



Report to: Planning Committee, 21st February 2019

Report of: Deputy Director - Economic Development and Planning

SUBJECT: APPLICATION P18L0453– ERECTION OF 2 BED DETACHED DORMER BUNGALOW AT 30 NORTON ROAD

1. Recommendation

1.1 The Deputy Director – Economic Development and Planning recommends that planning permission is granted, subject to the conditions set down in the plans list.

2. Background

- 2.1 The application was reported to planning committee on the 24th January 2018 at which it was deferred, minded to refuse, on grounds that the proposal proposed dwelling would cause harm to the residential amenity of the neighbouring residents by virtue of an overbearing impact on neighbouring residents amenities and would be an over-development of the site in comparison with the previously approved scheme (P17L0363), contrary to the aims and interests of policy SWDP 21 and paragraph 127 of the NPPF (2018) that encourages planning decisions to ensure that the in achieving well designed places that the amenity of existing and future users. A copy of my previous report is attached as **Appendix 1**.
- 2.2 As the Planning Committee is minded to make a decision that is contrary to Officer's recommendation the appropriate procedure to be followed is as detailed in paragraph 11 of the Council's Good Practice Protocol for Planning Matters, contained in Part 12 of the Council's Constitution.
- 2.3 In accordance with paragraph 11.1 the Planning Committee cited the reasons on which it was minded to refuse planning permission. In accordance with paragraph 11.4 the application was therefore deferred to a future meeting of the Planning Committee. This procedure was formally agreed by the Planning Committee at the meeting on 21st July 2008 and further endorsed by the Planning Committee at the meeting on 19th April 2018 to allow Officers to consider the matters that were confirmed by the Planning Committee as grounds to be minded to refuse planning permission and to provide a professional opinion on the likelihood of being able to defend an appeal.
- 2.4 The agent has provided a plan which demonstrates the increase in height and massing between the approved scheme (P17L036) and this proposed scheme.

- 2.5 The amended scheme put before committee increases the eaves height from the approved scheme from 2.9 metres to 3.9 m to allow for greater area with headroom internally. There would be an increase in ridge height of 17 centimetres between the approved and current scheme at 5.8 metres rather than 5.63 metres
- 2.6 In terms of floor area the proposed scheme would be 20 centimetres deeper (at 6.2 metres) and 40 centimetres wider (9.6metres) than the originally approved scheme P17L0363.

3. Comments of the Deputy Director - Economic Development and Planning

Siting and scale of the proposed development in relation to the neighbouring properties

- 3.1 There is a clear difference in the plot shape, massing, height and dwelling type on Arden Road compared to those on this side of Norton Road and on Arden Road opposite the site. The dwelling which was originally the host dwelling (30 Norton Road) was typical being a bungalow with a strong front and rear amenity area, it addressed the corner with off road parking and garage provision. Many of these dwellings have converted the roof area to be accommodation with a range of dormer windows and treatments in the roof space to facilitate this.
- 3.2 The buildings adjacent which continue down Arden Road are semi detached; again, many of them have been extended and altered, most with car parking on the front amenity area.
- 3.3 The proposed dwelling has been intentionally designed to be a lesser height than a traditional 2 storey dwelling as seen next door at 1 Arden Road. It has been designed to be an intermediate design between the surrounding bungalows and the two storey dwellings on Arden Road.
- 3.4 As such it would have a separate identity to the adjoining neighbouring dwellings, showing its context as an infill dwelling.

Scale of the development

- 3.5 As set out in the previous report in appendix 1 the development meets the design criteria of the Design Guide. The site is compact and there have been negotiations to ensure it can suitably fit the requirements of development into the site without being contrived e.g. bin storage, cycle storage, car parking and manoeuvring. Whilst the site is not generous beyond these requirements, it does meet them adequately and therefore meets policy xi.in SWDP21- Design regarding Appropriate Facilities.
- 3.6 The additional built form is set out in the earlier section of the report and as such the extent of harm generated by the difference between the approved and proposed scheme can be assessed. The extra depth would be 20 centimetres and 41 centimetres in width, which would result in an additional 4.26 m² of additional floor area.

