
Appeal Decision

Site visit made on 24 May 2017

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

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

Decision date: 16 June 2017

Appeal Ref: APP/C1950/W/17/3170928
Land r/o 45 Bradshaws, Hatfield AL10 9QS

- 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 P Doughty against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2016/2601/FULL, dated 6 December 2016, was refused by notice dated 20 February 2017.
 - The development proposed is erection of 2No. studio units.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Council advises that a new Local Plan is being prepared but that it is still in its early stages. Therefore, any weight that could be afforded to the emerging plan would be limited.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the living conditions of future occupiers of the new building and existing occupiers of the adjacent flats, with particular regard to outdoor living space, privacy and accessibility;
 - the effect of the proposed development on the living conditions of occupiers of 45 Bradshaws and Redhall Drive, with particular regard to outlook and privacy;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether sufficient car parking would be provided.

Reasons

Living conditions of future occupiers and occupiers of the adjacent flats

4. The proposal is to construct a two storey building, comprising two studio flats, to the immediate south of an existing two storey block of flats. It would stand on part of the outdoor garden area serving the existing flats. The remaining garden space would be shared between the occupiers of the two existing flats and the new studio flats.
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5. As I saw on my site visit, much of the residual outdoor space to the west is sandwiched between the existing building and boundary vegetation. Part is taken up by a service area and retaining wall at a lower level, relating to the current ground floor flat. The proposal would, therefore, leave a small grass strip largely boxed in by the new building to the south. That building would, given its location, result in further overshadowing of the area, in addition to that already created by the existing building and the high hedge separating the area from the rear gardens of the houses on Redhall Drive.
6. The appellant says that there are no reference points, in relevant policies or in the Supplementary Design Guidance (SDG)¹, to establish what constitutes an adequate garden. However, the SDG explains in paragraph 5.4 that *'the Council do not wish to apply rigid standard sizes for gardens, as it is felt that the design and layout of the garden in relation to the built environment should ensure that the garden is functional and usable in terms of its orientation, width, depth and shape.'* Therefore, it is ultimately a matter of planning judgement based on the particular characteristics of the site and design of the proposed development.
7. In that context, I consider that the layout would result in a small, diminished outdoor space. Its size would be insufficient to be shared between the occupants of the two existing two bedroom flats and the two proposed one bedroom studio flats, for purposes such as sitting out in and the siting of washing lines. Moreover, as it would also be likely to be deprived of light for much of the day, because of the surrounding built form and boundary hedge, it would not form an inviting or usable space.
8. Furthermore, the elevated grass area would be directly above the patio doors to the lounge of the proposed ground floor flat. Therefore, users of the garden would be able to look into its main living space, whilst future occupiers of the proposed first floor flat would look out onto the shared garden from their lounge and Juliet balcony. Whilst it is accepted that an element of overlooking is inevitable in relatively dense urban environments, overall, the combination and proximity of the overlooking of the garden and lack of privacy in a main habitable room weighs against the proposal.
9. In addition, the new building would create a narrow restricted passageway between the two blocks confining their respective entrance doors, which would open out onto adjacent two storey elevations. Its limited width would also make it difficult to easily manoeuvre prams, pushchairs or wheelchairs.
10. Therefore, I conclude that the proposal would harm the living conditions of future occupiers of the new building and existing occupiers of the adjoining block, with particular regard to inadequate and overshadowed outdoor space, privacy and accessibility. As a result, the proposal would conflict with Policy D1 of the Welwyn Hatfield District Plan 2005 (WHDP) and its related SDG, which, amongst other things, require that new development is of high quality design, provides functional and usable garden space and minimises overlooking of internal living areas and gardens.
11. It would also be contrary to Policies D5 and D9, which require account to be taken of impacts on existing and proposed movement patterns for pedestrians, along with access for the disabled and children in prams or pushchairs. The

¹ 2005

proposal would fail to accord with similar, though more general, design and living condition guidance in the National Planning Policy Framework (the Framework)².

12. I do not see that Policy D2 of the WHDP, referred to in the Council's decision notice, which is more concerned with respecting the character of an area, is directly relevant to effects on living conditions.

Living conditions of occupiers of 45 Bradshaws and Redhall Drive

13. Whilst there would be only two small, square, high level kitchen windows, the southern elevation of the new block would present a long stark two storey high wall and expanse of roof, rising well above and immediately abutting the existing boundary fence separating the site from the garden and patio of 45 Bradshaws. Views would be at an angle but, according to the Council, the building would be only about 4 metres from the rear corner of No 45 and 5.5 metres from the main window of a habitable room to the rear. Therefore, whilst there would not be significant overlooking, the height, size and proximity of the building would have an overbearing effect on the occupiers of No 45, when using their living space and garden.
14. Although the Council Officer's report and decision notice referred to 'direct overlooking' from the kitchen windows towards 45 Bradshaws, its Statement of Case accepts that possible overlooking could be addressed by condition, requiring the windows to be fixed shut and obscure glazed. However, an additional aspect concerning the perception of being overlooked is introduced. Whilst I am aware of the case law referred to and fully accept the concept, two small windows at high level within the kitchens, which could be made subject to the above condition, would not be likely to give rise to such a perception in this case. Neither, in the circumstances, do I consider that future occupiers of the flats would be subject to a perception of being overlooked from the south.
15. With regard to the effect of the proposal on the rear of the properties at Redhall Drive, the blank gable end wall would, according to the Council, be approximately 6 metres high to the ridge and only 2 metres away from the boundary. Those figures have not been disputed. Whilst the new building would be of a similar height to the existing block, that building is largely screened by trees and further away from the eastern boundary. In contrast, the gable end wall of the new block would be sited almost directly at the end of the garden of No 52 and approximately 15m from habitable rooms at that property, without screening. I consider that due to its proximity and height the gable end wall would have an overbearing effect on occupiers of No 52. Further planting to mitigate the adverse effect could prove equally oppressive. Other occupiers of Redhall Drive would be affected but to a lesser degree as their views of the proposed development would not be as direct.
16. The fact that the occupiers of No 52 may not have objected is not of itself significant, as that could be for any number of reasons. In any event, I note that the occupiers of No 54 have done so.
17. Overall therefore, I conclude that although there would not be significant effects on privacy, the proposal would harm the living conditions of the occupiers of 45 Bradshaws and 52 Redhall Drive with regard to outlook. Whilst

² Published 2012

Policy D1 of the WHDP and its related SDG, may not explicitly deal with outlook, paragraph 17 of the Framework advises that that a good standard amenity for all existing and future occupants of land and buildings should be secured. For the reasons given, the proposal would conflict with it.

Character and appearance

18. The area is, as detailed in the SDG, a planned suburb which is characterised by consistent and uniform patterns of development with effective use of landscaping, trees and hedgerows. Despite the relatively high density terraces, a sense of space is retained with generous gardens and reasonable back to back spacing. The existing two storey block of flats is a later development, untypical of the immediate area, making use of part of the former generous garden of 45 Bradshaws.
19. A further two storey building at this location, positioned on the southern boundary and close to the eastern boundary, with a reduced garden area, would appear cramped on its plot. It would be out-of-keeping with the carefully considered pattern of development in the locality.
20. Therefore, the proposal would have an adverse effect of the character and appearance of the area. It follows that it would be contrary to Policy SD1 and Policy SD2 of the WHDP and the supporting SDG, which encourage good design and require that all new development respects and relates to the character and context of an area.

Car parking

21. According to the Council, its Interim Policy for Car Parking Standards and Garage Sizes³ says that parking standards, detailed in Policy M14 of the WHDP and set out in Welwyn Hatfield Parking Standards Planning Guidance (2004), should be treated as guidelines with matters considered on a case-by-case basis.
22. The Council accepts that, on the basis of its current criteria, the proposal would require 5 parking spaces, which is what is proposed. However, it advises that a previous planning permission, presumably in relation to the existing flats granted in 2009, required a landscape strip where the proposed parking space no 5 would be sited. That landscape strip was intended to reduce the possible noise impact from cars on users of the garden area of 43 Bradshaws.
23. Although I do not have full details, the landscape strip does not appear to exist on the ground and the whole of the area to the west of the existing block appears to be used for car parking. The Council has not referred to any enforcement action taken in that respect or indeed any complaints received concerning the matter from the occupiers of No 43. Given that history and that there would, in any case, be 4 other parking spaces adjacent, I am not persuaded that one parking space slightly closer to the garden of No 43 would have a significant adverse effect. Therefore, it is not apparent why it could not be provided and as the parking requirement would apparently be met, I do not see on what basis the Council conclude that overspill giving rise to congestion would be likely to occur.

³ Approved by Cabinet Housing & Planning Panel 21 August 2014

24. Secure cycle storage, an issue not specifically raised in the reasons for refusal or the Officer's report, could be resolved by condition.

Conclusions

25. I have not found harm to the privacy of the occupiers of 45 Bradshaws or in respect of the car parking proposals. However, I have identified significant harm to the living conditions of future occupants of the proposed building and occupants of the existing block, with regard to outdoor living space, privacy and accessibility. I have also detailed harm to the living conditions of occupants of adjoining properties at 45 Bradshaws and 52 Redhall Drive, with particular regard to outlook and found an adverse effect on the character and appearance of the area.
26. The appellant refers to the challenges of providing sufficient housing in the area and submits that the proposal would contribute to the housing supply. The sustainability of the location is not at issue and the appellant relies much on the contention that the studio flats would be the type of accommodation that would appeal to students, because of the proximity of the university. Whilst that may be, there would be no reasonable way of securing occupation by a particular category of occupant without being unduly restrictive. In any event, whilst a contribution to housing supply would be of value, it would be limited as the proposal relates to just two one-bedroom flats. Furthermore, all development should be potentially usable by a diverse range of potential occupants and provide reasonable living conditions without compromising the character and appearance of the area.
27. Therefore, whilst I have considered the positive aspects of the scheme, any benefits are clearly outweighed by the significant harm which I have identified. Consequently, I conclude that, for the reasons given above and having regard to all other matters raised, the appeal should be dismissed.

Jonathan Tudor

INSPECTOR