



Appeal Decision

Site visit made on 24 June 2019

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 29 July 2019

Appeal Ref: APP/P1940/W/18/3212421

Land to the rear of 48-62 West Way, Rickmansworth, Hertfordshire, WD3 7EN

- 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 Moneyhill Investments Ltd against the decision of Three Rivers District Council.
 - The application Ref 18/0971/FUL, dated 1 May 2018 was refused by notice dated 9 August 2018.
 - The development is described as '*The proposed development comprises of demolition of the existing garages on the site Land to the rear of 48-62 West Way) and construction of 7no new build 3-Bedroom townhouses. The site is currently occupied by a total of 27 lock-up garages, most of which are not in use for parking but are used for storage and so attract some trips. Of these, 10 are on the northern boundary of the site and accessed through a lockable gate. One existing garage in the eastern part of the wider site, falling outside the red line boundary covered by the application and which falls under a different ownership, will be retained. The garages within the rear gardens of the houses fronting onto West Way will also be retained, with access maintained. The existing access and 40m long section of the track running north/south between nos 30 and 32/34 will be widened by removing the hedge on the eastern side to create a 4.1m wide shared surface accessway, increased to 4.8m closer to the junction with West Way to allow larger vehicles to turn in and out easily*'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are
 - The effect of the provision of dwellings on (a) the character and appearance of the area; (b) the living conditions of the occupiers of West Way and Cherry Tree Cottage; (c) protected trees; (d) protected species and (e) highway safety.
 - Whether the scheme would (f) provide appropriate living conditions for future occupiers, with particular regard to provision of garden space and (g) make appropriate provision for affordable housing.

Reasons

Character and appearance

3. The dwellings on West Way are a mix of frontage properties. There are both detached and pairs of houses as well as flats within the buildings directly in front of the appeal site. The wider area also contains a mix of dwelling type

and design. However, buildings do primarily front onto the road. To the north and west of the site boundary are the buildings for the air cadets and a nursery which are lower in height. The built form in the area is interspersed with garden areas, open areas and trees which contribute to the sylvan character of the area.

4. I appreciate that there are a variety of buildings, including flatted blocks, and materials in the surrounding area. In addition, the appellants submit that the existing condition of the site does not have any aesthetic value. Nonetheless, the existing garages are single storey in form and subservient to the existing dwellings. The new buildings would be four storeys in height. The design approach is described as contemporary and the building would be treated with a flat roof. It would represent a marked contrast to the surrounding built form with the introduction of four storey height. This is compounded by the appearance of the roof form which would sit atop the building. The shape of the roof would make it appear as a clumsy addition rather than an integral part of the design of the building. Consequently, it would draw attention to the development and appear incongruous within the locality.
5. The appellants consider that the site would be well screened from public vantage points. I do not dispute that the sylvan quality of the area would lessen some of the views of the built form. Nonetheless, I consider that there would be some parts of the scheme that would be visible. When seen they would clash awkwardly with the simple form of the buildings fronting West Way. I appreciate that the scheme would provide acceptable internal spaces, external areas and that the site was included in the Council's site allocations document. However, none of these matters alter my findings on overall character and appearance.
6. The appellants have referred me to a number of appeal decisions in the area that they consider offer support for their position¹. These summaries are of a variety of scheme sizes in a variety of locations in the borough. However, I have nothing before me to indicate that any of these schemes is directly comparable to the appeal scheme in terms of site location and constraints. As such I have attached very limited weight to these cases and judged the scheme before me on its merits.
7. I therefore conclude that the provision of dwellings in this location would have a harmful effect on the character and appearance of the area. It would be in conflict with policies CP1, CP3 and CP12 of the Core Strategy (CS) and DM1 and Appendix 2 of the Development Management Policies (DMP) in so far as they seek to promote high quality residential development that respects the character and qualities of an area.

Living conditions of existing occupiers

8. The Council's decision notice refers to the scheme as being 'overbearing and unneighbourly'. Appendix 2 of the DMP sets out a number of design criteria that will assist in creating a new development that would not lead to loss of privacy for near neighbours.
9. The buildings in West Way are two storey in height. Those that would share a common boundary with the appeal site contain two units within each 'half' of the semi-detached pair. The rear facing windows of these units, particularly at

¹ APP/P1940/A/07/2040578; APP/P1940/A/07/2051754; APP/P1940/A/14/2217333; APP/P1940/A/08/2093071; APP/P1940/A/12/2186270; APP/P1940/A/09/2102039; APP/P1940/W/18/3194375;

- first floor, would face the new buildings. In addition, the garden areas would be in close proximity to the new dwellings.
10. The front elevation of the seven dwellings would face towards West Way. The section drawings show that a large proportion of this would be visible above the boundary treatment. I note that some trees exist but the dwellings would still be visible through them. I note that the dwellings would be set away from the shared boundary. Nevertheless, the width and height of the overall building to accommodate 7 dwellings would be both prominent and visible for occupiers of West Way from both home and garden. Consequently, the outlook from dwellings in West Way would be obstructed by an imposing building of significant height. The effect would be overbearing. It would result in substantial harm to outlook.
 11. In the case of Cherry Tree Cottage the plans show that there would a separation between the site area for the scheme for 7 dwellings and the side boundary for this dwelling. This dwelling fronts onto Berry Lane and has a rear garden area. In addition, the new building would be positioned to the north and east of this property. Therefore, given the distance, separation and orientation I do not consider that the provision of the appeal scheme would have a harmful effect on the living conditions of the occupiers of Cherry Tree Cottage.
 12. The Council does not dispute the appellants separation distance to dwellings in West Way of about 29.8m. This would be between the front of the appeal building and the back of West Way buildings. The figure of 28m is given within Appendix 2 between the faces of single or two storey buildings. It is clear that distances should be greater for buildings in excess of two storeys with elevations that directly face one another. This does not differentiate between front and rear elevations.
 13. In this case the orientation of the building places the roof terraces, balconies and gardens for the new dwellings on the elevation away from West Way. The main living areas for the dwellings would also face out onto the garden areas. The front facing windows at second and third floor would relate to bedrooms and a bathroom. Therefore, overall, taken together I consider that the distance and orientation would ensure that the scheme would not lead to a loss of privacy for the dwellings in West Way.
 14. Whilst I have found that the scheme would not lead to a loss of privacy or harm the living conditions of Cherry Tree Cottage it would harm the outlook of the dwellings in West Way. In this regard it would be in conflict with CS policy CP12 and DMP policies DM1 and Appendix 2.

Protected trees

15. There are a number of trees within and adjacent to the appeal site, including a Tree Preservation Order (TPO). The scheme is supported by an Arboricultural Survey, Impact Assessment and Method Statement and Arboricultural Impact Assessment². The tree constraints and tree protection plans³ depict the TPO (T7, T8 & T9) and other trees within the site. These trees contribute to the pleasant setting of the road and the wider area. They are visible amongst the built form from a number of perspectives and in this regard have a high

² Thomson ecology April & July 2018

³ TCP01 & TPP01

amenity value. They contribute significantly to the sylvan character of the area.

16. The trees identified to be removed within the reports are categorised as either 'C' or 'U'. The TPO trees are shown to be retained along with other category B & C trees within the site should the development go ahead. There is some debate about the use of the term veteran versus mature to describe the tree. However, the key point is that the tree report identifies that T7 is a category 'A' tree. This means that within the submitted information it is described as a tree of a high quality with an estimated life expectancy of at least 40 years.
17. It is identified that the footprint of one of the townhouses would encroach into a small section of tree T7's root protection area (RPA). In addition, the new car park surface would need to be constructed from an appropriate material and upgrading of the access track and associated construction activity would also encroach into a number of RPAs.
18. The appellants have confirmed that the garages would be demolished inwards under arboricultural supervision using hand held tools or appropriate machinery footed outside of the RPAs, that the scheme could assist with remediation of existing soil compaction for T7 and that tree protection can be adequately secured by use of planning conditions.
19. Nonetheless, even if I were to accept that the provision of the shared garden area around the trees would offer choice and that future residents who did not like trees would not purchase a unit in the scheme this would not alter the fact T7 would be in a shared garden and moreover it would be in close proximity to the balcony, terrace and garden area on at least one of the units. Therefore, it would be likely to impact on light levels into these areas. Over time this proximity would lead to pressure to further lop or fell the tree. Should this occur the contribution that the tree does and could continue to make to the character and appearance of the area would be diminished.
20. Overall, I understand that it might technically be possible to demolish the garages and construct the dwellings without harm to the trees and that method statements have been provided that demonstrate how this could be carried out. However, this does not alter my concern regarding the proximity of the new building to T7. I therefore conclude that the scheme would have a harmful effect on protected trees. It would be in conflict with CS policies CP1 and CP12 and DMP policy DM6 which amongst things require new development to retain existing trees, demonstrate that existing trees would be safeguarded and ensure development is designed to retain, enhance or improve important existing natural features.

Protected species

21. There is no dispute that a preliminary ecological survey has been undertaken⁴. This found that T7 and T9⁵ have high potential to support roosting bats. It is also noted that the garden areas and greenspaces surrounding the site may support foraging and roosting. As these trees are to be retained the survey recommended mitigation. However, this would be informed by further survey work. In particular a dusk emergence and dawn return survey are recommended between May and September.

⁴ Thomson ecology Preliminary Ecological Appraisal and Preliminary Roost Assessment April 2018

⁵ para 4.6.4

22. The survey provided has not been undertaken during the bat active season of May to September and it recommends further work to be undertaken. I appreciate that the trees identified are shown to be retained. However, the information regarding the presence of species on site, based on the evidence before me, is not complete. As such I cannot be satisfied that development of the site would not have a harmful effect on protected species.
23. The appellants have referred me to an appeal decision⁶ they consider is relevant to this issue. However, the development in that case was a change of use and extensions which is a different proposition to the appeal scheme. As such I afford it very limited weight.
24. I therefore conclude that the proposal would have a harmful effect on protected species and would therefore be in conflict with CS policies CP1 and CP9 and DMP policy DM6. These policies seek to ensure that new development should not result in a net loss of biodiversity value and should conserve, enhance and where appropriate restore biodiversity.

Highway safety

25. Appendix 5 of the DMP sets out parking standards for new development. For a 3 bed dwelling the relevant standard is given as 2.25 spaces per dwelling (2 assigned space). The plans show a total of 17 spaces within the appeal scheme. 7 of these would be garage spaces for individual dwellings and the car parking area would contain a further 10 spaces.
26. The Council's statement acknowledges that only 7 of the spaces would be assigned and that the 10 spaces could be assigned through a parking management plan by condition. This would leave 3 unassigned visitor spaces. Overall there is no dispute that this provision would exceed the policy requirement. As such the scheme would meet its parking needs on site and there would not be overspill parking that could be prejudicial to highway safety.
27. I therefore conclude that the proposal would not have a harmful effect on highway safety. It would not be in conflict CS policies CP1, CP10 and CP12 and DMP policies DM1, DM13 and Appendix 5 in so far as they seek new development that provides sufficient parking to meet the operational requirements of the development whilst encouraging a range of sustainable transport options.

Living conditions of future occupiers

28. The Council's policy requirement for the provision of garden areas for new development are set out in Appendix 2 of the DMP. This sets out at part (b) that this '*should be attained as either individual gardens or in part, as space forming the setting for the buildings*'. Part (c) sets out '*indicative levels*' of the amount that should be provided by dwelling size. The appeal scheme would provide a private and enclosed garden area for each dwelling. In addition, the plans show that each dwelling would have a balcony and terrace area. On the site there would also be a shared garden area. This would be located close to the car park area for the houses.
29. The amount of space provided varies for each unit. The areas shown on the plans are regular in shape and would be private. There is some disagreement about the orientation of the gardens. However, I agree with the appellants that not all gardens receive direct sunlight at certain times of day. In this case

⁶ APP/P1940/A/12/2186270

the policy is framed in such a way that there is scope for flexibility in application of the standards. In this case I consider that the mix of provision for the new dwellings would provide a suitable amount of garden space. It is also the case that the policy allows for the inclusion of the shared garden area when considering the provision of garden areas for new dwellings. Therefore, even taking into account the presence of the trees, I consider that it is reasonable to take the shared garden area into account. Overall, I am satisfied that the combination of the forms of provision in this scheme would provide an acceptable quality and quantity of garden space.

30. I therefore conclude that the scheme would provide appropriate living conditions for future occupiers, with particular regard to provision of garden space. It would not be in conflict with CS policy CP12 and DMP policy DM1 and Appendix 2 in so far as they require new developments to take into account the need for adequate levels of garden space.

Affordable housing

31. The main area of dispute is the application of planning policy. In spite of providing a draft unilateral undertaking the appellants have challenged the need for affordable housing as a financial contribution.
32. CS policy CP4 and its associated Affordable Housing SPD require the provision of affordable housing on site in new development. More specifically the policy requires around 45% of all new housing as affordable housing. The Council clarifies that where the net gain of dwellings is between 1 and 9 then that requirement can be met through a financial contribution, the detail of which is within the SPD (AFH3 Mode of Provision).
33. Dating from 2011 policy CP4 and the SPD are not entirely consistent with the Framework in so far as it confirms that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. Therefore, this reduces the weight I attach to CP4 and the SPD.
34. The Council advise that it considers that the need for affordable housing remains great⁷ and as such great weight should be attached to the evidence of housing need. Paragraph 2 of the National Planning Policy Framework (the Framework) reiterates that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan would require affordable housing whilst national policy weighs against requiring such a provision. I have no substantive evidence that the constraints or other factors would render the scheme unviable with the inclusion of an appropriate commuted sum. Therefore, overall, even reducing weight to the development plan the other material considerations in this case would not outweigh the conflict with the development plan.
35. The appellants have referred me to a number of ⁸ other appeal decisions. These are in difference local authority areas where the policy position is different to this case. Therefore, whilst I have considered these decisions carefully, I have considered the specific circumstances of the appeal scheme on this matter. Provision of an affordable housing contribution as set out in the draft undertaking would be a benefit however it would not outweigh the harm I

⁷ Evidence for re-instating the affordable housing threshold in Core Strategy Policy CP4: Affordable Housing

⁸ APP/P1940/W/18/3194375; APP/W3520/W/3197538; APP/D3505/W/18/3217096

have found on the other main issues. Furthermore, as I am dismissing the appeal for other reasons, this matter would not alter my decision.

Planning balance

36. It is common ground that the Council does not have a five year supply of deliverable housing. The Framework indicates that where relevant policies are out-of-date planning permission will be granted unless material considerations indicate otherwise, taking into account whether: any adverse impacts of planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (the tilted balance test); or, specific policies in the Framework indicate that development should be restricted. Footnote 7 is clear that applications involving the provision of housing where the local planning authority cannot demonstrate a five year supply of housing will render the most important policies out of date. As such the tilted balance test is engaged.
37. The adverse impacts relate to the harm to the character of the area, living conditions of existing occupiers in West Way with regard to outlook, harm to protected species and protected trees. This would run counter to the core planning principle of designing developments which add to the overall quality of an area. In my judgement, this harm carries substantial weight. In terms of benefits, the construction of up to 7 houses would deliver market and an affordable housing contribution in an area where delivery of both has historically been lower than that required to meet need. On the evidence provided to this appeal, the Council is currently not able to demonstrate an adequate supply of housing which adds weight to the social benefits which this proposal might bring through the provision of homes.
38. I have found that the scheme would harm the character of the area, living conditions of existing occupiers, protected trees and protected species. In this regard it would be in conflict with development plan policies CP1, CP3, CP9, CP12, DM1, DM6, Appendix 2 and the Framework. These are matters to which I attach significant weight. Whilst this proposal would deliver social and economic benefits they would, to my mind, be significantly and demonstrably outweighed by the adverse effect of the environmental harm identified.
39. The proposal would be in conflict with CS and DMP policies. Therefore, it would be in conflict with the development plan as a whole. The proposal should also be assessed on the basis of the tilted balance set out at paragraph 11 of the Framework which is a material consideration. On this point I have found that the harm from the scheme would significantly and demonstrably outweigh the benefits of the provision of dwellings in this case. As such the Framework is a material consideration which also weighs against the proposal. Therefore, in the circumstances of this appeal the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.

Conclusion

40. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR