
Appeal Decision

Site visits made on 24 and 27 April 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 25 July 2017

Appeal Ref: APP/D3125/W/16/3161476

24 Bakers Piece, Witney OX28 1PQ

- 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 Brian Cade of Edgestone Homes Ltd. against the decision of West Oxfordshire District Council.
 - The application Ref 16/02183/FUL, dated 24 June 2016, was refused by notice dated 20 September 2016.
 - The development proposed is three houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised site plan showing an adjusted parking layout was submitted during the course of the application. The Council made its decision against this plan and I have determined the appeal on the same basis.
3. I made two site visits in relation to this case, one during the daytime and another in the evening to witness the parking situation in Bakers Piece.
4. The decision notice makes reference to several policies from the Emerging West Oxfordshire Local Plan 2031. Although at an advanced stage of preparation, this document has not yet completed examination. Given the uncertainties regarding the outcome of that process, I have given the emerging local plan limited weight. My assessment focuses upon the policies of the development plan which in this case comprises the West Oxfordshire Local Plan 2011 (WOLP).
5. My consideration of this appeal must reflect the statutory duty¹ to pay special attention to the desirability of preserving or enhancing the character or appearance of individual conservation areas. The Courts have held that this duty should carry significant importance and weight in the overall planning balance.
6. On 7 February 2017, the Government published the Housing White Paper entitled "Fixing our broken housing market". The parties have been given the opportunity to make comments on the implications of the White Paper for their respective cases. I have taken the responses into account in my determination of the appeal.

¹ S72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended.

Application for costs

7. An application for costs was made by Mr Brian Cade of Edgestone Homes Ltd against West Oxfordshire District Council. This application is the subject of a separate decision.

Main Issues

8. The main issues in this case are:
 - a) whether the proposal would preserve or enhance the character or appearance of the Witney and Cogges Conservation Area; and
 - b) the effect of the scheme on the living conditions of the occupiers of properties in Bakers Piece, with particular reference to the availability of convenient and accessible car parking within the cul-de-sac.

Reasons

Conservation Area

9. The appeal site was formerly part of the rear garden of 70 West End, a Grade II listed building. The site lies within the Witney and Cogges Conservation Area but borders onto modern housing to the north and west, its boundaries on these sides being defined by stone walling. It is unclear from the evidence whether the walls are themselves historic. I saw that a section on the boundary with 24 Bakers Piece has been recently rebuilt. Nevertheless, the walls are attractive and they provide strong definition to the edge of the old town core.
10. The Witney and Cogges Conservation Area Appraisal (CAP) explains that historically there were burgage plots on both sides of the road through West End, noting also that dry stone walling defines many of the curtilages to the rear of the properties. Paragraph 3.9.1 of the CAP states that the burgage walling found throughout the Conservation Area forms a precious but highly vulnerable facet of the historic character and fabric of Witney. It advises that the largely unbroken lines of this walling should remain largely undisturbed as losses over time are likely to cause irreversible harm to the historic topography of the town and by extension to this the Conservation Area as a whole.
11. Contrary to the appellant's evidence which refers to sections of wall being repaired and rebuilt as part of the scheme, the plans indicate that the appeal proposal would result in the permanent removal of a section of wall running along the entire western site boundary. This measures approximately 30 m in length. The site itself would be developed with a terrace of three 2-bedroom dwellings with modest rear gardens and a communal parking area to the front.
12. Although the land is presently disused garden, its open and undeveloped character plays an important role in providing a setting for the listed buildings on West End and a physical buffer to the modern housing which occupies an elevated position to the north. A boundary review in 2010 retained the site within the Conservation Area and this lends considerable weight to the argument that it retains a degree of heritage significance.
13. The new dwellings would be similar in scale, form and appearance to those existing residential properties immediately adjacent. It has been suggested that the proposal is a logical 'rounding off' of the housing in Bakers Piece. However,

in my judgement the loss of boundary wall and the incursion of buildings into this presently open area would cause significant harm to the Conservation Area. Although the new dwellings would be comparable to Nos 16-24 Bakers Piece in terms of their distance to the properties in West End, this is an uncomfortably close relationship which I would not wish to replicate under the appeal scheme.

