



Appeal Decision

Site visit made on 30 January 2018

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 09 February 2018

Appeal Ref: APP/K0425/C/17/3181248

Land at 29 Marlow Road, High Wycombe, Buckinghamshire HP11 1TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by SOFIYA Estates Ltd against an enforcement notice issued by Wycombe District Council.
 - The enforcement notice, numbered 15/00639/CU, was issued on 26 May 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a 3 bedroom detached dwelling known as 29E Marlow Road.
 - The requirements of the notice are:
 - 1) Demolish the building outlined in blue on the attached plan;
 - 2) Remove from the Land the close boarded fence (shown outlined in brown on the attached plan); and
 - 3) Remove all materials resulting from complying with steps 1 and 2 of the notice from the Land.
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of the words "3 months" as the time period for compliance at section 6 and the substitution with the following words "8 months". Subject to that variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (a)

2. The main issues in relation to the appeal on ground (a) are:
 - i) The effect of the development on the character and appearance of the surrounding area;
 - ii) The effect on the living conditions of neighbouring residents with particular regard to matters of overlooking, privacy, noise and disturbance;
 - iii) Whether the development provides satisfactory living conditions for occupants of the dwelling itself; and
 - iv) Whether adequate levels of car parking are available to serve the development and the adjacent flats at 29 Marlow Road.

Effect on the Character and Appearance of the Surrounding Area

3. The dwelling, which has been completed and occupied, is situated to the rear of No. 29 Marlow Road within a mixed commercial and residential area. No. 29 forms part of a parade of shops which is set back from Marlow Road and served by an access road to the side of which is an associated parking area. The property contains a hairdresser's shop at ground floor level to the front but has been extended and converted to provide four flats following the grant of planning permission in 2013. Those works included a first floor extension to the side, above the driveway which leads to the rear of the site. As a result of that extension the rear of the site is largely screened from public view with only fleeting glimpses being available from the street.
4. No. 29 is the last commercial unit within the row. The neighbouring property to the north – No. 27 – is a detached dwelling and beyond that property is a row of similar dwellings with substantial rear gardens. A substantial outbuilding, granted on appeal in 2016, has been constructed at the bottom end of the rear garden of No. 27. Akin to the generous proportions of the residential gardens to the north, the space to the rear of the commercial units within the parade is also substantial. The Council has approved a residential development to the rear of the neighbouring units at Nos 31-33 Marlow Road and that scheme was largely complete at the time of my site visit¹.
5. The Council maintains that the development "*is considered to erode the previously evident spaciousness of the immediate locality*". However, to my mind, that assessment ignores the character established by the recent developments at either side of the site. The terrace of dwellings to the rear of Nos 31 and 33 is substantial in scale with a higher ridgeline and deeper floor plan than the dwelling at the appeal site. The outbuilding to the rear of No. 27 is of a similar scale and appearance to the dwelling. Thus, even in the dwelling was to be demolished I do not concur that the immediate context is one of "evident spaciousness"; on the contrary, the context is dominated by the other buildings on each side.
6. The introduction of the dwellings to the rear of Nos 31 and 33 has established a residential character at the rear of the parade of shops and the dwelling does not appear incongruous in that context. In physical terms it fills in the gap between the adjacent buildings and projects no further forward than the outbuilding to the rear of No. 27 and is set back slightly from the building line to the front of the newly constructed dwellings. There remains a substantial distance between the front of the dwelling and the rear of the flats within No. 29. Consequently, in terms of its physical scale and outward appearance the building does not appear incongruous within its setting, nor does it appear unduly cramped given the presence of those other buildings. The external facing and roofing materials are also acceptable given the context of those recently constructed modern buildings.
7. However, whilst I am satisfied that the design and external appearance of the dwelling itself is appropriate to its context the same conclusions cannot be drawn regarding the design and layout of the external space. The garden to the front of the property has been enclosed by a 2 metre high close-boarded fence which provides a bland and somewhat unattractive feature when viewed

¹ Various planning applications have been approved but the scheme being constructed appears to be that approved under application reference 15/07337/FUL which was for the erection of three, two bedroom, dwellings.

from within the adjacent car parking area and from the ground floor windows of the dwelling itself. The use of close-boarded fencing is contrary to advice contained within paragraph B9 of the Council's adopted Residential Design Guide (2017) (the RDG) which advocates the use of walls or hedges and a combination of lower walls with trellis tops to provide a degree of surveillance where properties face onto rear parking courts, as is the case here.

8. Unlike the neighbouring scheme to the rear of Nos 31 and 33 – where the external car parking area has been formally laid out incorporating room for landscaping, it would appear that little or no thought has been given the appearance of the external space surrounding the appeal site. The ad-hoc parking arrangements and the lack of a suitable scheme of hard and soft landscaping results in an extremely unattractive residential environment. Paragraph 120 of the RDG notes that landscaping is essential, even in small spaces, and paragraph 135 notes that, "parking courts should be designed as a space first and a place for parking cars second, incorporating trees and landscape features". The absence of any landscaping in this instance results in a sterile external layout. I also have concerns about the durability and longevity of the crushed gravel used in the car parking area and the absence of a more formal parking arrangement may result in maintenance issues and problems of weed suppression over time.
9. The introduction of the dwelling has altered the character at the rear of No. 29 and the external space no longer functions just as a car parking area but it also serves as the entry point and setting for the dwelling. The design and appearance of the external space is wholly unsuitable in that context and its character and appearance of that space is in stark contrast to the more verdant character of the garden to the rear of No.27 and the more thoughtfully planned and formally laid out space to the rear of Nos 31 and 33.
10. I acknowledge that the effect of the development in those respects will largely go un-noticed from public vantage points. Nonetheless, the impacts will be noticed by the residents of the dwelling, those of the adjacent flats and any future residents of the dwellings to the rear of Nos 31 and 33. Moreover, section 7 of the National Planning Policy Framework (the Framework), sets a requirement for good design in all developments, not only those that are prominent from within the public realm. For the stated reasons, I find that the introduction of the dwelling, without any associated thought to the design and layout of the external space surrounding it, has resulted in an unattractive space that has caused harm to the character and appearance of the area. In that respect the development is contrary to the design related requirements of the Framework, the RDG and policy CS19(1) of the Wycombe Core Strategy (2008) (the CS) and policy G3 of the Wycombe District Local Plan to 2011 (the LP).

Whether the Development Provides Satisfactory Living Conditions for Residents of the Dwelling

11. Internally the dwelling is laid out to a good standard and provides adequate space and all of the facilities required for day to day living. Having viewed the property all of the rooms benefit from reasonable levels of natural light although the outlook from the ground floor room to the rear of the living room was restricted by the boundary fencing in close proximity. The parties have

debated whether that room should be described as a bedroom and the appellant maintains that it was not designed as such.

12. As with most dwellings the way in which particular rooms are utilised will ultimately be a matter for the occupiers at any given moment. Given the size of the room in question it seems plausible that it was not specifically designed as a bedroom but as a room that could serve a number of functions, which could include a bedroom, a play room or office space. However it was used I find that the limited outlook from that one room alone is not indicative of a poor internal environment in the property as a whole. Taken in the round, the internal space provides a flexible layout that would serve the needs of small families or couples who are most likely to be the occupants given the size and location of the dwelling.
13. I am also satisfied that the distance between the property and the rear windows of the flats within No. 29 is sufficient to maintain adequate levels of privacy within the dwelling itself. Whilst I have concerns about the design and appearance of the current fence the screening prevents any significant overlooking into the small garden to the front. That garden is not large but provides space for sitting out, drying washing, storing bins or bicycles and general amenity space. In terms of the space available I am satisfied that it is adequate to meet the expected needs of most occupants, given the size of the dwelling and the urban location.
14. However, the RDG advises that the quality of any external space will be more important than its quantity. Similarly, the pre-amble to policy H19 of the LP notes that the Council will expect space to be usable, attractive, accessible and reasonably private. The close-boarded fencing presents an unattractive outlook from within the dwelling and from within the garden itself. Given that the garden is not large the solidity of the fencing results in the space feeling "hemmed in" and somewhat claustrophobic. There is no greenery to break up the monotony of the fence and the limited size of the garden restricts opportunities for such planting to take place. Thus, in terms of the quality of external space the current arrangement creates a sterile environment that provides a poor outlook from within the dwelling and an unappealing space externally.

Those concerns add to my conclusions relating to the character and appearance of the external space within the adjacent car parking area, as described in relation to the first main issue. Any residents are required to pass through that featureless area to gain access to the dwelling which is hidden away behind a substantial fence. Taken in the round I find that the external layout has created a poor quality residential environment which provides a standard of amenity below that which may reasonably be expected for residents of the property. Accordingly, the proposal contravenes the aims of the RDG and policy H19 of the LP and a core principle of the Framework, set out at paragraph 17, which is that planning should secure a good standard of amenity for all existing and future occupiers of land and buildings.

Effect on Living Conditions of Neighbouring Residents

15. As noted above, the distance between the front elevation of the dwelling and the rear elevation of the flats in No. 29 is sufficient to prevent any undue loss of privacy as a result of overlooking through windows. In fact, the forward facing windows of the end dwelling in the row of three at the rear of Nos 31

and 33 is closer to the rear of No. 29 due to being set further forward than the appeal scheme. That property has large windows at first floor level, unlike the scheme before me which contains velux rooflights which provide a more restrictive view.

16. Evidently, the Council was satisfied with the relationship between the dwellings at the rear of Nos 31 and 33 and the flats to the rear of the parade and it is not clear why it considers that a greater or more unsatisfactory level of overlooking results from the dwelling in this instance. I am satisfied the separation distances and the design of the dwelling is such that adequate levels of privacy are maintained for existing residents.
17. Given that the area to the rear of No.29 already serves as a parking area for the four flats I find that there is unlikely to have been any substantive increase in noise and disturbance as a result of the additional vehicular activity associated with the dwelling. However, the plans approved in relation to the extension and conversion of No. 29 included a storage building/ bike shed at the rear of the parking area, in the area where the dwelling now stands. The provision of those facilities was in line with sections F6 and F7 of the RDG. No alternative provision has been provided and I noted that wheelie bins were stored in an ad-hoc manner on the covered driveway next to the entrance door to the flats. The bins are unsightly and would no doubt have the potential to cause odour problems, particularly in the warmer months, in close proximity to the main entrance to the flats. No alternative provision for cycle storage appears to have been provided.
18. Thus, the use of the space to the rear of the site has been intensified by the erection of the dwelling and the lack of thought to basic matters such as bin storage, cycle storage and the general layout of the external space has resulted in a poor quality environment that is to the detriment of the living conditions of existing residents of the flats and residents of the dwelling. In those respects the development is contrary to the aims of policy G3(2) of the LP which notes that planning permission may be refused if a sufficiently high standard of design and layout is not achieved having regard to the nature of the application site and its surroundings. It is also contrary to the aims of the RDG and the core principle of the Framework with regard to standards of amenity, as set out at paragraph 17.

Car Parking

19. The car parking area is not formally laid out but the appellant maintains that sufficient space is available for six cars. The Council does not dispute that figure and, having viewed the space, I have no reason to doubt that number of cars could be accommodated. The Council suggests that the scheme for four flats was required to provide four spaces plus two visitor spaces based upon Buckinghamshire County Council's Parking Guidance. The dwelling itself would be required to provide two spaces under those standards. Thus, in the view of the Council the development has resulted in an inadequate level of provision.
20. I have not been provided with a copy of the County Council's parking standards but there would appear to be a degree of conflict between those standards and advice contained at paragraph 143 of the RDG which clearly states that visitor spaces should not be included within parking courts which should be seen as private space. The RDG advises that visitor parking should be accommodated on street. To my mind that is a sensible approach to help define public and

private space. There is an area of unrestricted public parking to the front of the parade of shops that would readily cater for visitor parking.

21. Moreover, the site is in an accessible location, close to bus routes and is well served by the shops and the facilities on offer in the two petrol garages in close proximity, both of which have ancillary retail facilities. Given all of those factors, and taking account of the size of the units in question, I am satisfied that the level of off-street parking is adequate to meet the needs of residents and that visitor parking could be accommodated to the front of the site.

Other Matters

22. The appellant maintains that the Council cannot demonstrate a five-year supply of deliverable housing sites with reference to the Council's *Five Year Housing Land Supply Position Statement* (December 2016) (the Position Statement). Within that document the Council acknowledges that the housing requirement within the CS can no longer be considered up to date due to the fact that the CS was adopted in 2008, some years prior to the publication of the Framework.
23. The Council is currently working on the production of a new local plan and, along with neighbouring authorities, has commissioned a 'Housing and Economic Development Needs Assessment' (HEDNA) for the housing market area. The HEDNA was published in December 2016 with an addendum in September 2017. That document indicated that the Full Objectively Assessed Need (FOAN) for the Council's administrative area was 13,200 new dwellings, which would equate to 660 dwellings per annum. When set against that figure the Council estimates that it can demonstrate 4.95 year's supply for the period of 2018 to 2023.
24. The figures put forward within the HEDNA have yet to be tested as part of the local plan examination process and that limits the weight that I can attach to those figures. That said, no other evidence has been put before me and the appellant does not specifically question the way in which the FOAN was calculated. For the purposes of this appeal, the Council's own analysis is that it cannot demonstrate a five year supply against the FOAN. I acknowledge that the eventual housing requirement of the emerging local plan may end up below the level of the FOAN due to constraints such as Green Belt². The Position Statement suggests that unmet need may be accommodated within the area of Aylesbury Vale Council and the publication version of the Local Plan sets a housing requirement of 10,925 dwellings.
25. However, the starting point within the Framework is that a council should seek to meet its housing needs in full³. The precise extent to which need can be met within the boundary of the district and the nature of any constraints would be a matter for the local plan examination to consider. In advance of that process it is very difficult to draw any meaningful conclusion on the extent to which allowances should be made for constraints such as Green Belt. In fact, on the limited information before me, it would be inappropriate to do so. Consequently, based on the Council's own estimate of the FOAN, I conclude that it is presently unable to demonstrate a five year supply of deliverable

² With reference to footnote 9 of Paragraph 14 of the Framework

³ Paragraph 47

housing sites. I note that the Secretary of State reached the same conclusion in relation to a recent appeal decision⁴.

26. In that context, the development should be assessed in the context of the presumption in favour of sustainable development at paragraph 14 of the Framework. I shall make that assessment as part of my overall conclusion on the planning merits below.

Conditions

27. I have considered whether the harm that I have identified above could be mitigated through the use of conditions. That harm does not relate to the design or appearance of the dwelling itself but stems from the poor quality of the external environment which results in poor living conditions for residents and harm to the character and appearance of the area.
28. The appellant has put forward conditions to require the provision of landscaping, a defined car parking layout and cycle and bin storage, in line with details to be agreed in writing by the Local Planning Authority. In my view, careful attention to those matters, in addition to consideration of boundary treatments and surfacing materials, could overcome the concerns and result in a more attractive residential environment, based on similar principles to that deemed acceptable to the Council at the rear of Nos 31 and 33.
29. However, there are limitations to what may be considered within the scope of a ground (a) appeal as dictated by the terms of section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) which states that planning permission may be granted, *"in respect of the matters stated in the enforcement notice.....whether in relation to the whole or any part of those matters"*.
30. In this case, the enforcement notice relates to the erection of a dwellinghouse. The works contained within the suggested conditions would not amount to a grant of permission 'for the whole or any part' of the matters constituting the breach of control. What would be required to make the environment acceptable would amount to a comprehensive scheme to lay out and landscape the entirety of the space to the rear of No. 29 and to ensure a satisfactory external space associated with the new dwelling, including appropriate boundary treatments. Any proposals would also need to take account of the need for bin and cycle storage to compensate for the loss of the storage building previously approved in relation to the scheme for four flats.
31. In my view those works are not of a minor nature and certain elements, such as the construction of storage buildings, the provision of hard surfaces, and potentially the erection of boundary walls are matters that may require planning permission of themselves. Those works would impact upon existing residents of the flats in No.29 and the dwelling itself and those residents and other neighbouring occupiers could reasonably expect to be consulted on such matters as part of the planning process. That may not be possible if permission was granted subject to the conditions suggested by the appellant.
32. Consequently, I am not satisfied that it would be appropriate, within the limited scope of an appeal on ground (a) to grant planning permission subject to conditions as suggested.

⁴ Planning Inspectorate reference: APP/K0425/W/15/3135297, issued on 14 September 2017.

Overall Conclusion on Ground (a)

33. I have concluded that the development has resulted in an unsatisfactory external environment that causes harm to the character and appearance of the area and fails to provide satisfactory living conditions for existing and future residents of the dwelling and the flats within No. 29 Marlow Road. The development is contrary to the relevant policies of the development plan and the requirements of the Framework in those respects.
34. The Council cannot demonstrate a five year supply of housing against its FOAN and the presumption in favour of sustainable development at paragraph 14 of the Framework applies. For decision taking that means approving development proposals that accord with the development plan without delay. Where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or where specific policies in the Framework indicate that development should be restricted.
35. As set out, the development does not comply with a number of relevant policies in the development plan. Those policies, including G3, G8 and H19 of the LP and CS19 of the CS are general development control policies and not policies specific to housing. Nothing has been presented to indicate that those policies are inconsistent with the Framework and I attach significant weight to them.
36. Moreover, the benefits of a single dwelling added to the housing supply are modest in terms of the overall needs of the district and the marginal extent of the shortfall in the five year supply. In my view those benefits are clearly and demonstrably outweighed by the harm that would be caused to the living conditions of existing and future occupants and the harm to the character of the area as a result of the poor quality of the external environment, as described above. I am not satisfied that the harm could be overcome through the use of conditions having regard to the limited scope of an appeal on ground (a).
37. The provision of sub-standard residential development is fundamentally unsustainable and should not be approved, having regard to the balance at paragraph 14 of the Framework and all other material considerations. Accordingly, the appeal on ground (a) fails and I shall refuse to grant planning permission for the matters constituting the breach of planning control.

The Appeal on Ground (f)

38. The purposes for which an enforcement notice may be served are governed by section 173(4) of the Town and Country Planning Act 1990 (the Act). Those purposes are:
- (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.

39. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In order to determine the scope of such an appeal it is necessary to understand the purposes behind the issue of the enforcement notice and whether they fall within section 173(4) (a) or (b). In this case, the Council is clearly seeking to remedy the breach of planning control given that the requirements of the notice seek the demolition of the building, the close boarded fence and the removal of associated materials. It appears to me that those requirements go no further than is necessary to remedy the breach.
40. The appellant has suggested that it would be excessive to require the removal of the building on the basis that it doesn't cause harm to the character and appearance of the area. If the residential use is not considered acceptable he contends that it could be put to an alternative use as an ancillary storage building to serve the flats at the site. However, planning permission would be required for the erection and use of the structure as a storage building and no such permission exists. It is not open to me to grant planning permission for an alternative form of development in relation to the appeal on ground (a) because the scope of the appeal on that ground is limited to the question of whether planning permission should be granted for the erection of the dwellinghouse. In the absence of any planning permission for a storage building a variation to the notice to require the building to be used for that purpose would not amount to a lesser step that would remedy the breach of planning control.
41. No other alternatives have been put forward and, accordingly, the appeal on ground (f) fails.

The Appeal on Ground (g)

42. The appellant suggests that the works of demolition would take longer than three months due to the 'backland' nature of the site and the desire to control dust, noise and disturbance whilst carrying out the works. Whilst I note those aims, the building is not unduly large and no specific technical issues have been identified to suggest that it would be a complex operation to demolish the structure. It appears to me that a competent contractor could demolish the building and remove associated materials in the time specified without the need to work at anti-social hours so as to keep disturbance to acceptable levels.
43. Reference has also been made to the tenancy arrangements but no tenancy agreement has been provided to confirm the length of any tenancy or notice period. The Council maintain that the tenancy was signed after the notice was issued. In the absence of any hard evidence it is difficult to attach significant weight to the appellant's case in that respect.
44. However, as set out above, I have found that the building itself causes no particular harm to the character and appearance of the area. Subject to careful thought and design, applying the good design principles within the RDG, it seems to me that a suitable external environment could be created within the available space to accommodate parking, storage facilities, landscaping and more attractive boundary treatments, whilst maintaining privacy for the residents of the dwelling. For the reasons given the extent of such a scheme is

beyond what can be considered in the scope of an appeal on ground (a) and could not be secured by condition.

45. In that context I consider it reasonable to extend the period for compliance to enable the appellant to submit an application to the Council with appropriate details. A period of eight months has been requested to enable that process to take place. I am satisfied that is a reasonable period given the likely time required to prepare and submit an application, for the Council to determine it, and for the works to be completed. Therefore, the appeal on ground (g) succeeds to that extent and I shall vary the notice to extend the period for compliance accordingly.

Chris Preston

INSPECTOR