
Appeal Decision

Site visit made on 14 June 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 4th July 2017

Appeal Ref: APP/N1920/W/16/3166136

Twin Cottage, Common Lane, Radlett, Hertfordshire WD7 8PJ

- 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 Michael Smyth against the decision of Hertsmere Borough Council.
 - The application Ref 16/1783/FUL, dated 19 September 2016, was refused by notice dated 14 December 2016.
 - The development proposed is the demolition of existing dwelling and construction of 2 new dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and construction of 2 new dwellings at Twin Cottage, Common Lane, Radlett, Hertfordshire WD7 8PJ in accordance with the terms of the application, Ref 16/1738/FUL, dated 19 September subject to the conditions set out in the attached schedule.

Background

2. There is a detailed planning history to the site. An initial planning permission was granted in March 2016 for the demolition of the existing dwelling and the erection of a single replacement, Council reference 15/2247/FUL. This was followed by the second scheme which sought planning permission for the erection of two dwellings in place of the existing, reference 16/0934/FUL. This was for the effective sub division of the appeal site as it is and the resulting two rear garden areas covering the entirety of the existing plot. The overall size of the development site exceeded the trigger for developer contributions in respect of affordable housing in accordance with the Council's development plan. A completed Unilateral Undertaking to secure this was accepted by the Council and planning permission was granted in September 2016.
 3. A third scheme was refused planning permission in December 2016. This was reference 16/1783/FUL and is the one subject of this appeal. This was also for the erection of the two same dwellings as in the second scheme following the demolition of the existing but the sizes of the proposed gardens for each dwelling was reduced.
 4. A fourth planning application, reference 16/2461/FUL, was submitted in December 2016 which was an effective reversion to the second in all respects save for the fact that it was supported by a viability assessment that
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demonstrated it could not support the developer contributions towards affordable housing required by the development plan. The Council accepted this argument following independent advice and granted planning permission in March 2017. All of these schemes remain extant at the time of writing.

Main Issues

5. There are three main issues, these are:

- The effect of the proposed development on the openness of the Green Belt;
- The principle of the proposed development and specifically whether or not the creation of a 'nil use' would be harmful; and
- The effect of the proposed development on the character and appearance of the area.

Reasons

The Openness of the Green Belt

6. Whether or not the proposed development would be inappropriate development in the Green belt has been established. Two dwellings, of the same design, scale and location as proposed, have been previously approved and are extant at the time of writing. The fact that they can be built out regardless of the outcome of this appeal is relevant and material to my findings. They have been considered as replacement buildings through the redevelopment of a previously developed site¹. There is no further evidence before me that would lead me to a different conclusion on this matter. There would therefore be no harm to the Green Belt in this respect.
7. Openness is an essential characteristic of the Green Belt and it has both a spatial and visual aspect. The former can be taken to mean the absence of built form.
8. The proposed development would not bring any additional built form to the appeal site over and above that which has been granted planning permission and is extant. The difference in the scheme before me when compared to that which has been permitted would be the smaller plot sizes.
9. The smaller gardens would result in an area of land that would become open to the rear of each dwelling. This would not be part of a residential curtilage in the lawful planning sense and as such would likely be free from domestic related paraphernalia. Being in the Green Belt, the land would be subject to future planning controls on new buildings. For these reasons, the proposed development would have the potential to increase the openness of the Green Belt in net terms and as a result I am unable to conclude that it would be harmful to either the visual or spatial aspects of its openness.
10. The proposed development would thus comply, with regard to this main issue, with Policy CS13 of the Core Strategy² (CS), Policy SADM26 of the Local Plan³ and section 9 of the Framework⁴. These policies seek to ensure, amongst other

¹ Paragraph 89 of the National Planning Policy Framework 2012

² Hertsmere Local Plan Core Strategy Development Plan Document 2013

³ Hertsmere Local Plan Site Allocations and Development Management Policies Plan 2016

⁴ The National Planning Policy Framework 2012

things, that the essential characteristics of the Green Belt are protected from harm.

