



Appeal Decision

Site visit made on 10 June 2019

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/J1915/W/19/3224944

138 Hertingfordbury Road, Hertford SG14 2AL

- 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 C Johnson against the decision of East Herts District Council.
 - The application Ref 3/18/2787/FUL, dated 20 December 2018, was refused by notice dated 22 February 2019.
 - The development proposed is a new detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a new detached dwelling at 138 Hertingfordbury Road, Hertford SG14 2AL in accordance with the terms of the application, Ref 3/18/2787/FUL, dated 20 December 2018, subject to the conditions in the Schedule attached to this decision.

Procedural Matter

1. In an attempt to overcome the council's reasons for refusal, the appellant has submitted plans with their appeal documents for a substantially different proposal. These plans have not been subject to public consultation and I have therefore determined the appeal on the basis of the plans on which the Council based their decision.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the local area; and
 - the effect of the proposal on the living conditions of neighbouring residential occupiers.

Reasons

The effect of the proposal on the character and appearance of the local area

3. The local area is residential in character, with semi-detached and terraced houses and their gardens, with some detached garages associated with properties on Valeside, providing the immediate setting for the appeal site.
4. The proposed detached dwelling is a 2 storey, four bedroom house in an 'L' plan that would be located on a site comprising the rear half of the steeply

terraced garden of 138 Hertingfordbury Road (No 138). This reduces the size of the garden to this dwelling, but not to an unacceptable degree.

5. The proposed dwelling would be located at the site's highest point, with the lower floor located on a lower terrace. A second lower terrace would provide garden and car parking, accessed from a shared driveway shared with 134a to c Hertingfordbury Road (Nos 134a-c).
6. Although at a higher level than Nos 138 and 140, in width, depth and height the proposed dwelling would appear as being similar in scale to other neighbouring dwellings. The intended external materials, roof profile and architectural expression of the proposal reflect that of other dwellings in the local area and would be complimentary to the existing streetscape. The stepped design of the proposed dwelling and its integration into the topography of the site by terracing would mean that the development would not appear as over-intensive and being visually out-of keeping with the character and appearance of the area.
7. Although the proposal would involve some loss of greenery of limited significance to the verdant character of the area, the provision of new planting as part of the landscaping of the proposed terracing can be made the subject of a suitable condition.
8. I conclude that the proposal would respect the form and grain of existing dwellings in the area and would not be harmful to the character and appearance of the area and would be in accordance with Policies DES2, DES3 and DES4 of the East Herts District Local Plan 2018 (DLP), which seek to ensure that development respects the character of the site and surrounding area, conserves the districts landscape character and ensures that development proposals include appropriate compensatory planting.

Living conditions

9. The proposal would be visible in oblique views from the rear of No 134c and from its rear garden. Whilst the views of the proposal from this property would not be overbearing or visually intrusive, due to the proposal being set into the land by terracing, there would be potential for some partial overlooking and perception of or loss of privacy to occupiers when using the garden. This could, however, be reasonably mitigated by a planting screen or hedge etc as part of a landscaping scheme made the subject of a suitable condition.
10. As No 140 has a large garden and No 138 would still retain an adequate garden, there would be enough distance from the proposal for there to be no overbearing effect or significant overlooking or loss of privacy to the occupiers of these dwellings.
11. When viewed from properties at 44 to 50 Valeswood, the overall scale and massing of the dwelling would appear to be that of a single storey building due to the proposal's setting. This is due to the proposal's stepping into the surrounding topography as part of the proposed terracing and its unassertive hipped roof profile. Although taller than the detached garages and fencing at this upper level, due to the distances involved between these properties and the proposed dwelling, its effect would not be overbearing, visually intrusive nor would give rise to degrees of overlooking beyond which would be reasonably expected in such a residential area.

12. The proposal would not result in significant harm to the living conditions of neighbouring residential occupiers through overbearing, and overlooking, to the extent that potential harm to the occupiers of No 134c through overlooking and loss of privacy, could not be mitigated by the application of a condition requiring the submission of a suitable landscaping scheme.
13. I conclude that the proposal would not be harmful to the living conditions of neighbouring occupiers and there would be no material conflict with Policies DES2, DES3 and DES4 of the DLP, which seek to ensure that development proposals avoid detrimental impacts on the amenity, including privacy, of neighbouring properties and include appropriate mitigating landscaping measures, which take into account the effect of development on the amenity value of landscaping and local conditions.

Other Matters

14. Concerns have been raised by other parties in relation to land ownership, restrictive covenants, rights of way, disputes over property boundaries, commercial parking and sewerage and utilities connections. These are legal issues, not material to my remit of assessing the proposal on its planning merits and impacts.
15. As the site would be safely accessed from the public highway by way of a shared driveway, the proposal would not result in pressures in relation to local on street parking provision or road safety.
16. Concerns raised in relation to the support of excavations are not material planning considerations and fall within the remit of Building Control legislation.
17. Noise and disruption during construction can be mitigated by imposing a condition limiting hours of construction and are not necessarily material reasons that justify refusal of planning permission.
18. The information submitted in relation to a previous appeal and the use of other properties owned by the appellant are not material to my determination of this appeal, that I have considered on its own merits.
19. The Council has drawn my attention to a dismissed appeal for a larger dwelling and an allowed appeal for smaller dwelling on the site. Whilst there may be differences and similarities of both to the proposal, in determining this appeal I have considered it on its own merits.

Conditions

20. I have considered the conditions suggested by the Council, I find, however that there are no material considerations with regard to the protection of privacy, which would justify the imposition of a condition limiting rights set out in the General Permitted Development Order 2019. In addition to the standard condition that provides a timescale for the commencement of the development and to provide certainty I have added a condition to ensure that the development is carried out in accordance with the approved plans.
21. To protect the living conditions of neighbouring residential occupiers I have imposed conditions that controls the hours of construction. To protect the living conditions of the occupiers of No 134c I have imposed a condition requiring the obscured glazing of the first floor bathroom and a condition requiring the

submission of a scheme of hard and soft landscaping, that is also intended to protect the character and appearance of the local area. To this end, I have also imposed a condition requiring the submission of details /samples of external materials.

22. In the interests of wider environmental standards and safety I have imposed a condition that deals with the environmental risks associated with contamination of the site, which includes safeguarding, monitoring and reporting measures to be agreed prior to the commencement of development. In the interest of road safety, I have imposed a condition in relation to parking provision prior to occupation.

Conclusion

23. With the presumption in favour of sustainable development contained in the National Planning Policy Framework in mind, I confirm that the benefits of granting planning permission would significantly and demonstrably outweigh any adverse impacts.
24. For the above reasons and with regard to all other issues raised, the appeal is allowed.

Victor Callister

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with approved plans 12262-P020-E and 9186481
- 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the building 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) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 5) No development above ground floor slab level of any part of the development hereby permitted shall take place until there has been submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping. 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 building 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, unless the Local Planning Authority gives written consent to any variation.
- 6) The building hereby permitted shall not be occupied until the window at the upper floor bathroom has been fitted with obscured glazing, and no part of that 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.
- 7) The building hereby permitted shall not be occupied until the vehicle parking and turning spaces have been constructed in accordance with drawing no. 1226-PO20-E. These spaces shall thereafter be retained for their designated use.
- 8) No construction work shall take place on the site other than between the hours of 8am and 6pm Monday to Friday and 8.30am and 1pm on Saturdays. There shall be no working on Sundays or Public Holidays.