
Appeal Decision

Site visit made on 6 February 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 28 February 2017

Appeal Ref: APP/M5450/W/16/3156710

Land to rear of No 51, 53 & 55 Shaftesbury Avenue, Harrow HA2 0PL

- 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 Sachin Chudasama against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/0738/16, dated 4 February 2016, was refused by notice dated 20 April 2016.
 - The development proposed is construction of two semi-detached houses, two storeys high.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - a) whether, having regard to development plan policy and other material considerations, the principle of housing on the site is acceptable;
 - b) the effect of the proposal on the living conditions of the occupiers of 53 and 55 Shaftesbury Avenue, with particular regard to outlook; and
 - c) the effect on the character and appearance of the area.

Reasons

Principle of development

3. Core Policy CS1.A of the Harrow Core Strategy (2012) (HCS) seeks to manage growth in accordance with the Spatial Strategy which focuses on the regeneration of the Harrow and Wealdstone Intensification Area. Growth throughout the rest of the borough will be directed to town centres and strategic previously developed sites.
 4. Core Policy CS1.B states that garden development will be resisted. The supporting text (paragraph 4.5) explains that such development would lead to unmanaged incremental growth and prejudice the contribution of residential gardens to suburban character and the quality of life of residents. Gardens are also of recognised importance for natural drainage and biodiversity.
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5. The Council has prepared the Harrow Garden Land Development Supplementary Planning Document (2013) (SPD) to support the implementation of Core Policy CS1. Although not part of the statutory development plan, this document is a relevant material consideration. The guidance has been adopted following a process of public consultation and therefore I have attached it significant weight.
6. I have been supplied with an affidavit which states that the appeal site was assembled over the period 2001-2010, having been acquired under three separate property titles for land at the rear of No 51, No 53 and No 55 Shaftesbury Avenue respectively. Ordnance Survey maps held with the Land Registry give a clear indication that the land was originally within the residential curtilages of these properties. It has not been utilised as domestic garden for some time and is currently fenced off. I am told that the site has been used for the storage of materials, although this was not evident during my visit.
7. The SPD provides a helpful interpretation of the term 'garden land'. Paragraph 3.1 defines it to include any land that formed part of a garden but which has been legally and/or physically severed from the donor property(ies). That is precisely the situation in this particular case. The guidance clarifies that any land that historically formed part of a garden but which now has another lawful use and which has not reverted to have a garden use will not be treated as garden land. In the absence of any evidence to demonstrate that the use of the appeal site for storage has been sanctioned by a grant of planning permission, or is otherwise lawful, this exemption does not apply.
8. Based on the available evidence I am satisfied that the appeal scheme would comprise garden land development of the type the Council is seeking to resist at a strategic level. The proposal would therefore be contrary to Core Policy CS1 of the HCS. In accordance with S38(6) of the Planning and Compulsory Purchase Act 2004 it should only be approved where other material considerations exist to outweigh the conflict with the development plan. Although the scheme would deliver additional housing this is not sufficient reason to justify a departure from adopted planning policy. I therefore conclude that the principle of housing on the site is unacceptable.

Living conditions

9. The proposed development would fill the width of the site, to within 2 metres of the boundary with adjoining gardens in Shaftesbury Avenue. The occupiers of No 53 and No 55 would be faced with a two-storey flank wall at close quarters. Given that their present outlook is relatively open and unrestricted, this proximity of built form would be unduly oppressive. The properties in this area benefit from lengthy gardens which enhance the quality of life of residents. The proposal would result in a significantly tighter arrangement of buildings and this would detract from the spacious character, to the detriment of the occupiers of adjoining properties.
10. I therefore conclude that the proposal would be materially harmful to the living conditions of the occupiers at No 53 and No 55 Shaftesbury Avenue. It would therefore conflict with Policy 7.6 of the London Plan (2015) (LonP) and Policy DM1 of the Harrow Development Management Policies Local Plan (2013) (HDMP) insofar as they seek to protect the amenity of surrounding land and buildings.

Character and appearance

11. The local neighbourhood consists mainly of two-storey housing. The properties in Dudley Road, onto which the proposed development would face, are arranged in short terraced blocks. Those on Shaftesbury Avenue itself are predominantly semi-detached.
12. The proposal would be at odds with the terraced pattern of development in Dudley Road. However, given the proximity of the site to Shaftesbury Avenue where semi-detached properties are the norm, I am not persuaded that this should weigh against the scheme. The height, depth and roof form of the dwellings would be generally reflective of other dwellings on this side of the street and the new properties would include projecting two-storey gables which are characteristic features of the locality.
13. Overall, I am satisfied that the appeal scheme would be compatible with its surroundings. I therefore conclude that it would not give rise to material harm to the character or appearance of the area. As such, I find no conflict with Policies 7.4B, 7.6B and 3.5A of the LonP, Core Policy CS1 of the HCS and Policy DM1 of the HDMP, insofar as they seek to ensure that development is of a high standard of design which has proper regard to local character and context.

Other Matters

14. It is contended that the proposal would meet the aspirations of the London Plan by delivering additional housing. In line with paragraph 53 of the National Planning Policy Framework, Policy 3.5 of the London Plan allows boroughs to introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified. The HCS includes such a policy and this has been tested and found to be sound at examination. Its adoption effectively means that the benefits to housing supply are outweighed by the harm arising from inappropriate garden development.

Conclusion

15. I have concluded that the proposal would not have a material adverse effect on the character or appearance of the area. However, this finding does not outweigh the conflict with development plan policy in respect of the strong presumption against garden land development and the harmful impact on the living conditions of neighbouring occupiers.
16. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR