
Appeal Decision

Site visit made on 8 November 2016

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 25 January 2017

Appeal Ref: APP/D3125/W/16/3155795

Land east of the B4022 The Slade, Charlbury, Oxfordshire OX7 3SJ

- 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 J Gomm against the decision of West Oxfordshire District Council.
 - The application Ref 16/00939/FUL, dated 21 March 2016, was refused by notice dated 13 June 2016.
 - The development proposed is erection of five dwellings with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:
 - the living conditions of the occupants of 24 and 26 The Slade, with particular regard to privacy and outlook.
 - the character and appearance of Charlbury Conservation area and the Cotswolds Area of Outstanding Natural Beauty,

Reasons

Living Conditions

3. The appeal site is located within an agricultural field to the east of a line of existing residential dwellings on The Slade and to the south of further housing accessed off The Slade. The topography of the land rises from the main road and continues to rise to the east. Consequently, the development would be on a higher level than the houses on The Slade.
4. Though the proposed five dwellings are limited to one and a half storeys they would, according to the appellant's Design and Access Statement (DAS), still reach a height of 7.5-8 metres. It is recognised that the layout places them opposite existing dwellings off The Slade, to the north, which also rise with the land west to east but it is the relationship with the existing dwellings to the west that is problematic.
5. Whilst Plots 1 and 2 are oriented at a slight angle, their rear elevations still face predominantly towards the rear elevations of the existing properties at 26 and 24 The Slade, respectively. The DAS advises that the dwellings would be

just 15 metres away from the mature Lime Trees which form the shared boundary with Nos 26 and 24 which lie below. The high tree canopy would not provide any effective screening as it would be well above the properties. In any event, any cover would be limited during the winter months as confirmed by my site visit.

6. The rear western elevation of the dwelling proposed for Plot 1 includes two sets of patio doors and a window serving its lounge and a kitchen/breakfast room on the ground floor. Above on the first floor are three dormer windows into the eaves, two serving bedrooms and one a bathroom. A Section Drawing No. 15_075_D202, supplied by the appellants, shows that the land level of Plot 1 would about 3 metres higher than No 26.
7. Though No 26 is single storey, it has habitable rooms in the roof and roof lights that face the proposed development. In addition it has a conservatory in its garden at its south eastern corner. The appellants advise that because of the slight offset of Plot 1 the distance between the rear windows of Plot 1 and those at No 26 would be between 26.5 metres and 30 metres.
8. Similarly, the dwelling on Plot 2 would have patio door windows from the lounge and a kitchen/breakfast room facing towards No 24 whilst there would be a large bedroom window and a smaller bathroom window in the prominent gable. The appellant states that because the dwelling would be slightly offset it would be facing towards a gap between Nos 24 and 26. However, the gap between those two properties is not that substantial and the dwelling at Plot 2 would still face predominantly towards No 24, albeit at an angle.
9. Though No 24 is technically single storey it has a substantial box dormer to the rear with bedroom windows facing the site. The appellant advises that the distance between the rear windows of the dwelling and the rear elevation of No 24 would be about 28 metres at its maximum and less at the southern edge. I note that the Council Officer's report refers to a distance of approximately 26 metres. The appellant Section Drawing, referred to above, suggests that the land level would be about 3.5 metres higher than No. 24.
10. The appellant refers to a distance of 20 metres typically being acceptable but that figure is not stated in any policy or guidance specific to this case. Whilst it is a rule of thumb often applied, it is a minimum rather than an optimum distance, and a starting point for consideration depending on the particular circumstances of the site and nature of the proposal. Though the distances are in excess of that figure, the fact remains that there would still be a large number of windows from habitable rooms facing towards the habitable rooms and windows in the rear elevations of Nos 26 and 24. Furthermore, users of the gardens to the rear of the new dwellings sloping down towards The Slade would be closer again.
11. On the one hand the appellant holds that the distances are more than sufficient, yet on the other suggests that views from the ground floor windows of the new dwellings could be further reduced by a hedge or fence set 5 metres in from the shared boundary. Therefore, the existence of views even from the ground floor is accepted. The Section Drawing, referred to above, indicates that the proposed initial two metre high privet or beech hedge would still not screen all views even from ground floor windows. Even after 3-5 years growth, assuming it achieved 3 to 4 metres, some views, particularly to the dormer of No 24 would remain.

12. Therefore, I consider that, even allowing for the distances between the properties, there would be overlooking into habitable room windows. Furthermore, and as importantly, the higher land level would increase the visibility and dominance of the dwellings and their window array for occupants of Nos 26 and 24 creating a significant perception of being overlooked. In those respects I take a different view from the original Council Officer's report, extensively quoted by the appellant, but share the views of the Council Planning Sub-Committee who refused the application following a site visit.
13. The consequence of the orientation of the dwellings on Plots 1 and 2 would be that, despite being limited to one and a half storeys, the main bulk of the rear of the buildings would face predominantly towards Nos 24 and 26. Given their height of about 7.5 to 8 metres would also be accentuated by the 3 to 3.5 metre difference in ground level, I consider that the dwellings would also appear overbearing just 15 metres from the shared boundary looming above on higher ground.
14. Whilst private views are not protected by the planning system and though the remainder of the field would remain open, the new dwellings would become the dominant feature for the occupants of Nos 26 and 24. At present there is no built form on the site and, given the topography, its introduction in the particular guises of Plots 1 and 2 would not merely change the view but have an enclosing and confining effect on the occupiers of Nos 24 and 26. The proposed mitigating screening in the form of a hedge ultimately growing to up to 4 metres or a fence alternative of similar height, just 5 metres from the shared boundary, would itself also have an overbearing and confining effect.
15. It is the combination of the above factors that leads me to conclude that the proposal would significantly harm the living conditions of the occupants of Nos 24 and 26 The Slade, with particular regard to privacy and outlook. It would, therefore, conflict with the objectives of saved Policies BE2 and H2 of the West Oxfordshire Local Plan 2011 (LP)¹, which amongst other things seek to ensure that development retains a satisfactory environment for people living in the area and does not create unacceptable living conditions for existing residents.
16. In their Decision Notice, the Council also cite policies OS2 and H2 of the emerging West Oxfordshire Local Plan 2011-2031 (emerging LP). As that plan is still undergoing examination, I give it limited weight. In any event, both policies contain similar provisions regarding the protection of the living conditions of existing occupants.
17. Though the appellant refers to the LP as time expired, it is still the existing Development Plan for the area and can be given weight insofar as it complies with the National Planning Policy Framework (the Framework). It seems to me that Policies BE2 and H2 in relation to living conditions reflect the requirement within the core planning principles, set out in paragraph 17, to always seek to ensure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
18. I will consider the effect of the lack of a five year housing land supply, acknowledged by the Council, within my conclusion.