A Nil Use

11. The Council's concerns in this respect stem from the creation of what they describe as a nil use that would not make the most efficient use of the site and would thereby be unsustainable in land use terms.
12. The proposed development would indeed result in parcel of land being outside of any residential curtilage that would be created. Whilst this land would not therefore be in residential use, it would be somewhat short sighted to consider it unsustainable in land use terms. It is correct that any future use would require planning permission as would likely the erection of new buildings that do not fall into any of the exceptions specified by section 9 of the Framework.
13. Looking at this matter purely in isolation, the land would still be in private hands and thus be subject to an obligation to manage in some way. In addition, there are a number of uses (whilst planning permission would be required) set out by the Framework that would be compatible with its Green Belt location. The fact that the areas of land would become locked and accessible only via the plots afforded to the new dwellings would be a constraint of the appellants own making. Moreover, it cannot be ruled out that the land could change hands in the future given how it would be accessible from more open and undulating areas of countryside beyond the existing rear boundary.
14. I cannot therefore reconcile a clear argument that the lack of inclusion of the remaining land into residential curtilages would be harmful in planning terms with regard to the particular circumstances of this case. In actual fact, quite the contrary in Green Belt terms as I have set out above.
15. I am therefore of the view that the principle of the development would be acceptable and consequently, with regard to this main issue, there would be no conflict with Policies SP1 of the CS. This Policy, along with one of the key principles underpinning the Framework, advocates a sustainable approach to new development.

Character and Appearance

16. The appeal site comprises a single detached dwelling in a reasonably substantial irregular curtilage. It is of an original cottage style design and has been extended to form a narrow, linear two storey range. Vehicular access and parking is to the front and the garden extends to the rear. It faces, is set back from and is slightly elevated from the road.
17. The Council raise substantive concerns in this respect with regard to the character of the surrounding area and the visual amenity of the Green Belt. My findings on the effect of the proposed development on the openness of the Green Belt aside, the visual amenity of the Green Belt applies, in the case of the scheme before me, to the area in which the appeal site is located. Essentially therefore it would be sufficient to assess the effect of the proposals on the visual amenity of the Green Belt in the context of this main issue.
18. As I have alluded to above, the design and appearance of the proposed replacement dwellings has been previously considered and approved. Indeed,

there is no specific concern in this regard between the parties. For the purposes of this main issue therefore, I shall focus on the effect of the proposed smaller gardens on the character and appearance of the area as this is where the concerns of the Council appear to rest.

19. The gardens would still be divided roughly in half lengthways but would be notably shorter. This would reduce the spaciousness of the plots overall and certainly increase the built form to garden space ratio. In my opinion however, this would not make the development harmful. There is no clearly defined even rhythm to the extent of gardens in the area which is actually a clear mix between large and open and smaller and compact. In respect of the latter, the appeal site is directly adjacent to the higher density residential development of Manor Court which contributes to the mixed character of garden sizes in the area.
20. For these reasons, the proposed development would comply with Policy CS22 of the CS, Policies SADM26 and SADM30 of the Local Plan and sections 7 and 9 of the Framework. These policies, amongst other things, seek to ensure a high quality and contextually appropriate design and appearance to new development that does not cause harm to the Green Belt.

Other Matters

21. The Council have made reference to Policy SADM3 of the Local Plan in respect of the third main issue. On my reading, SADM3 appears to set out the Council's consideration of schemes for residential development with an emphasis on the loss of such uses. It also focusses on conversion schemes and the loss of affordable housing. I am of the view that these matters are not directly relevant to the third main issue.
22. I have come to a view on the effect of the creation of what the Council refer to as a nil use in my findings above. Nonetheless, the Council also refer to this in respect of the proposed development representing an artificial division of the site which would be a deliberate attempt to avoid contributing to affordable housing provision. Consequently it would fail to make adequate provision for affordable housing, contrary to Policies SP1 and CS4 of the CS and the Affordable Housing Supplementary Planning Document (SPD). The lack of a contribution in this respect is also of concern to local residents.
23. The reasons for the reduction in the size of the gardens that would be afforded to the new dwellings over that which has been proposed before is not a matter for this appeal to consider. These are factors that have lead up to the appellant's decision to apply for a different scheme which has been considered on its own merits. Regardless of that reason, no planning harm has been found with regard to the various effects that this decision has ultimately had.
24. In any event, the overall area within which the appeal site is contained falls below the area that is expressed as requiring developer contributions in the relevant policy. The provisions of CS4 and its accompanying SPD do not therefore apply to the scheme before me. Moreover, there is also an extant planning permission for the same two dwellings to be brought forward without contributing toward affordable housing following the acceptance of a viability case.

