
Appeal Decision

Site visit made on 15 August 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 29 September 2016

Appeal Ref: APP/P1940/W/16/3149879

Land at Clovers Court, Clovers Court, Chorleywood WD3 5FD

- 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 Ms Emma Fitzgibbon against the decision of Three Rivers District Council.
 - The application Ref 15/1717/FUL, dated 19 January 2015, was refused by notice dated 20 November 2015.
 - The development proposed is the erection of 2 bungalows at Clovers Court.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 bungalows at land at Clovers Court, Clovers Court, Chorleywood WD3 5FD in accordance with the terms of the application, Ref 15/1717/FUL, dated 20 November 2015, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description set out in the banner heading above is taken from the original planning application form. I have adopted a slightly more concise description in my decision, above.
3. The Council refused the application for two reasons, the second of which stated that as the proposal failed to make appropriate provision to secure a financial contribution towards affordable housing, it was contrary to policy CS8 of the Core Strategy for Chiltern District (the Core Strategy). However, in response to the Court of Appeal's judgement of 11 May 2016¹, the Council confirmed that they wished to withdraw this second reason for refusal, and that the appeal should be determined solely against the first reason for refusal.
4. I too have had regard to that judgement, in respect of the earlier judgement of the High Court of 31 July 2015 and the effect on policy set out in the Secretary of State's Written Ministerial Statement of 28 November 2014, and to subsequent alterations to Planning Practice Guidance on tariff-style planning obligations for affordable housing and social infrastructure contributions in respect of small housing sites. In light of this judgement, and as this matter is no longer a point of dispute between the parties, this matter has not formed part of my deliberations.

¹ Court of Appeal 11 May 2016 – Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the surrounding area.

Reasons

6. The appeal site lies in a residential area and comprises part of a site that has already been redeveloped to provide six terraced houses in two blocks of three houses. The existing development, and the appeal site, is accessed via a steeply sloping drive from Quickley Lane that leads to a large area of hardstanding that currently serves as a parking and manoeuvring area in relation to the existing six dwellings.
7. The land rises steeply up from Quickley Lane, the existing six dwellings sitting at a substantially higher level than Quickley Lane itself. The existing houses and the parking area forms somewhat of a plateau, before the land rises, steeply at first, then more gradually towards the rear of the site, where it backs on to the rear garden boundaries of properties on Stag Lane. The site also shares boundaries along its sides with residential properties on Rendlesham Way and with 83 Quickley Lane.
8. Quickley Lane is characterised by a variety of house types and sizes, increasingly so as a result of recent developments that led to the construction of the six terraced properties that lie between Quickley Lane and the proposed bungalows, and also the development at Juniper Court. Both Juniper Court and the existing development on the appeal site present their rear faces and rear gardens to Quickley Lane, the fronts of the dwellings facing into a courtyard in the case of Juniper Court, and the parking area in the case of the appeal site.
9. Policy DM1 of the Development Management Policies Local Development Document (the DMP) seeks to protect the character and appearance of existing areas of housing from forms of backland, infill or other forms of new residential development which are inappropriate for the area. It also specifically refers to development that would result in tandem development, stating that such forms of development would not be supported.
10. The lengthy planning history associated with the appeal site and the site of the existing six terraced houses, particularly previous planning appeals², is referred to extensively, particularly with regard to an assessment and description of the character of the surrounding area. Whilst I accept that, prior to the redevelopment of the site of the former Nos 79 and 81, the area around the corner of Quickley Lane and Rendlesham Way might have very much been characterised by detached bungalows within generous or large garden plots, I find that to be less so now.
11. Both the developments at Juniper Court and the six terraced properties to the front of the appeal site have led to the evolution of the character of the area. Unlike other properties along Quickley Lane, they present their rear face, behind substantial timber fences, towards Quickley Lane. They look inwards, into shared parking and turning courtyards. As the character and appearance of places evolve over time, these developments are as much constituent parts of the character and appearance of the surrounding area as the bungalows elsewhere on Rendlesham Way are, or the semi-detached properties opposite

² APP/P1940/A/11/2144323 & APP/P1940/A/10/2140364 - 3 May 2011

the appeal site or further up Quickley Way are. Put simply, the character of the area, through house types, scale, layout and age is mixed.