- 3.7 I do not consider that this limited increase in either floor area or the eaves height increase of would materially affect the neighbouring residents amenity to the extent the scheme is unacceptable.

Consequences of the changes in the design of the schemes

- 3.8 The scale and density of the development was considered in terms if flexibility and adaptability as promoted in SWDP21 Design- vii. Flexible Design which states 'Buildings should incorporate flexible designs, addressing access to public open spaces and enabling adaption for future needs and uses in terms of internal spaces and extensions.'
- 3.9 The proposal has a ground floor bathroom and a lounge which could be used as ground floor accommodation. This flexible type of accommodation s a positive attribute in a location which is highly sustainable, being in close proximity of the arterial route within St Peters estate to the central shops and close to the bus route along Norton Road onto Bath Road. As such there is a weighting given to the type of adaptable accommodation which could provide a resident/s with a degree of future proofing and/or long term independence.
- 3.10 However, given the spatial constraints of the site, it was considered that further development to extension was not possible without generating a negative impact on neighbouring residents. As such rights to further develop the site were proposed to be restricted to safeguard any future harm or further harm to neighbouring resident's amenity. The committee may consider it reasonable to apply a condition to control outbuilding in the rear amenity space. This would ensure that the external space is not further restricted or intensively used in one specific area without due consideration.

Overbearing impact

- 3.11 Given the further assessment regarding the massing and scale of the proposal, I do not consider that there is sufficient merit in the assertion of over bearing impact to warrant a refusal.
- 3.12 For No 1 Arden road the building would follow the building line along Norton Road and would be akin to having a neighbouring resident. It would be visible from within the rear amenity area, but to an extent which would be common of linear development by a neighbour, and to a lesser degree than the existing adjoining neighbour. The use of roof lights in the proposal to the rear would mean no overlooking.
- 3.13 For No 30 Norton Road the outlook would be greatly altered with a side elevation clearly visible and with the rear garden being altered already due to the subdivision of the plot would result in the rear area being already restricted.
- 3.14 The elevation would be altered from the approved scheme (P17L0363) by a additional with an increase in the built form visible from the rear elevation and within the rear amenity area. This is demonstrated on a plan provided by the agent. The amended plans mean that the side elevation would be bigger with the rear eaves height increased by 1 metre.

However in terms of outlook, I consider it would be difficult to argue that it is sufficiently substantive enough to warrant refusal on these grounds.

Conclusions

3.15 The scheme has been revised to be more like the scheme as already approved but to allow internal space to move around the upper floor which would be compromised in the original scheme.

3.16 Whilst the infill development will result in a scheme which maximises the opportunity of the site, this is the approach supported in the National Planning Policy Framework 2018 which states in Paragraph 130:

'Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development.'

3.17 With this in mind, I do not consider that there is a cogent reason to refuse the scheme which meets the design criteria in the Supplementary Planning Document on Design and also SWDP21.

3.18 The proposed conditions set out in the plans list would mean a good standard of development would be delivered with conditions on materials and the restrictions on development rights on the site would ensure that the amenity of neighbours would not be further compromised.

3.19 However, notwithstanding the above and without prejudice to my recommendation, in the event that Members resolve that they would have been minded to refuse the application, contrary to my recommendation, and wish to defend the appeal against non-determination the following comments are made for Members' consideration with regard to putative reason/s for refusal.

3.20 Members are perfectly entitled to reach a different decision to that recommended by Officers. However, in relation to planning determinations generally, whether the relevant decision-maker is a local planning authority or an Inspector on behalf of the Secretary of State on appeal, the following should be borne in mind:

i) Section 70(2) of the 1990 Act provides that, in dealing with an application for planning permission, a decision-maker must have regard to the provisions of "the development plan", as well as "any other material consideration";

ii) "The development plan" sets out the local planning policy for an area, and is defined by section 38 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") to include adopted local plans. Section 70(2) of the 1990 Act makes clear that the development plan is a material consideration; but it is more than that, because section 38(6) of the 2004 Act gives it a particular status:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

