
Appeal Decision

Site visit made on 4 June 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal Ref: APP/X0415/W/19/3220978

Plots 15 and 16, Woodchester, Woodchester Park, Knotty Green HP9 2TU

- 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 Zafiro Homes against the decision of Chiltern District Council.
 - The application Ref PL/18/2774/FA, dated 20 July 2018, was refused by notice dated 8 October 2018.
 - The development proposed is erection of three detached dwellings with double garages (in lieu of two approved dwellings).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the appeal, the appellant submitted an executed Unilateral Undertaking (UU) which would secure developer contributions towards affordable housing. I consider this matter later in my decision.

Main Issues

3. The main issues are the effect of the proposal on:
 - the living conditions of neighbouring occupiers with particular regard to privacy and outlook; and
 - the character and appearance of the area, including whether adequate private rear amenity space would be provided.

Reasons

Living conditions

4. The appeal site is vacant parcel of land which had previously formed part of the curtilage of Woodchester, a bungalow, which sat in extensive grounds prior to its demolition. The site benefits from an unimplemented extant planning permission for two dwellings¹ (the original permission) which formed part of wider development taking place in the area. More recently, during the course of the appeal, planning permission has been granted for three dwellings² on the appeal site (the recent permission).

¹ CH/2018/0122/FA

² PL/18/4331/FA

5. The proposed development lies immediately to the south west of two substantial dwellings known as Hawthorn House and Tinkersfield (the neighbouring properties). Those houses are set back some way from the appeal site beyond their rear garden areas.
6. The topography of the area is such that the appeal site is elevated somewhat above the ground levels of the neighbouring properties. Existing planting filters views to a degree between those properties and the appeal site although the evidence indicates that tree removal has recently taken place, allowing an appreciable degree of inter-visibility between the properties. At the request of the occupiers, I viewed the appeal site from the house and gardens of the neighbouring properties on my site visit.
7. The proposed dwellings would be two storeys and have comparable ridge heights to those consented under the original permission. The rear elevations of the appeal dwellings would face directly towards the neighbouring properties across their rear gardens. In contrast to both the original and recent permissions, however, the appeal scheme would incorporate roof dormer windows to the rear elevations, effectively creating an additional half-storey.
8. According to the submitted evidence, the separation distance between the nearest proposed windows (in Plot 2) and those of Hawthorn House would be around 38m. Whilst this represents a slightly reduced distance from both the original and recent extant schemes, I consider this degree of separation would be sufficient to safeguard the privacy of occupiers within habitable rooms of the neighbouring dwellings, even taking into account the difference in ground levels.
9. However, I saw that whilst relatively large, the rear gardens of Hawthorn House and Tinkersfield lead immediately off the back of the host properties such that full extent of the gardens are in active use as functional private outdoor amenity space.
10. The introduction of roof dormer windows on the appeal dwellings would enable elevated and expansive views across these private garden spaces. This effect would be compounded by the difference in relative levels of the properties. In my judgement, this would result in an unacceptable degree of overlooking of those rear gardens and give rise to a harmful loss of privacy for the properties' occupiers.
11. I appreciate that the appellant has already undertaken significant replacement landscaping along the rear boundary of the appeal site, in line with the requirement of the recent permission. This, in due course, can be expected to combine with existing planting to provide a high degree of screening between the properties. Nevertheless, it is reasonable to expect such planting to take a considerable period of time to mature to the extent that it would provide effective screening of views from roof dormer level. Moreover, I am mindful that soft landscaping cannot, in any event, be guaranteed to remain in good health and effective in perpetuity and would not, in this case, therefore provide an effective safeguard against loss of garden privacy.
12. In terms of outlook, I am satisfied that the distances involved would not give rise to any unacceptable sense of enclosure from either the neighbouring properties' gardens or houses and so no harm would arise in that respect.

13. In conclusion on this main issue therefore, whilst no unacceptable loss of outlook would occur from the neighbouring properties, or loss of privacy from the dwellings, the proposed development would give rise to a harmful loss of garden privacy for occupiers of those dwellings. As such, the scheme would conflict with the Saved Chiltern District Local Plan (September 1997 including alterations adopted May 2001 and consolidated September 2007 & November 2011) (the CLP) Policy GC3. That Policy seeks to achieve good standards of amenity for existing adjoining and neighbouring properties in considering proposals for development.

Character and appearance

14. Woodchester Park is a sizeable development of large, detached dwellings generally occupying spacious plots in a landscaped environment. Whilst in this respect there is a high degree of consistency, there is also considerable variation in the size and type of buildings and the orientation of plots.
15. The appeal scheme proposes the erection of three detached dwellings which would cover a similar width of development as that already consented under the original and recent permissions. The dwellings would all directly address the road frontage and according to the appellant's evidence, would be separated from each other by gaps of 4.6m. The dwellings and their associated garage/carport blocks would be set back some distance from the highway behind existing landscaping.
16. In terms of its effect upon the street scene, the scheme would give rise to a more dense form of development compared to that of the original permission. However, it would nonetheless be broadly comparable to, and appear as a continuation of, Plots 14A and 14B immediately to the north west which I saw were under construction at the time of my site visit. Furthermore, the scheme would, in proposing three smaller dwellings, introduce a lesser degree of continuous built-up frontage.
17. Moreover, whilst the dwellings would incorporate living accommodation at roof level, this would not be readily perceptible in public views from the highway and the dwellings would not appear disproportionately tall.
18. As such, from this perspective, I consider the proposal would not appear as a cramped form of development in the street scene and would be consistent with the character of the immediately surrounding area.
19. Turning to adequacy of proposed garden space, CLP Policy H12 sets out, amongst other requirements, a general expectation of minimum rear garden depths of about 15m throughout the District. The purpose of the Policy is stated as being to ensure environmental quality and also to provide reasonable amenity space for future occupiers. For convenience, I have considered both these aspects in this main issue.
20. The submitted plans show that all three of the proposed gardens would incorporate a depth of at least 12m for a substantial proportion of their width, albeit that those distances would, in places, be considerably less taking into account the proposed projecting rear elevations of the dwellings.
21. Accordingly, the proposal would not, on the face of it, comply with the stated numerical requirement of CLP Policy H12. Moreover, the Council submits that

average garden lengths in the area exceed 15m and, in accordance with criterion (i)(a) of CLP Policy H12, that the level of provision required under the appeal proposal should be similarly larger.

22. However, I am mindful that a great deal of development has taken place recently in the area and I have been provided with no substantive evidence to indicate that average gardens depths in the area are “significantly” in excess of 15m as required by the Policy. On the contrary, the proposed garden areas are marginally smaller than, but broadly comparable with those of adjoining Plots 14A and 14B, with which the dwellings would be closely associated.
23. In terms of the effect of the garden sizes on the character and appearance of the area, the configuration of the plots are such that no significant views of the rear of the proposed dwellings would be gained from public vantage points. The depth of the proposed rear gardens would not therefore be determinative of, or detrimental to, the character and appearance of the area.
24. Furthermore, whilst the proposed dwellings would be relatively large, I have no substantive evidence to show that the proposed garden spaces would not be provide a comfortable level of outdoor amenity for normal domestic needs.
25. In any event, whilst not achieving a minimum depth of 15m, the proposed gardens are broad, with the smallest plot totalling 178 sq.m. according to the appellant’s figures.
26. In this context, I am conscious that CLP Policy H12 refers to “about” 15m as the minimum standard to be achieved. Consequently, having regard to the consistency of the proposed gardens with those on the adjoining development and the generous widths of the garden areas, I find no conflict with Policy H12 in this case.
27. I acknowledge the appellant’s submission that the Policy, having been adopted in 1997 and having antecedents some time before that, should be regarded as out of date. However, the National Planning Policy Framework (the Framework) indicates that existing policies should not be considered out-of-date simply because they were adopted prior to its publication. In this regard, it states that due weight should be given to those policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
28. Whilst the Framework establishes that development should make efficient use of land taking into account the desirability of maintaining and area’s prevailing character and setting (including residential gardens), that is not inconsistent with the overall intentions of CLP Policy H12. As noted above, that Policy does not require the rigid application of a blanket numerical standard in all cases. Accordingly, I have therefore had regard to the Policy in determining the appeal.
29. In conclusion on this main issue therefore, I find that the proposed development would not lead to a cramped form of development and would not fail to make adequate provision for private outdoor amenity space. As such it would accord with CLP Policies GC1, H3, GC3 and H12 and adopted Chiltern District Core Strategy (November 2011) (the CCS) Policy CS20. Together, these Policies require high standard development to be compatible with the character of the built-up area by respecting the general density, scale, siting,

height and character of buildings in the locality and the presence of landscaping. They also require the provision of adequate garden areas including good standards of amenity for future occupiers of the development.

Other Matters

30. The Council's second reason for refusal related to the absence of developer contributions towards affordable housing. As noted above, however, a UU was submitted during the appeal which would secure a payment of £75,000 for off-site affordable housing measures in line with CCS Policy CS8. The Council has not indicated whether this would remove its concerns in relation to this matter.
31. Nevertheless, as there would be planning benefits in terms of affordable housing, this matter weighs in favour of the proposal. Furthermore, there is no dispute between the main parties that the appeal site is, in principle, a suitable location for housing development and the scheme would contribute to general housing land supply. However, these benefits are limited by the small scale of the scheme which amounts to a single net additional dwelling compared to the original permission. As such, the benefits are not sufficient to outweigh the harm I have found in the overall planning balance.

Conclusion

32. Whilst the proposed development would not be unacceptably harmful to the character and appearance of the area, it would give rise to unacceptable loss of garden privacy for occupiers of neighbouring properties. For the reasons given, the appeal should be dismissed.

Ian Bowen

INSPECTOR