14. Accordingly, I conclude on this issue that the proposal would fail to preserve or enhance the character or appearance of the Witney and Cogges Conservation Area. It would thus conflict with saved Policies BE2, BE5 and H2 of the WOLP. Amongst other things, these policies seek to resist unsympathetic proposals which erode the character or appearance of Conservation Areas. The National Planning Policy Framework (the Framework) makes clear that, as heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

Living conditions

15. The Council does not advance any highway safety objections but is nonetheless concerned that the proposal would lead to occupiers of adjoining properties in Bakers Piece finding it difficult to park and/or facing situations where their vehicles get blocked in. I am prepared to accept that such occurrences have the potential to be stressful and this could indirectly affect the living conditions of residents.
16. The appeal scheme would provide 7 off-street parking spaces together with a replacement space in front of 24 Bakers Piece. This met with the acceptance of the Highway Authority and in my view it would be adequate to serve the needs of future occupiers of the three dwellings. For this reason, it is unlikely that there would be any significant parking overspill into the existing road.
17. Residents have indicated that on-street parking demand is greatest in the evenings when most people are home from work. At the time of my second visit, which took place around 7.30pm on a weekday, Bakers Piece contained a total of 16 cars. The overwhelming majority were responsibly parked and despite a number being stationed in the turning head, there was sufficient manoeuvring space for drivers to enter the cul-de-sac and exit in forward gear.
18. Given my observations I am satisfied that access and egress for new residents would not be impeded by the proposed development. Although I have been supplied with photographs to illustrate the problems faced by refuse and emergency vehicles, I am not convinced that the appeal scheme would make the situation materially worse. Neither am I persuaded that the modest number of additional comings and goings generated by three small dwellings would cause undue noise or disturbance for existing residents.
19. Whilst I can appreciate that there may be an element of disruption during the construction period, these adverse effects would be temporary. The impacts could be satisfactorily mitigated using a condition to require the submission of a construction management plan prior to the development commencing.
20. Overall, having given careful consideration to the matters raised by the Council and third parties, I do not consider that there would be unacceptable harm to the living conditions of the occupiers of properties in Bakers Piece. As such, the proposal would comply with Policies BE2 and H2 of the WOLP insofar as they seek to protect living conditions for existing and new residents.

Other Matters

21. Concerns are raised regarding the quality of outlook for future residents. The proposed dwellings would face towards the flank wall of 225 Farmers Close. However, in my opinion the intervening distance would be sufficient to prevent any adverse overbearing impact.
22. The occupier of No 225 has also expressed concerns regarding potential overlooking of her rear garden. Given that views into this area are already available from Bakers Piece and No 24 in particular, there would be no additional loss of privacy.
23. The appellant refers to the appeal site as a left-over piece of land. However, it has a historical and visual association with No 70 and contributes positively to the Conservation Area. The current overgrown and neglected condition of the site is the result of lack of maintenance and this should not be used to justify its development. I have therefore attributed the argument very limited weight.
24. The appellant makes reference to the fact that the amended application was recommended for approval. Whilst this is a material consideration, under S79(1) of the Act² I must consider the scheme *de novo*, and have therefore formed my own planning judgements, taking account of the reasons for refusal set out on the decision notice and the matters raised by third parties.
25. I am told that the delay of going to appeal has resulted in frustration for the appellant. I also note that there have been financial implications for his company. However, I have attached very limited weight to such matters. My decision must turn on the substantive planning merits of the scheme.

Planning Balance and Conclusion

26. The Council asserts that it is able to identify a five-year supply of deliverable housing sites in accordance with paragraph 47 of the Framework. However, this is reliant upon certain key matters being agreed by the examining Inspector for the emerging Local Plan. The Council concedes that for the past 12 months it has been taking the position that the requisite land supply cannot be demonstrated. Given the uncertainties regarding the outcome of the examination process, it would be premature for me to conclude to the contrary.
27. Paragraph 134 of the Framework requires that, in situations such as this where the harm to the significance of a designated heritage asset is less than substantial, the harm should be weighed against the public benefits. In this case the main public benefits would arise from the contribution the scheme would make towards the supply of homes. There would also be short term gains to the local economy arising from the construction phase. Even taking into account the Council's position on housing land supply and the Government's stated objective to boost significantly the delivery of housing³, I consider that the public benefits are outweighed by the harm to the Conservation Area.
28. As I have noted above, the appellant has suggested that public benefits would accrue from the repairing and rebuilding of boundary walls. However, this is not shown on the plans and therefore I cannot be confident that it forms part of the scheme. Accordingly, I have not factored it into the balance.

² Town and Country Planning Act 1990, as amended

³ as set out in Paragraph 47 of the Framework and the Housing White Paper

29. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 14 sets out that in such circumstances, 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; or specific policies in the Framework indicate development should be restricted.
30. Given that paragraph 134 of the Framework is a restrictive policy, and the balancing exercise under that policy is not favourable to the proposal, it follows that the appeal scheme does not constitute sustainable development and does not benefit from the presumption set out within paragraph 14. Accordingly, I find that the proposal conflicts with the development plan as a whole. There are no material considerations which would warrant a decision other than in accordance with the development plan.
31. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should fail.

Robert Parker

INSPECTOR