
Appeal Decision

Site visit made on 31 January 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 17th February 2017

Appeal Ref: APP/E0345/W/16/3160994

Land adjacent 26 Woods Road, Caversham, Reading RG4 6NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs G Garg against Reading Borough Council.
 - The application Ref 160059, is dated 13 January 2016.
 - The development proposed is described as *'erection of 2x4 bed dwellings with associated vehicle parking and cycle storage. New access from highway'*.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2x4 bed dwellings with associated vehicle parking and cycle storage and new access from highway at Land adjacent 26 Woods Road, Caversham, Reading, RG4 6NA in accordance with the terms of the application, Ref 160059, dated 13 January 2016, subject to the conditions set out in Appendix A.

Preliminary Matters

2. The appeal scheme was not determined by the local planning authority (LPA) within the statutory period. At the appeal stage the LPA has indicated three reasons for refusal had it been in a position to determine the application. I have taken these putative reasons into account in forming what I consider the main issues are.
3. The Council also sought further plans which were submitted on 6 April and 13 May 2016 respectively. The appellant has confirmed that it is only the latter plans, and those originally submitted, which form the basis for the appeal scheme. With no decision notice to the contrary, I see no reason why these drawings, excluding those from 6 April 2016, are those for which my decision should be made in light of.

Main Issues

4. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the street scene, and;
 - The effect of the proposed development on the living conditions of neighbouring occupiers, with specific regard to overlooking, and;
 - Whether the proposal makes an adequate provision for affordable housing.
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Reasons

Character and appearance

5. The appeal site forms part of the garden serving No 26 Woods Road. At the time of my site inspection that property was being redeveloped as part of another planning permission. I was able to see that the appeal site faces onto Lowfield Road and would be read within the context of that street scene rather than that of Woods Road. Given such circumstances, it is the street scene along Lowfield Road that should provide the main contextual analysis of the impact of the proposal in this instance.
6. The part of Lowfield Road closest to the appeal site is characterised by detached houses or areas of open grassed verges. These dwellings tend to comprise smaller plots and dwellings when compared to those on Woods Road, and they are indicative of the smaller units along Earlsfield Close for example; which have plots sizes not dissimilar to those proposed in this case. More generally, the street scene is typified by a mixture of dwelling styles, albeit there is a stylistic split between the dwellings on the north eastern side to those on the south western side, which is typical of the different times these areas were developed.
7. The proposal seeks the erection of two, four-bedroom detached houses, which would not be visually or dimensionally dissimilar to that found at 6b Lowfield Road in terms of their design, width, height and overall bulk. The Council does not raise an objection to the principle of residential development at the site¹. They are, however, concerned that the footprint-to-plot relationship would not be reflective of that found along the western side of Lowfield Road. But this is a result of comparing 26 and 27 Woods Road, rather than taking into account the footprint-to-plot ratio at plots such as 6b Lowfield Road, which the proposed dwellings would be read in conjunction with. In this respect, the proposed dwellings would not appear as cramped within the context of their plots or the wider street scene. Nor would they appear at odds with the prevailing plot sizes of dwellings facing onto Lowfield Road, or the nearby roads that feed off this road, such as Earlsfield Close.
8. The proposal would provide individual rear garden areas for both dwellings. I have been directed to Policy DM10 of the *Sites and Detailed Policies Document 2015 – with alterations January 2015* (SDPD) which states that '*Dwellings will be provided with functional private or communal open space that allows for suitable sitting-out areas...*' The Policy does not set out specific internal-to-external ratios. The Council is concerned that the gardens would be smaller than the gross floor area of the dwellings they serve, but it has not demonstrated or fully explained as to why the garden space proposed here would not be able to fulfil the objectives of the policy set out above.
9. In the absence of such evidence, I can only come to the logical conclusion that the private garden areas serving each dwelling would provide an adequate area of open space for future occupiers. I also note the concerns raised in respect of 'garden grabbing'. However, it is clear that 26 Woods Road would continue to be served by a sizeable garden, and therefore the proposal would not result in an unacceptable retained garden area serving that dwelling.

¹ Paragraph 5.5, LPAs Appeal Statement

10. I note that the proposal would most likely result in the loss of some trees to the front of the site. I am aware of the requirement under Section 197 of the TCPA in that adequate provision should be made for the preservation or planting of trees. To this end, the LPA has not indicated that the trees are of significance that their retention is vital to the character or appearance of the street scene, and I see no reason not to concur. In any case, a suitably worded condition in terms of landscaping can ensure that replacement trees are planted where appropriate.
11. I therefore conclude that the proposed development would not have a materially adverse impact on the character or appearance of the street scene. As such, the proposal would therefore accord with Policies CS7 and CS14 of the *Core Strategy* 2015 (CS) and Policies DM10 and DM11 of the SDPD, which amongst the aims cited above, seek to ensure that developments make a positive contribution to the character of the area.