That requires the proposed development to be in accordance with the development plan looked at as a whole, rather than with every policy in the plan, which may well pull in different directions and some of which may be more relevant to a particular application than others (*R v Rochdale Metropolitan Borough Council* (2001) and *R (Hampton Bishop Parish Council) v Herefordshire Council* (2014)). Section 38(6) thus raises a presumption that planning decisions will be taken in accordance with the development plan, looked at as a whole; but that presumption is rebuttable by other material considerations. If a proposed development is not in accordance with the development plan read as a whole, with a focus on its relevant objectives and the policies which give effect to those objectives, then there is a presumption against approval (*R (TW Logistics Limited) v Tendring District Council* (2013), and *Crane v Secretary of State for Communities and Local Government* (2015));

iii) "Material considerations" in this context include statements of central government policy which are now largely set out in the NPPF as supplemented by the Secretary of State's web-based Planning Practice Guidance ("the PPG"), launched on 6 March 2014, which replaced a plethora of earlier guidance documents and which is regularly updated;

iv) Whilst all material considerations must be taken into account, the weight to be given to such considerations is exclusively a matter of planning judgment for the decision-maker, who is entitled to give a material consideration whatever weight, if any, he/she considers appropriate, subject only to his/her decision not being irrational in the sense of 'Wednesbury' unreasonable (*Tesco Stores Ltd v Secretary of State for the Environment* (1995));

v) A decision-maker must interpret policy properly. The true interpretation of such policy, including the NPPF, is a matter of law for the court to be considered objectively on the basis of the relevant policy documents as they stand, the subjective view of the author being irrelevant (*Tesco Stores Ltd v Dundee City Council* (2012), *Europa Oil & Gas Limited v Secretary of State for Communities and Local Government* (2014)). Where a decision-maker has misunderstood or misapplied a plan or other policy, that may justify a challenge to his/her decision, if it is material, i.e. if his/her decision would or might have been different if he/she had properly understood and applied the guidance. However, if the misunderstanding or misapplication is immaterial – because the decision would inevitably have been the same despite the identified error(s) – then the courts have a discretion not to quash the decision (*Simplex GE (Holdings Limited) v Secretary of State for the Environment* (1989));

vi) An inspector's decision letter cannot be subjected to the same degree of interpretation that might be appropriate for a statute or a deed. It must be read as a whole, and in a practical, flexible and common sense way, in the knowledge that it is addressed to the parties who will be well aware of the issues and the arguments deployed at the inspector's inquiry, so that it is not necessary to rehearse every argument but only the principal controversial issues.

The reasons for an inspector's decision must be intelligible and adequate to enable an informed observer to understand why he/she decided the appeal as he/she did, including his/her conclusions on the principal important controversial issues. They must not give rise to any substantial doubt that he/she proceeded in accordance with the law, e.g. in his/her understanding the relevant policies (*Seddon Properties v Secretary of State for the Environment* (1981); *South Somerset District Council v Secretary of State for the Environment* (1993), and; *South Bucks District Council v Porter (No 2)* (2004), and;

vii) Because the exercise of discretion involves a series of planning judgments, in respect of which an inspector or other planning decision-maker has particular experience and expertise, "The court must be astute to ensure that such challenges are not used for what is, in truth, a rerun of the arguments on the planning merits" (*Newsmith v Secretary of State for the Environment, Transport and the Regions* (2001)).

Putative Reason for Refusal

- 3.21 Without prejudice to my recommendation, in the event that Members resolve that they would have been minded to refuse the application the following putative reason is suggested, albeit it remains my opinion that this reason is not sufficiently robust:

In the opinion of the Local Planning Authority, the proposed dwelling would introduce a dwelling within a site which by virtue of the limited space and arrangement would generate harm to the adjoining residents by virtue of being overbearing in scale and size. The occupation of the site and ensuing facilities required are contrived to the point of being occupied intensely and in a way that is contrary to the surrounding development. this would be contrary to the aims and interests of policy SWDP 21 and paragraphs 127, 128 and 130 of the National Planning Policy Framework 2018, which seek to promote inclusive design, social interaction, and the provision and use of shared spaces.

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Background Papers:	Report to Planning Committee 24th January 2019