¹ Adopted June 2006

Character and appearance

19. As the appeal site is located within the Charlbury Conservation Area (CA), decision makers are required to pay special attention to the desirability of preserving or enhancing its character or appearance.² It also falls within the Cotswolds Area of Outstanding Natural Beauty (AONB). Paragraph 115 of the Framework says great weight should be given to conserving the landscape and scenic beauty of such areas.
20. The CA is extensive and encompasses areas of open countryside around the town. The Council advises that the CA was intentionally drawn widely, in its current form, in recognition of the contribution of the surrounding landscape and countryside to the setting of the town. The Council also refers to the loss of important open space but the appeal site is only 0.4 hectares at the northern end of a field on private land and I do not consider that it contributes significantly to the character or appearance of the CA.
21. It has already been established that the development would be opposite existing housing along the access off the Slade and to the rear of development along The Slade with very limited views from the road. It would be seen in some distant views from the public rights of way network to the south and other footpaths that cross higher ground. However, as it would be against the backdrop of existing development and consist of only 5 dwellings of one and a half storey height constructed of sympathetic local materials, I agree with the original Council Officer's report and the appellant that it would not appear prominent from those vantage points.
22. Therefore, I do not consider that the proposed development would harm the character or appearance of the CA or the AONB. At it would cause no discernible harm, it also follows that it would preserve the CA. Therefore, it would not conflict with saved Policies BE2, BE4, BE5, NE1, NE3, NE4 and H2 of the LP insofar as they seek to encourage good design which respects the character and appearance of the surrounding area, protects important open areas, preserves or enhances CAs, safeguards local landscape character and the AONB. Neither would it conflict with the relevant policies in the NPPF in those respects.
23. As already discussed, policies in the emerging LP including OS2, H2, EH1 and BC1 have more limited weight and in any event I do not consider the proposal conflicts with their similar aims.

Other Matters

24. In addition to the above, a range of objections have been made raising a variety of issues including highway safety, traffic, parking, noise, access, drainage, contamination, loss of light, ecology, private land rights, property values, the prospect of further development, affordable housing, greenfield land, trees, the effect on a nearby nature reserve, the number of houses proposed, restrictive covenants on the land, that it would not be 'infilling' or 'rounding off', damage to the site from inappropriate storage of materials and alleged contravention of the European Convention on Human Rights.
25. I note that though the Council considered those matters, it did not share those concerns or concluded that they were not relevant planning considerations. I

² S.72(1) Planning (Conservation Areas and Listed Buildings) Act 1990

agree with the Council's view of those matters. In any event, I have dismissed the appeal for other reasons.

Conclusion

26. Whilst I do not consider that the proposal would harm the character and appearance of the CA or AONB, it would cause significant harm to the living conditions of the occupants of 24 and 26 The Slade, with regard to privacy and outlook. Though I have found that it conflicts with saved Policies BE2 and H2 of the LP Policies in those respects, the Council accepts that it cannot demonstrate a five year supply of deliverable housing land.
27. It follows that, in accord with Paragraph 49 of the Framework, policies BE2 and H2 which both to varying degrees restrict the housing land supply are to be considered not up-to-date. That reduces the weight that can be attributed to them.
28. In such circumstances, paragraph 14 of the Framework indicates that permission should be granted 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. The presumption in favour of sustainable development in the Framework is explained in paragraph 7 as having three dimensions: economic, environmental and social.
29. The proposal would have some economic benefits including investment in employment and materials during the construction period and the contributions of future residents. However, such benefits are relatively limited due to the scale of the development, limited to five houses.
30. In environmental terms, though I have found that the development would not harm the CA or the AONB, I do not accept the appellant's suggestion that it would enhance them. The primary role of any landscaping proposals would be to soften and mitigate the visual effects of the development rather than to improve the CA or AONB. It would also, according to the DAS, compensate for the loss of some existing hedgerow and hazel coppice. The mature Lime Trees on the western boundary would be retained and their root protection areas respected. Therefore, I consider the environmental effects to be neutral.
31. Socially, the proposal would provide some additional housing in a relatively sustainable location, as Charlbury has a range of basic services and is accepted by the Council as an appropriate location for some new development. As already stated, however, the contribution at five houses is limited. Notwithstanding the limited benefits, I have already concluded that there would be significant harm to the living conditions of the occupants of 24 and 26 The Slade, contrary to one of the core planning principles in paragraph 17 of the Framework. That weighs heavily in the balance.
32. Overall therefore, I consider the material harm caused by granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Consequently, the proposal would not represent sustainable development.
33. Whilst the relevant LP policies are considered out of date, the proposed development would remain contrary to the existing development plan and that conflict would not be outweighed by other material considerations including the Framework and paragraph 14 in particular.

34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR