
Appeal Decision

Site visit made on 6 June 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 28th July 2017

Appeal Ref: APP/M5450/W/17/3170615

30 Park View, Pinner HA5 4LN

- 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 Model Properties Limited against the decision of the Council of the London Borough of Harrow.
 - The application Ref: P/4801/16, dated 12 October 2016, was refused by notice dated 19 January 2017.
 - The development proposed is demolition of existing garage attached to the side of 30 Park View, erection of a detached two storey, three bedroom, dwelling to the side of the existing dwelling, amendment of existing crossover to 30 Park View and new crossover to the new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on the living conditions of the occupiers of neighbouring residential properties; and
 - Whether the appeal site is a suitable location for new residential development, having regard to the development plan.

Reasons

Character and appearance of the area

3. The appeal site comprises approximately 466 square metres of land that is currently part of the curtilage of number 30 Park View. Park View consists predominantly of substantial detached houses set within large gardens. Whilst the front garden areas are in the main quite small, the rear gardens are in general long. The street is relatively straight although at its south west end, adjacent to the appeal site, it bends for a short distance before terminating. At this point, the relatively consistent building line that is evident in the majority of the street becomes staggered as the houses follow the curve of the road, which results in the final section of the road having a different visual character. The large side garden area of number 30 coincides with the bend in the road. This forms a pleasant visual break between these two areas of differing character and

provides relief from the otherwise closely spaced houses. The development of the side garden would completely erode this visual break and substantially change the established character of the street at this point to the detriment of the street scene.

4. The houses on Park View are of diverse designs, however, shared features such as hipped roofs of broadly similar height, extensive use of render, common architectural features such as bay windows and canopies, and the use of windows which are noticeably wider than they are high, give the street a distinct architectural character.
5. The proposed new dwelling would incorporate some of these features, such as the hipped roof, rendered finish to the walls and the canopy over the main door. It would also be of a similar height and achieve a similar separation from the houses on either side to the other houses in the street. The main windows on the front elevation are closer to square in proportion rather than the much stronger horizontal emphasis to the fenestration on other houses, resulting in a different solid to void ratio to the established dwellings. This would be a slightly discordant feature that would not help integrate the new dwelling into the street scene. Although less noticeable, the smaller plot size would also be inconsistent with the much larger plots occupied by the other houses in the street.
6. Within the street there are a number of street trees of varying sizes within the grass verges adjoining the carriageway of the road. Further well established trees are present in the gardens of individual properties. A particularly tall Corsican Pine tree is set within the footway outside number 30 and is a very prominent feature in the street scene.
7. An arboricultural report was submitted with the planning application which assesses the Corsican Pine as being important in the street scene. The report also identifies that the proposed dwelling will encroach into the root protection areas of the Corsican Pine. Whilst it is calculated that the development will affect only 6.5% of the root protection area, which is not great, the report does not take into account that a significant proportion of the root protection area is currently beneath the highway and footway beyond the site boundary. The cumulative effect is not assessed in the report.
8. The report recommends a no-dig solution for providing the new driveway. However, the details of this are sparse and there is no indication of how this will relate to the levels of the existing highway or to those of the proposed new dwelling which, due to existing ground levels, would be set below the level of the existing highway. I also note that the Council's arboricultural officer and landscape officer expressed concerns regarding the effect of the proposed works on this tree.
9. I have noted the point that the appellant would accept a condition as set out in the Council's Committee report seeking the appellant to enter into either a s106 Legal Agreement or section 278 Legal Agreement to require tree protection works. However, the Planning Practice Guidance (the Guidance) states that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990, or an agreement under other powers, as it is unlikely to pass the test of enforceability. The Guidance goes on to say that, in exceptional circumstances, a negatively worded condition requiring a planning obligation, or other agreement, to be entered into before

certain development can commence may be appropriate in the case of more complex and strategically important development, where there is clear evidence that the delivery of the development would otherwise be at serious risk¹. The development proposed could not be described as strategically important, and I do not consider that exceptional circumstances exist.

10. On the basis of the evidence before me, I am not satisfied that the development could be carried out without having an adverse impact on the Corsican Pine, ultimately leading to its removal and consequent harm to the street scene.
11. Taken as a whole, the proposed development would cause harm to the character and appearance of the area. It would not comply with the relevant requirements of Policies 7.4 and 7.6 of the London Plan; Policy CS1 of the Harrow Core Strategy 2012 (Core Strategy); and Policy DM1 of the Harrow Development Management Policies Local Plan 2013 (DMP), which seek a high standard of design in new developments that has regard to its context and local character.

Living conditions of neighbouring occupiers

12. From the Council's statement it is apparent that the concern in respect of the living conditions of neighbouring occupiers relates solely to the effect on number 28 Park View. I have noted that there are no concerns in respect of loss of privacy or overlooking resulting from the proposed development and also that although the kitchen windows in the flank elevation of number 28, facing the appeal site, are the only windows to this room, they cannot be considered as 'protected' windows for the purposes of daylight and sunlight due to previous alterations to the house.
13. This notwithstanding, the appellant has submitted a daylight and sunlight assessment in respect of these windows. This assessment concludes that whilst the proposed development will have some effect on the amount of daylight and sunlight received by these windows, the overall effect will not be severe. Only summary data has been provided and no details of the current and resulting daylight and sunlight levels or other supporting text are included. Consequently, the magnitude of the change is difficult to determine from the evidence submitted. Nevertheless, from my site visit, during which I was able to view the appeal site from inside number 28, and due to the orientation of the windows in the kitchen, I do not consider that the loss of daylight and sunlight to this room would be so severe as to warrant refusing planning permission for this reason alone.
14. However, I saw when I visited this property that the kitchen is larger than 13 square metres floor area and can be considered as a habitable room. The proposed development would result in a two storey high, flank wall, relieved only by a small bathroom window, being located approximately three metres from the kitchen windows of number 28. Although there is currently a boundary fence and planting between the appeal site and the flank wall of number 28, as a result of the height and position of the new house, it would in my view have an unduly overbearing impact on the outlook from these windows.
15. I, therefore, conclude that the proposed development would cause harm to the living conditions of the occupiers of the neighbouring residential properties. It would be contrary to the relevant requirements of Policy 7.6 of the London Plan

¹ Reference ID: 21a-010-20140306

and Policy DM1 of the DMP which seek to ensure that new development does not have an adverse impact on neighbouring occupiers. It would also be inconsistent with the policies in the National Planning Policy Framework (the Framework) which seeks to ensure a good standard of amenity for all occupiers of land and buildings.

Whether the appeal site is a suitable location for housing

16. Whilst it is not in dispute between the parties that the site is in a location that has reasonable access to shops, facilities and public transport, there is disagreement over whether the proposal is in accordance with the Council's growth strategy, which seeks to restrict piecemeal, small scale, development in garden areas in order to achieve its strategic objectives.
17. Policy 3.5 of the London Plan 2016 (London Plan) allows Councils to introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified. Policy CS1 of the Core Strategy sets out the growth strategy for the Borough and seeks to focus development in the Harrow and Wealdstone Intensification Area, town centres and strategic previously developed sites. The appeal site is not within any of these identified areas.
18. Policy CS1(B) states that garden development will be resisted, although it does not preclude all development within garden areas. Further guidance in respect of when limited development within garden areas may be acceptable is set out in the Harrow Supplementary Planning Document: Garden Land Development, 2013 (SPD). The SPD defines garden land as "any land within the curtilage of a building the principal use of which is residential" and also makes plain that no distinction is made between front, side, and rear gardens.
19. I saw during my site visit that the appeal site is laid to grass with established planting on the boundaries. It also contains a small shed and had all the characteristics of a garden area. I also saw that the amenity area to the immediate rear of number 30 was relatively short in depth compared to the other properties in the area, where the length of the rear gardens is apparent at the junction of Park View with Anselm Road and when viewed from the pedestrian walkways which link Cornwall Road to Woodridings Avenue. Although it is configured differently, in overall area, the outdoor amenity space associated with number 30 at present is broadly similar to the other houses in the area. The appeal site has every appearance of being a side garden area to 30 Park View and a reasonable person would conclude that it is such. The proposed development would, therefore, be development on garden land and falls to be considered in the light of the presumption against garden development set out in Core Strategy Policy CS1 and the SPD.
20. Much of the appellant's case rests on the exception for gap sites set out in the SPD and the pre-application advice offered by the Council prior to the submission of the development proposal. The Guidance, whilst recognising the benefit of early discussions with the local planning authority is, nonetheless clear that pre-application advice provided by the local planning authority cannot pre-empt the democratic decision making process or a particular outcome².

² Reference ID: 20-011-20140306

21. I have also noted the Council officer's recommendation in this case. The Council is not duty bound to follow the advice of its professional officers, and can reach a different conclusion, if there are planning grounds to do so.
22. The SPD states that gaps sites will usually be obvious vacant plots, of dimensions consistent with those prevailing in the street. In addition it makes it very clear that that side gardens in spacious residential areas do not constitute the kind of gaps to which this exception applies. The surrounding area typically consists of substantial dwellings set in large gardens. Although the individual dwellings are quite closely spaced, the overall character is of a spacious, relatively low density, development. The appeal site is not consistent with the predominant plot sizes in the street and surrounding area.
23. Although there are no other similar garden arrangements in the street, applying the criteria and advice in the SPD and taking account of the fact that in order to create a building plot of approximately the same frontage as those of the existing houses it is necessary to demolish the existing attached garage at the donor property, it is difficult to describe the appeal site as an "anomalous missing piece" in the street scene. Consequently, there is no substantive evidence that the appeal site is a genuine gap site as contemplated by the exception in the SPD.
24. Whilst Core Strategy Policy CS1 does not state that there should be no development on garden land, it is clear that in order to achieve the Council's objective of focussing development in particular areas, such development is not favoured. If it is to occur it must respond positively to the local and historic context in terms of design, siting, density and spacing. I have found that the proposed development would cause harm to the character and appearance of the area. Accordingly, the proposed development would not comply with Core Strategy CS1 or the SPD.
25. My attention has been drawn to an appeal decision relating to a site at Corbin's Lane³. I do not have the full details and so cannot be certain that the circumstances are the same as those in the case before me. However, from the decision letter that has been provided, it would appear that the context of the appeal site is different from that in this case. In particular, the Inspector who determined that appeal noted that the built form surrounding the appeal site was not spacious. The Inspector in that case also appears to have been applying a broader presumption in favour of sustainable development, operating outwith Paragraph 14 of the framework, which, whilst common at the time is not now supported by more recent decisions of the courts⁴.
26. I have also been referred to a planning permission granted at Glebe Avenue⁵. Again, I do not have full details of the case but from the officer's report provided, this does not appear to have addressed the issue of whether the site was a gap site and, consequently, I find no support for the appellant's case in this.
27. I have had regard to the appellant's reference to the February 2017 White Paper 'Fixing our broken housing market' in respect of support being given to small windfall sites within settlements for the provision of housing. However, this was

³ Appeal reference: APP/M5450/A/14/2225222

⁴ *East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973 (Admin)*

⁵ Planning Permission Reference: P/3267/16

a consultation paper and not a policy document, and the suggested amendment to national policy referred to has not been made as of this time. Therefore, I can attribute no weight to this.

28. Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration and this sets out that there is a presumption in favour of sustainable development. However, the Framework is also clear that it does not change the statutory status of the development plan as the starting point for decision making. Development proposals that accord with the development plan should be approved and those that do not should be refused, unless material considerations indicate otherwise.
29. It is not suggested that the Council does not have a deliverable five year housing land supply or that the relevant policies in the development plan are out of date or inconsistent with the Framework. This being the case, Paragraphs 12 and 14 of the Framework require that the application be determined in line with the development plan policies.
30. I therefore conclude that the appeal site is not a suitable site for new residential development having regard to the development plan. It would be contrary to the relevant requirements of Policy 3.5 of the London Plan; Policy CS1(A) and CS1(B) of the Core Strategy; and the adopted Harrow Supplementary Planning Document: Garden Land Development 2013, which seek to direct new development to areas requiring regeneration or which are strategic previously developed sites by restricting sporadic development elsewhere.

Other matters

31. It is not in dispute between the parties that the proposed new dwelling would provide suitable living conditions for the future occupiers in terms of internal and external space. I also note that the Highway Authority have not raised any concerns with regard to traffic or car parking.
32. Concerns in respect of flooding have been raised by a number of third parties, but I have no substantive evidence before me in respect of this.
33. None of these matters, either singly or collectively lead me to a different conclusion on the main issues.

Conclusion

34. For the reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's development plan and there are no material considerations of such weight as to warrant a decision other than in accordance with the aforementioned Development Plan. Consequently, the appeal should be dismissed.

John Dowsett

INSPECTOR