



# Appeal Decision

Site visit made on 20 September 2022

**by Alexander O'Doherty LLB (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 November 2022**

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**Appeal Ref: APP/Y3940/W/22/3299231**

**Land to the rear of 39 Woodrow Road, Melksham SN12 7AY**

- 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 L Thompson against the decision of Wiltshire Council.
  - The application Ref PL/2021/09635, dated 6 October 2021, was refused by notice dated 11 February 2022.
  - The development proposed is erection of new dwelling.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of 39 Woodrow Road, and the future occupiers of the proposal, with respect to the provision of private amenity space.

## Reasons

3. The appeal site comprises the rear garden of 39 Woodrow Road (No 39), a mid-terrace 2-storey dwelling situated within a residential area in Melksham.
4. Following the grant of planning permission for an outline consent<sup>1</sup>, reserved matters approval was given for a 2-bedroom detached bungalow at the site<sup>2</sup>, in 2007. However, the bungalow was not built.
5. The appellant has provided copies of some of the planning policies which were taken into account by the Council in 2007. Of these, Policy C38 of the West Wiltshire District Plan 1<sup>st</sup> Alteration (2004) is the most relevant policy to this main issue. Policy C38 was replaced by Core Policy 57 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy). Whilst the language used is different, in substance part vii. of Core Policy 57 is similar to Policy C38.
6. The National Planning Policy Framework (the Framework) was not in existence in 2007, and the version of the Framework at the time the Core Strategy was adopted referred to 'a good standard of amenity', rather than 'a high standard of amenity', as now found at paragraph 130 f) of the current version of the Framework. Nevertheless, taking account of this slight change in emphasis in the Framework, it is fair to say that with respect to the focus of this main issue, the planning policy context is broadly the same now as it was in 2007.

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<sup>1</sup> W/05/01311/OUT

<sup>2</sup> W/07/01037/REM

Additionally, the evidence indicates that there has been no material physical changes to the site since 2007.

7. Consistency is important in the planning system for a number of reasons, including that it provides a measure of certainty for all parties, but ultimately my decision constitutes an independent and impartial assessment of the merits of the proposal. In this respect, for the reasons which I explain in detail below, and taking account of the policy context referred to above, I consider that it is necessary to depart from the previous decisions.
8. The proposal for a new dwelling at the site is almost identical to the 2007 scheme. The Council have referred to Building for Life 12 (2015), and have asserted that the size of the rear garden for the proposed new dwelling would not be equal to the ground floor footprint of the dwelling, which has not been disputed by the appellant. Whilst in no way conclusive of itself, this conflict with the guidance found in Building for Life 12 indicates that the proposal deviates from a recognised industry standard.
9. Although the Officer's Report for the 2007 reserved matters approval mentioned that the bungalow would be served by a small but adequate rear garden, for the proposal before me I take issue with the adequacy of the private amenity space that would be provided. This is because, whilst the rear garden area would be approximately 17 metres long, it would be narrow and the presence of the long west elevation of the proposed new dwelling and the boundary treatments to the gardens of properties on Bowden Crescent would result in a near-tunnelling effect for its users. This would likely make the space unattractive and less than functional to use, particularly for families with children.
10. The proposed new dwelling would retain space at the front of the property. However, much of this would be given over to parking and given its small size in my view its presence would not adequately compensate for the poor quality of the rear private amenity space, referred to above.
11. Upon completion of the proposed development the occupiers of No 39 would be left with a very small and narrow rear garden area. Indeed, the Council have calculated that this area would be approximately 94% smaller than at present, and this figure has not been disputed by the appellant. Due to its size, this area would offer little scope for recreation or relaxation, other than merely sitting out. Consequently, it would be of little value to families with children.
12. Part of the front garden of No 39 would be given over to parking via the proposal. The remaining area of the garden would not be private, due to its position near the road. Accordingly, its presence would not adequately compensate for the paucity of garden space to the rear of No 39 that would result from the proposal.
13. Reference has been made to the definition of curtilage given in paragraph X of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, this definition relates solely to permitted development rights for changes of use of agricultural buildings. As such, that definition is not directly relevant to the circumstances of this appeal. Additionally, the land within the red line boundary as shown on the site plan includes an access way and parking for the proposed new dwelling, which cannot be considered to be private amenity space, which

further reduces the relevance of that definition to this appeal. For these reasons, this matter does not change my findings.

14. The appellant has referred to the planning permission for 35A Woodrow Road<sup>3</sup> (No 35A). I note that the Officer's Report for that application only discussed the rear garden involved in that proposal with respect to privacy, rather than the provision of private amenity space. As such, whilst the appellant has asserted that the rear garden at No 35A is smaller than that proposed for the new dwelling in this appeal, it has not been possible to scrutinise the internal logic applied by the Council in that case with respect to the focus of this main issue, meaning that this example does not provide compelling reasons to alter my findings.
15. Taking all of the above into account, I therefore find that the proposal would have an unacceptable and significantly harmful effect on the living conditions of the occupiers of No 39, and the future occupiers of the proposal, with respect to the provision of private amenity space. The proposal would conflict with Core Policy 57 of the Core Strategy which provides that, amongst other things, applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through having regard to the impact on the amenities of existing occupants, and ensuring that appropriate levels of amenity are achievable within the development itself.
16. The proposal would also conflict with paragraph 130 f) of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

### **Other Matters and Planning Balance**

17. No concerns have been raised by the Council in their decision notice with respect to matters relating to highway safety, ecology, or drainage. However, even if I were to likewise reason that the proposal would be acceptable in these respects, these would be neutral factors rather than ones which weigh positively in favour of the proposal.
18. It is common ground that the Council is currently unable to demonstrate the supply of housing sites as required by the Framework. As such, I would consider the most important policies out-of-date and be taken to the provisions of paragraph 11 d) ii. of the Framework in that planning permission should be granted for the proposal unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
19. The proposal would provide a number of benefits, including providing one new dwelling in an established and accessible residential area, located within a defined settlement boundary. In this respect, the proposal would support the Government's objective of significantly boosting the supply of homes, as set out in paragraph 60 of the Framework, and the new dwelling would contribute to housing choice and mix in the local area. Also of relevance to the proposal is paragraph 69 of the Framework which provides that, amongst other things,

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<sup>3</sup> W/03/00577/FUL

small and medium sized sites can make an important contribution to meeting the housing requirement of an area.

20. In addition to the above, the proposal would contribute to the environmental objective of achieving sustainable development via the provision of an electric vehicle charging point, and to the social objective by the proposed new dwelling offering disabled access. The proposal would provide economic benefits by providing work for construction professionals and contributions towards off-site infrastructure if required by the Community Infrastructure Levy.
21. The site primarily relates to a residential garden situated in a residential area and in this respect few details have been provided to substantiate the contention that the land is under-utilised in land use terms. Considering that it forms part of a residential property, in all likelihood in its present state over the long-term it would serve a valuable purpose by contributing to the health and well-being of the occupiers of No 39. Therefore, whilst there is an identified need for housing in the wider area due to the housing land supply issue referred to above, I consider that it has not been demonstrated that the site comprises under-utilised land with respect to paragraph 120 d) of the Framework.
22. Given the housing land supply position mentioned above, the requirement to take account of housing need as per paragraph 124 a) of the Framework, and that a high density of development is a characteristic of the locality, the proposal would constitute an efficient use of land in land use terms. However, the weight to be given to this factor is reduced as the proposal would not sit squarely with the importance of securing healthy places, referred to in paragraph 124 e) of the Framework, due to the harm to living conditions that would arise via the proposal, identified on the main issue above.
23. Furthermore, the scale of the positive impacts of the various economic, social, and environmental benefits as summarised above would be directly linked to the quantum of development involved in this appeal, which is one dwelling only. Thus, I consider that all these benefits, when considered collectively, provide only minimal support for the proposal. Therefore, these would amount to no more than limited weight in favour of the proposal.
24. In applying the provisions of paragraph 11 d) ii. it is necessary to assess the proposal against the policies in the Framework taken as a whole. In this respect, paragraph 119 of the Framework highlights the importance of ensuring healthy living conditions in the context of promoting an effective use of land in meeting the need for homes. As, following my findings on the main issue, above, the proposal would not achieve this aim, which I consider to be fundamental to the design process, I give substantial weight to the adverse impacts that would result via the proposal.
25. Setting the substantial weight of these adverse impacts against the limited weight I afford to the benefits I have found, it is clear that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. The appeal scheme would not therefore be sustainable development for which the presumption in favour applies.

**Conclusion**

26. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

*Alexander O'Doherty*

INSPECTOR