Living conditions

12. The approximate 11 metres between the rear elevations and the shared boundary with 24 Woods Road, is considered by the Council to be insufficient to prevent overlooking. However, this fails to take into account that of the three windows at first floor level in each proposed dwelling, one would serve a bathroom (which is likely to have an obscured glazed window), with the other two serving bedrooms. In practice, the bedrooms would not be occupied in the same way as say a living room, with the openings mainly there to provide light and outlook onto the rear gardens. What is more, there is not a direct back-to-back relationship between the proposed dwellings or that at No 24, with 24 Woods Road at a roughly 90 degree angle to those proposed.
13. The combination of the distances involved including the intervening garden space of about 11 metres, the use of the rooms proposed, and the angles involved and the ability to sensitively use landscaping to protect privacy mean that the proposal would not result in material harm to the occupiers of No 24 with regard to overlooking; whether perceived or in practice. I therefore conclude that the proposal would not have a materially harmful impact on the living conditions of neighbouring occupiers. It would therefore accord with Policies DM4 and DM11 of the adopted SDPD, which amongst other aims seek to ensure that development of private residential gardens do not cause a significant detrimental impact to the amenity of nearby occupants.

Provision of affordable housing

14. Policy DM6 of the SDPD requires a financial contribution to be provided towards affordable housing elsewhere in the Borough for schemes of 1 to 15 dwellings. The appellant has indicated a willingness to enter into a signed planning obligation, but none has been provided.
15. Following the Court of Appeal's judgement on 13 May 2016², the *Written Ministerial Statement of 28 November 2015* (WMS) has been reinstated. This, together with the national Planning Practice Guidance³, clearly indicates that '*contributions should not be sought from developments of 10-units or less, and which have a maximum combined floor space of no more than 1,000 square*

² Secretary of State for CLG v. West Berkshire District Council and others [2016] EWCA Civ 441

³ <https://www.gov.uk/guidance/planning-obligations> see Paragraph: 031 Reference ID: 23b-031-20160519
Revision Date 19/05/2016

metres. This is a material consideration which should be afforded significant weight as national planning policy, which post-dates the adoption of the adopted development plan and its 'altered' status in January 2015.

16. The Council have pointed me to the case law, which at Paragraph 99(iii) of the judgement states that *'in the determination of planning applications the effect of the new national policy is that although it would normally be inappropriate to require any affordable housing....contributions on sites below the thresholds stated, local circumstances may justify lower (or no) thresholds as an exception to the national policy. It would then be a matter for the decision-maker to decide how much weight to give to lower thresholds justified by local circumstances as compared with the new national policy.'*⁴
17. In support of this stance, the LPA has submitted various committee reports and a statement on the Council's position on affordable housing. This indicates that the implementation of Policy DM6 since 2012 to 2016 has delivered or secured about 14 affordable housing units and over £2,000,000 in contributions, and this equates to about 40-45 affordable housing units in its first three years⁵. The report also indicates that there is a 'high need' for affordable housing⁶ within the Borough and that *'in many cases large sites of more than 10 dwellings provide significantly less than the target figure of 30% under policies CS15 and DM6'*.⁷ The report also makes the point that Reading is wholly urban and that this severely limits the amount of affordable housing that can be achieved in the Borough⁸.
18. I acknowledge these constraints and the impact that changes in the policy context may have on the delivery of both market and affordable housing. However, the case law is clear in that local circumstances *may* justify lower thresholds as an *exception*. The point is that if and when a lower threshold than that set out in national policy is used, this should be an exception not the norm. In this case, I do not find the local circumstances, difficult as they may be perceived by the local planning authority to be, mean that an exception to national policy is justified.
19. Even were I to find that a lower threshold is exceptionally justified in this case, I am unconvinced that a financial contribution for around £35,000 towards affordable housing, would weigh any more than minimal in weight when considered against the requirements of the WMS, which clearly direct the provision of affordable housing towards developments of 10 units or more (unless within a rural area, for example). A threshold that the LPA's own evidence indicates provides less than the target figure of 30% in many cases. But the failure of the Council to achieve the requirements of its own adopted Policy which would broadly comply with the provisions of the WMS in seeking affordable housing from schemes of 10-units or above, does not provide justification for an exception to be made to the requirements of the WMS.
20. Regulation 122(2) of the *Community Infrastructure Levy Regulations 2010* (the CIL Regs) states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is: (a) *necessary to make the development acceptable in planning terms;* (b) *directly*

⁴ LPAs Appeal Statement, Appendix 3, Paragraph 1.13

⁵ Ibid. Paragraph 1.31 to 1.32

⁶ Ibid. Paragraph 1.34

⁷ Ibid. Paragraph 1.57

⁸ Ibid. Paragraph 1.59

related to the development; and (c) fairly and reasonably related in scale and kind to the development. These reflect the policy tests set out in Paragraph 204 of the *National Planning Policy Framework* (the Framework). Given my reasoning above, I do not consider that it has been demonstrated that the obligation sought by the LPA is necessary in this instance and therefore an obligation in this case would not constitute a reason for granting permission under the CIL Regs or Paragraph 204 tests.

21. I have taken into account a number of appeal decisions put forward which both support and also counter the Council's stance⁹. I am not certain that the evidence before those Inspectors' is fully reflective or the same as that before me. Indeed, whilst I acknowledge one case where the Inspector found the Council's case '*compelling and persuasive as an exception to national policy*', I have not found that to be the situation here.
22. In the absence of a persuasive case which would justify an exception to national policy in this instance, I cannot be satisfied that a contribution is justifiable on this occasion. Consequently, I consider the proposal would accord with national planning policy which, based upon the evidence before me, outweighs the requirements of Policy DM6 of the SDPD in this case.

Conditions

23. The Council have suggested a number of condition, and I taken into account Paragraph 206 of the Framework and also the national *Planning Practice Guidance* in terms of the use of planning conditions in considering these.
24. Conditions requiring the proposal to be carried out in accordance with the submitted drawings and requiring the submission of finished floor levels are necessary and reasonable to provide certainty. For similar reasons a condition requiring the submission of details and materials is reasonable and necessary.
25. Conditions requiring the provision and retention of parking and access into the site are reasonable in order to encourage safe access for all highway users. A construction method statement is necessary in order to protect the amenity of nearby residents. This should also include a construction management plan which contains hours of operation, measures to control dust and noise, and that no burning of materials takes place on the appeal site. This would not only incorporate other conditions proposed, but would be reasonable and necessary in this case given the necessary construction works involved.
26. Details of landscaping, including any retained trees, and the location and species of plants to be used are necessary in order to enhance the character of the area, and also to ensure that suitable trees are planted on site. Further conditions relating to retaining trees are not specifically necessary, as they can be reasonably dealt with by this condition.
27. A condition removing permitted development rights, including extensions and outbuildings, would be onerous and no special exceptions have been cited as to why this condition should be imposed in this case. Such a condition is not necessary or reasonable in this case.

⁹ Appeal References include: 3153661, 3154971, 3146699, 3154081, and 3142834

Overall Conclusion

28. For the reasons given above, and having taken into account all matters raised, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

Appendix A – List 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: 3294/99 – Existing location and block plan, 3294/200D – Proposed site plan, 3294/201B – Plot 1 Floor and roof plan, 3294/202A – Plot 1 Elevations, 3294/203C – Street elevation, 3294/204A – Plot 2 Floor and roof plan, 3294/205 – Plot 2 Elevations, 3294/206 – Part basement elevations & 3294/218 – Visibility splays.
- 3) Notwithstanding condition 2, no development shall take place until details of the finished floor and roof ridge levels of the building, with reference to existing surrounding ground levels, have been submitted to and approved in writing by the local planning authority. The development shall not be constructed other than in accordance with the approved levels.
- 4) No development shall take place until details and samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 5) The dwellings shall not be occupied until the means of access and sightlines for vehicles and/or pedestrians and/or cyclists have been constructed in accordance with drawing 3294/218. The access and sightlines approved shall be retained thereafter.
- 6) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 3294/200D for cars and other vehicles to be parked and that space shall thereafter be kept available at all times for the parking of vehicles.
- 7) No development shall take place, including any works of demolition or ground clearance, until a Construction Method Statement, which includes a Construction Management Plan, has been submitted to, and approved in writing by the local planning authority. The Statement and Plan shall provide for:
 - i) Hours of any and all works (including ground clearance), not to exceed 08:00 to 18:00 Monday to Fridays, 08:00 to 13:00 on Saturdays, and at no time on Sundays, Bank or Public Holidays;
 - ii) the parking of vehicles of site operatives and visitors, and the location on a plan of a scale no less than 1:500;
 - iii) loading and unloading of plant and materials, and the location on a plan of a scale no less than 1:500;
 - iv) storage of plant and materials used in constructing the development, and the location on a plan of a scale no less than 1:500;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities and any measures to control the deposit of dirt/mud or other similar materials on surrounding roads during the clearance and construction phases;
 - vii) measures to control the emission of dust and dirt during construction;

- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- ix) that no materials and/or green waste produced as a result of the clearance of the site, demolition or construction works shall be burnt on or near to the site;
- x) details of any footpath and or road closures that may be required during construction, including any traffic management requirements, and when this may occur and that approval from the appropriate body has been secured;
- xi) the times, routes and means of access into and from the site for construction and delivery vehicles;
- xii) delivery, demolition and construction working hours, that shall not exceed those set out in part i) above.

The approved Construction Method Statement and Construction Management Plan shall be adhered to throughout the construction period for the development.

- 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. These details shall include:
- i) a statement setting out the design objectives and how these will be delivered;
 - ii) details of the plant species to be used, including their age and location on site, such details shall also include information on the retention of any trees (including root protection areas) and/or specific details of replacement trees elsewhere on the site which should be of an indigenous species appropriate to its location;
 - iii) earthworks showing existing and proposed finished levels or contours;
 - iv) means of enclosure and any retaining structures;
 - v) boundary treatments;
 - vi) vehicle parking layouts;
 - vii) hard surfacing materials;
 - viii) an implementation programme, including phasing of work.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

-----END OF CONDITIONS---