12. In this context, I find that the proposed form of development; two bungalows located just beyond the shared parking and turning area facing towards the front elevations of the existing terrace of six dwellings, would not be inappropriate, in terms of character, for the area. The development would follow the pattern and general layout established by Juniper Court with a type of dwelling that would reflect the character, appearance and form of neighbouring bungalows along Rendlesham Way whilst the garden plots around the dwellings would also be broadly comparable with those surroundings.
13. From public viewpoints beyond the appeal site, the proposed bungalows would not be readily visible. They would be glimpsed between the substantial retaining walls and gable elevations of the existing terraced blocks at Clovers Court, but not to the extent that they would have an overpowering or harmful effect on the character of the area. The relatively low line nature of such buildings would ensure that the, equally glimpsed, views of the verdant, sylvan backdrop of the garden plots of properties on Stag Lane would still be evident behind and above the proposed bungalows.
14. Although the form of the proposed development differs from that at the front of the site, I find it no less a valid response to the site and its surroundings. It does not, as the Council suggest, indicate to me a contrived form of development. Rather, it is one that responds to the mixed character and nature of the surrounding area and the constraints of the site, creating a form of courtyard development reflecting the mixed inputs and factors of the surrounding area.
15. In a previous appeal³ on this site, the Inspector considered that appeal site to be both a backland site and tandem development. Whilst I accept that, notwithstanding the differing circumstances and context of the current proposal, the current appeal site and development is capable of constituting a form of backland development, I find that that is not harmful per se. Nor, significantly, is it precluded by the provisions of DMP Policy DM1.
16. The proposal would ensure rear garden plots for each of the two bungalows that would be broadly consistent with those found adjoining the site on Rendlesham Way. Whilst I acknowledge that the original proposal to development the plots at Nos 79 and 81 sought to retain the area beyond the parking and turning area associated with the six new dwellings as open amenity area, the current proposal would also retain a significant portion of the land at the rear of the site as garden land. In so doing, I conclude that this would not fundamentally or harmfully erode the sylvan nature of the rears of properties on Stag Lane or Rendlesham Way, or of the glimpsed views of that backdrop between buildings on Quickley Lane, Rendlesham Way or Stag Lane. Nor have I been presented with any evidence that seeks to demonstrate what harm, if any, would arise from the land beyond the footprint of the pair of bungalows being used as residential garden land, as opposed to amenity open space associated with the existing dwellings on Clovers Court.
17. The pair of proposed bungalows would face towards the front of the existing terraced properties in a manner not dissimilar to that found on Juniper Court.

³ APP/P1940/A/11/2144323 & APP/P1940/A/10/2140364 - 3 May 2011

Although the Council cite distances between the opposing front faces of the existing and proposed development, I have not been presented with any compelling evidence regarding a policy base for stand off distances in such circumstances. In any event, those distances that have been referred to are acknowledged as being back-to-back distances which I do not consider appropriate to apply in this instance, and the Council have not sought to argue that the proposal would result in a loss of residential amenity, or otherwise harm the living conditions of occupiers of neighbouring properties.

18. Thus, for the reasons set out, I conclude that the proposal would not result in harm to the character or appearance of the surrounding area. As such, there would be no conflict with DMP Policy DM1 or Core Strategy Policy CP12. Together, these policies seek to protect the character and residential amenity of existing areas of housing, and to have regard to local context. Nor, I conclude, would the proposal be contrary to Core Strategy Policy CP1 which sets out overarching criteria relating to sustainable development within the District, which recognises the promotion of buildings that respect local distinctiveness. Together, these policies align with the National Planning Policy Framework (the Framework) in seeking to secure high quality design and to take account of the character of different areas.

Other Matters

19. I note that there is disagreement between the main parties over whether or not the Council is able to demonstrate a deliverable 5 year housing land supply and, as a consequence, whether or not the development plan policies quoted in the refusal reason should be considered up to date, or indeed whether they are relevant policies for the supply of housing. However, in the broad terms of paragraphs 14 and 49 of the Framework that housing applications should be considered in the context of the presumption in favour of sustainable development, the issue of whether or not the Council is able to demonstrate a deliverable 5 year housing land supply has not been central to my considerations.
20. In respect of highway safety, the Highway Authority did not object to the proposal on this basis, nor did it object in terms of the total number of parking spaces provided within Clovers Court or within the appeal proposal. I note that the first of the Council's refusal reasons makes reference to concerns over unsatisfactory access and parking provision, but there is no evidence before me which would lead me to conclude that the proposed development would result in any significant increase in risk to highway safety arising from the use of the existing access and the alterations and revisions to the existing parking and turning area within Clovers Court.
21. Local residents object to the proposal on a wider basis, including in respect of loss of privacy, noise disturbance, the piecemeal nature of previous development proposals for the site and Clovers Court, connection to services, the supervision of construction works and the enforcement of planning conditions. I note that loss of privacy and the impact on living conditions of occupiers of neighbouring properties did not form part of the Council's reasons for refusal and I am satisfied, having viewed the site and surroundings, that with appropriate conditions restricting permitted development, that this would not result in a level of harm which would justify dismissal of the appeal. So too with other matters, where material and not covered by alternative legislation,

the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be over-riding issues warranting the dismissal of the appeal.