Conditions

25. I have had regard to the conditions that have been suggested by the Council. I have imposed the following but have made some changes to the wording in the interests of clarity and enforceability. As well as the standard time condition, I have set out the approved plans for certainty.
26. In the interests of securing an appropriate external appearance to the proposed development, I have set out that the materials shall be agreed. This needs to be done prior to the commencement of development since it goes to the heart of the planning permission. For the same reasons and to ensure appropriate demarcation of each plot, I consider a landscaping scheme is justified which also addresses the matter of the trees to be retained and protected on site. Such a scheme shall also set out the agreement of boundary treatments.
27. An appropriate time period for the reasonable future management of said scheme would also be justified. Since protection measures need to be in place prior to any works including demolition works being undertaken or materials stored, they would need to be agreed and in place prior to the commencement of any works. I consider that, together, these conditions would be sufficient to address the matter of the trees on the site.
28. To ensure the appropriate functioning of the proposed development, I have set out that a scheme for the management and discharge of surface water shall be agreed as well as the provision of appropriate visibility splays for the access. The former may require some preparatory ground works and as such the relevant scheme needs to be agreed prior to the commencement of any development but it would be sufficient in my view to agree and carry out the work in respect of the agreed scheme and the required visibility splays prior to the first occupation of the first dwelling.
29. In the interests of the living conditions of existing neighbours, the safe use of the highway and visual amenity more generally, I consider it would be reasonable to agree a demolition and construction method statement. By its very nature, this would need to be agreed prior to the commencement of development.
30. My comments on the need for a scheme of landscaping aside, surface water runoff from any hard surfaced areas can be dealt with under a separate condition as I have set it out above. I have also shown an appropriate condition to secure the necessary vehicular access. The Council state that the reason for ensuring the rear boundary treatment is a minimum of 1.8 metres is to ensure that the residential use approved is confined to the permitted site area. It would remain the fact however that any land beyond that shown to comprise the lawful residential curtilage of the dwellings on the approved plans would require planning permission to change its use, the decision on whether to approve which would be in the hands of the Council. As such I am not persuaded such a condition would be necessary, given also what an individual may require for the purposes of security and what can be secured through my suggested landscaping condition.
31. In the interests of the living conditions of existing neighbouring occupiers, I have set out that the window in the first floor north elevation of plot 1 should be obscurely glazed. It would be sufficient to agree this detail prior to the first occupation of the dwelling concerned.

32. To protect the Green Belt from the addition of further built form in the interests of maintaining its openness, I consider it would be reasonable to restrict future alterations to the dwellings without the need for express planning permission. This is in respect of Schedule 2, Part 1, Classes A to F inclusive, as well as Part 2, Class A of the GPDO⁵. Any new windows or doors would not have a harmful effect on the Green Belt by their nature and new windows in the first floor side elevations would have to be obscurely glazed in any event. Further, I have not been provided with any specific justification for restricting the use of any garage for the parking of a car.

Conclusion

33. For the reasons above and subject to the conditions set out in the attached schedule, the appeal is allowed.

John Morrison

INSPECTOR

⁵ Town and Country Planning (General Permitted Development) (England) Order 2015

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: 16.185.P5.003B; 16.185.P6.004C; 16.185.P6.005C; 16.185.P6.006B and 16.185.P6.007A.
- 3) No development shall commence until details/samples of the materials to be used in the construction of the external surfaces of the dwellings extension 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/samples.
- 4) No demolition or constructions works shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include proposed boundary treatments and indications of all existing trees and hedgerows on the land, identify those to be retained, and set out measures for their protection throughout the course of development. The agreed protection measures shall be carried out prior to the commencement of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No building hereby permitted shall be first occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 7) Prior to the first occupation of the first dwelling hereby permitted, details of the visibility splays in accordance with the guidance set out in Roads in Hertfordshire design Guide 3rd Edition in respect of the proposed new vehicle cross over shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 8) No development shall take place, including any works of demolition, until a demolition and construction method statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) delivery, demolition and construction working hours.
- The approved statement shall be adhered to throughout the relevant periods of the development.
- 9) The dwelling hereby permitted at Plot 1 shall not be first occupied until the first floor window in the north elevation has been fitted with obscured glazing, and no part of that/those window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development shall be carried out in respect of Schedule 2, Part 1, Classes A, B, C, D, E or F or Part 2, Class A.