have two windows. The depth of separation between these windows and the boundaries of the property would not be great. Nevertheless, there would be adequate separation between the proposed windows and taller structures beyond the boundaries, which would allow good open views of the sky and this would be augmented by the visual amenity created by the adjacent trees. As a consequence an acceptable standard of outlook would be available from the proposed development's habitable rooms. For these reasons, I conclude on this main issue that the proposed development would cause no adverse effect to the living conditions of its future occupants, and in these regards would not conflict with Policies BCS15, BCS18 and BCS21 of the Core Strategy; or Policies DM27; DM29 or DM30 of the DM Policies. Amongst other things, and taken together, these policies seek to ensure that residential developments are flexible and adaptable and create a high quality environment for their future occupiers.

#### **Other Matters**

20. The proposed development would supply an additional house, the internal space of which would be in excess of the minimum requirement outlined in the national Space Standard<sup>9</sup> and with an adequate supply of amenity space, on what the Council describes as a vacant plot, in an accessible location, close to local services and public transport links. Renewable energy measures would also be installed and the proposed dwelling's green roof could provide gains in terms of biodiversity. The proposed development could also help to improve the mix of types of dwelling in the immediate area. These are clear public benefits of the scheme and accordingly weigh in its favour, but due to the overall scale of the proposal do so only to a modest degree.
21. The appellant cites the Framework's support for the re-use of previously developed land. In this respect I am also mindful of references to the current use of the appeal site for storage. However, aside from references to the physical separation of the appeal site from No 36, its lawful use in planning

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<sup>9</sup> Department for Communities and Local Government *Technical housing standards-Nationally described space standard* (March 2015)

terms is unclear from the submitted material. Moreover, given the appeal site's character, it has not been conclusively demonstrated that it meets the definition of previously developed land given in the glossary of the Framework which excludes "land in built-up areas such as residential gardens..." Consequently, it has not been demonstrated that the Framework's policies in these regards weigh materially in favour of the proposed development.

22. The appellant considers that the proposed development would avoid harm to the living conditions of the occupants of adjacent dwellings, and I am also mindful that the Council expressed no objection to the appeal scheme in these terms. However, this merely points to an absence of harm in these regards rather than a positive benefit of the scheme and thus has only a neutral effect on the overall planning balance.

### **Planning Balance and Conclusion**

23. The appellant provided the Council's Five Year Housing Land Supply 2017-2022 document (January 2018), which establishes that the relevant housing requirements for the city can be met comfortably. Whilst I note also the emerging housing requirements expressed in the Council's *Housing Delivery Plan 2017-2020*, and the Publication version of the West of England: Joint Spatial Plan (November 2017) (the Joint Spatial Plan), I have been supplied with no substantive evidence to suggest that the Council cannot demonstrate a five year supply against its *existing* requirement. Also, whilst the Joint Spatial Plan has reached an advanced stage of preparation, the level and nature of any unresolved objections to the emerging requirement have not been drawn to my attention. Therefore in accordance with the Framework<sup>10</sup> the emerging requirement set out in the Joint Spatial Plan carries only moderate weight in the overall balance.

24. Moreover, even if I were to conclude that the Council's supply of housing land was deficient, I am mindful that the presumption in favour of sustainable development set out in paragraph 11 of the Framework does not apply where the application of policies of the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed including designated heritage assets<sup>11</sup>.

25. In these respects, the Framework anticipates, once harm has been found to the significance of a heritage asset, that its magnitude should be assessed. Whilst in the context of the Conservation Area taken as a whole the proposed development would clearly cause less than substantial harm, the Framework sets out<sup>12</sup> that great weight should be given to a heritage asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Moreover, the harm should be weighed against the public benefits of a proposal<sup>13</sup>.

26. In the current case, whilst the proposed development would supply an acceptable standard of outlook for its future occupants, this is merely evidence of an absence of harm in these regards rather than a positive benefit, and therefore neither weighs for nor against the scheme. Moreover, for the reasons set out above, the public benefits of the proposed development carry

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<sup>10</sup> Paragraph 48

<sup>11</sup> Per footnote 6 of the Framework

<sup>12</sup> At paragraph 193

<sup>13</sup> Per paragraph 196 of the Framework

only modest weight, and do not tip the overall balance in favour of the scheme when set against the great weight and importance that its harmful effect to the significance of the Conservation Area attracts. For these reasons, the proposed development would conflict with the Framework insofar as it seeks to ensure that heritage assets are managed in a manner appropriate to their significance. In arriving at this conclusion, I have taken into account the Court judgement<sup>14</sup> referred to me by the Council, and the references to Historic England guidance<sup>15</sup> made by the appellant

27. Consequently, no material considerations have been advanced in this case sufficient to justify a decision other than in accordance with the development plan, with which in terms of the above cited heritage, character and appearance related policies it would clearly conflict.
28. Accordingly, for the above-given reasons, and taking fully into account all other matters raised, I conclude that the appeal should be dismissed.

[REDACTED]

INSPECTOR

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<sup>14</sup> *R (on the application of) Forge Field Society & Others v Sevenoaks DC & Interested Parties* [2014] EWHC 1895 (Admin)

<sup>15</sup> Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision-taking in the Historic Environment