Conditions

22. I have considered the suggested conditions in the light of the Framework and Planning Practice Guidance, and have made minor amendments to them where necessary and in the interests of clarity.
23. In addition to the time limit condition, a condition specifying the approved plans is necessary in order to provide certainty. I agree that conditions regarding the details of external materials, hard and soft landscaping and the refuse and recycling facilities are necessary and reasonable in the interests of the character and appearance of the area. I have not, however, attached separate conditions relating to full construction details of retaining walls, boundary treatments, external lighting and the implementation of soft landscaping as these can be adequately and appropriately incorporated into a revised hard and soft landscaping condition.
24. I have attached conditions requiring details of a construction management plan, and also regarding the provision and retention of garage spaces and car parking spaces in the interests of character and appearance and highway and pedestrian safety. Conditions relating to drainage details and energy efficiency measures are also necessary and reasonable.
25. Paragraph 200 of the Framework states that planning conditions should not be used to restrict national permitted development rights, unless there is clear justification for doing so. The Guidance goes on to advise that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances. Whilst the site levels of the bungalows would be lower than those of neighbouring properties on Rendlesham Way, I consider that restrictions on permitted development should be imposed to control the erection of further buildings, the erection of extensions or changes to the roof and the addition of dormer windows, in the interests of the living conditions of occupiers of neighbouring properties.
26. Finally, I have not applied the condition relating to the provision of fire hydrants, as it has not been demonstrated to be necessary and it lacks precision.

Conclusion

27. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DL001 B Rev D; DL002 B Rev C; DL003 B Rev G; DL004 B Rev H; DL005 B Rev E and DL007 B Rev C.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces (external walls, retaining walls, fenestration, garage doors and roof tiles) of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The garages hereby permitted serving the approved bungalows shall be kept available for the parking of motor vehicles at all times. The garages shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.
- 5) Prior to the occupation of the approved bungalows, the parking spaces shall be constructed, surfaced and permanently laid out in accordance with the approved plan DL004 B Rev H (Proposed Site Plan). The parking spaces shall thereafter be kept permanently available for the use of residents and visitors to the site only.
- 6) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall include, but not be limited to, details of: construction vehicle access and movement; the parking of vehicles of site operatives and visitors; the storage of materials; and wheel washing facilities. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 7) Prior to the occupation of the approved bungalows, details of the size and appearance of the refuse and recycling facilities within the site, as indicated on approved plan DL004 B Rev H (Proposed Site Plan) shall be submitted to, and approved in writing by, the local planning authority. The agreed details shall be implemented prior to the occupation of the approved bungalows and shall be retained as such thereafter.
- 8) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. In respect of hard landscaping, these details shall include full construction details (including foundation design) of all retaining walls within the application site; details, including a plan, indicating the positions, design, materials and types of all boundary treatments; and details, including the position, height, design and intensity of all external lighting to be installed on the site or affixed to any buildings. All hard landscaping works required by the approved scheme shall be carried out in complete accordance with those details prior to the first occupation of the development hereby approved.

In respect of the soft landscaping, these details shall include the location of all existing trees and hedgerows affected by the proposed development, and details of those to be retained, together with a scheme detailing measures for their protection in the course of development. All soft landscaping works required by the approved scheme shall be carried out in accordance with a programme to be agreed before the development commences, and shall be maintained including the replacement of any trees or plants which die or are removed or become seriously damaged or diseased in the next planting season with others of a similar size or species for a period of five years from the date the approved scheme was completed.

- 9) The development shall not commence until a drainage strategy detailing any on and / or off site drainage works has been submitted to and approved in writing by the local planning authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 10) The development hereby permitted shall be implemented in accordance with the details of the submitted C-Plan Energy and Sustainability Statement, the approved details to be implemented prior to the first occupation of the hereby approved bungalows.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that Order with or without modification), no development of the types described in Part 1, Classes A, B, C, D, E and F of Schedule 2 of that Order (or any order revoking and re-enacting that Order with or without modification), other than those expressly authorised by this permission, shall be undertaken within the curtilage of the two bungalows hereby permitted.