



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: 06 August 2019

Appeal Ref: APP/X0415/W/19/3220949

Rear of 14-16 Kings Lane, South Heath HP16 0QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Dominic Killenger against Chiltern District Council.
 - The application Ref PL/18/2197/FA, is dated 8 June 2018.
 - The development proposed is redevelopment of land to rear of 14-16 Kings Lane, construction of three dwellings with associated access, parking & landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Dominic Killenger against Chiltern District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council failed to make a decision on the planning application within the requisite period for determination and did not submit a statement of case in respect of the appeal.
4. However, the Council's response to the appellant's application for a cost award confirms that its concerns relate to the effects on the living conditions of neighbouring occupiers with respect to overlooking and loss of privacy. In addition, the Highway Authority (HA) submitted a statement expanding on its objections, with which the Council concurs.
5. My attention has also been drawn to reasons for refusal which were issued in relation to an apparently similar scheme on the site¹ which additionally raised concerns in relation to ecology. However, the County Ecologist has indicated that such matters could, in this case, be satisfactorily addressed through a suitable planning condition. I see no reason to disagree.
6. I have had regard to the above matters, together with all representations made by interested parties, in framing the main issues in this case. These are set out below.

¹ CH/2017/1505/FA

Main Issues

The main issues are:

- the effect of the proposal on the living condition of occupiers of 28 and 29 Sibleys Rise with particular regard to garden privacy; and
- whether the proposal would provide suitable and safe access for vehicles and pedestrians.

Reasons

Living Conditions

7. The proposed development comprises three two-storey dwellings within the large rear gardens of 14 and 16 Kings Lane. Two of the houses would be semi-detached with the third detached. They would be located broadly on the site of an existing large, detached outbuilding set in a sizeable area of hardstanding.
8. The dwellings would be orientated at right angles across the existing plots, with their main elevations aligned on a north west/south east axis. The north west elevations would be sited fairly close to the boundary with the rear gardens of 28 and 29 Sibley Rise which are set at a somewhat lower level beyond a brick wall.
9. The submitted plans indicate there would be rear-facing bedroom windows at first floor in each of the three dwellings and occupiers of these rooms would have uninterrupted view across these private spaces. Consequently, there would be a harmful loss of privacy to the garden areas of Nos 28 and 29. The appellant contends that the harm could be mitigated through the imposition of a planning condition requiring the first floor rear windows to be fitted with obscured glazing up to a height of 1.7m.
10. Whilst this would ensure no loss of privacy would arise, the proposed windows would be the sole source of outlook for occupiers of those rooms. The imposition of such a condition would therefore give rise to an oppressive environment for future occupiers of the dwellings and would not provide suitable living conditions for bedrooms.
11. Accordingly, I conclude on this main issue that the proposed development would give rise to an unacceptable loss of garden privacy for occupiers of No 28 and 29. Alternatively, the scheme, if conditioned as described above, would not provide satisfactory living conditions for occupiers of the proposed north-west facing bedrooms at first floor. This would conflict with Policy GC3 of the Saved Chiltern District Local Plan (1997, including alterations adopted 29 May 2001, consolidated September 2007 & November 2011) (the CLP). That Policy requires good standards of amenity for future occupiers and to protect the amenities of those of existing adjoining and neighbouring properties. For the same reasons, the proposal would also not accord with the National Planning Policy Framework (the Framework) which requires a high standard of amenity for existing and future users of development.

Highway access

12. The appeal site would be accessed off Sibleys Rise, a cul-de-sac which loops around to terminate at a block of five garages. The street is flanked for the majority of its length on both sides by footpaths and incorporates a turning

- circle and occasional side roads providing opportunities for cars to pass and/or turn.
13. Whilst there is some dispute over the width of the highway, it appeared to me that sufficient width is available to allow two cars to pass along the majority of its length. However, it is narrow with frequent on-street parking and a sharp bend in the road on approaching the appeal site, which provide constraints on free-flowing traffic.
 14. The main parties concur that the development would be likely to generate between 12 – 18 additional vehicular trips per day. Whilst this would add to inconvenience experienced by existing road users on the main section of Sibleys Rise, I do not regard this level of increase in traffic volumes as being so harmful to the free operation of the highway network as to require permission to be withheld. Furthermore, I have seen no substantive evidence that the additional traffic flows would give rise to an increased risk to the safety of pedestrians, cyclists or other road users.
 15. However, in the vicinity of the proposed access to the dwellings and associated car parking area, near 22A Sibleys Rise, the street has only one footway located on its north western edge upon which, according to the HA's evidence, informal car parking takes place. Furthermore, the pavement terminates at this point and pedestrian access to the dwellings would be via a shared surface curving around towards the proposed parking area.
 16. Again, whilst there is disagreement over the existing dimensions, the main parties concur that the width of the highway at this point falls below the HA's minimum requirement of 4.8m, which would allow vehicles and pedestrians to safely co-exist.
 17. In this regard, the appellant submits that the existing garage block would be demolished and replaced thus enabling the required width to be achieved. However, the garages fall outside of the appeal site and no clear mechanism has been submitted which would enable me to be confident that such a measure would be undertaken in the event of planning permission being granted.
 18. Whilst the distance between the existing footpath outside No 22A and the appeal properties is not particularly extensive, it would nonetheless be the sole means of accessing the dwellings on foot. Given the limited width of the road at this point, such an arrangement would not, in my judgement, be conducive to safe and comfortable pedestrian access.
 19. As regards access for refuse vehicles, I accept that smaller units can reasonably be expected to be deployed by the waste collection authority where necessary. Nevertheless, the submitted 'swept path' diagrams² indicate that the retention of the garage block would mean space, even for smaller vehicles, would be somewhat constrained and require multiple manoeuvres in order to turn. Moreover, this assumes that the area remains free of other vehicles being parked immediately outside the garages. I am not aware of any restriction currently preventing such parking, or any firm proposals to introduce any such restrictions. Consequently, I attach little weight to the claimed benefits of the scheme allowing such vehicles, together with other large vehicles such as fire

² Set out in the Access Statement prepared by Lanmor Consulting, September 2018

appliances, to arrive and depart in forward gear in contrast to the pre-existing situation.

20. In conclusion on this main issue, therefore, whilst the increased level of traffic associated with the development would not have an unacceptable effect on the safe and free operation of the estate road, it would not provide safe and convenient pedestrian access. As such it would conflict with CLP Policies TR2 and TR3 and Core Strategy for Chiltern District (November 2011) Policies CS4, CS25 and CS26.
21. Together, those policies require provision of safe access and standards of road safety for all users including the provision of safe, convenient and attractive access on foot and making suitable connections with existing footways. For the same reasons, the scheme would not accord with the policies of the Framework which seek to ensure that safe and suitable access can be achieved for all users, giving priority first to pedestrians. The Framework also states that applications for development should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians and vehicles.

Other Matters

22. The site lies in the designated Green Belt to which the Framework makes clear the Government attached great importance. Accordingly, whilst the Council has not raised any objections in relation to this matter, I requested copies of relevant Development Plan Policies during the course of the appeal.
23. Of particular relevance are Policies GB5 and GB23 which, together, permit infilling developments within settlements in the Green Belt provided the development consists of a small parcel of land in established use which is totally or substantially enclosed by existing buildings and not just their curtilages.
24. The policies also require the design of the proposed development to be compatible with the existing character of the settlement around the development and where appropriate, of a type and size to suit local housing needs.
25. Whilst those Policies have been in operation for a considerable period of time and were adopted in a different planning policy context, they are nevertheless broadly consistent with Paragraph 145 e) of the Framework which establishes that limited infilling in villages is, by definition, not inappropriate development in the Green Belt.
26. I have seen no evidence to suggest that the type of housing proposed would not meet local needs. Furthermore, given the site is not prominent in townscape, would replace an existing substantial outbuilding and is located in fairly close proximity to existing dwellings where there is variation in the pattern of development, I do not find that the proposal would be harmful to the character and appearance of the area.
27. Accordingly, I find the proposal would not be inappropriate development in the Green Belt and would accord with local and national planning policies in this regard.

28. Turning to other elements of the scheme, the proposed development would provide additional housing within a settlement where there is accessibility to day-to-day services and facilities. The scheme would also support employment during the construction phase and would provide some additional ongoing support for services and local businesses. These factors weigh in favour of the proposal. However, given the small scale of the development, they are not sufficient to outweigh the harm I have found.
29. I have had regard to a number of other issues raised by interested parties. However, as I am dismissing the appeal in relation to the main issues above, they are not determinative to my decision.

Conclusion

30. For the reasons given, the appeal is dismissed.

Ian Bowen

INSPECTOR