
Appeal Decision

Site visit made on 13 August 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Appeal Ref: APP/P1940/W/19/3229274

101 Durrants Drive, Rickmansworth, Hertfordshire WD3 3NY

- 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 and Mrs R White against the decision of Three Rivers District Council.
 - The application Ref 18/2494/FUL, dated 15 December 2018, was refused by notice dated 4 March 2019.
 - The development proposed is a new two storey dwelling to the rear of 101 Durrants Drive.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - The living conditions of residents at 99 and 101 Durrants Drive, with particular reference to privacy and outlook;
 - The living conditions of future residents, with particular reference to privacy and the amount of garden space;
 - Highway safety with particular reference to the parking provided, and;
 - The provision of Affordable Housing with reference to local and national policies.

Reasons

Character and appearance

3. 101 Durrants Drive is on the corner of Durrants Drive and Little Green Lane and is within an Urban Character Area referred to in the Croxley Green Neighbourhood Plan 2017-2032, December 2018 (NP) as North of Baldwins Lane, Links Way and Little Green Lane. The largely residential area is distinctive due to its grid like layout and the homogeneous form, materials and regular relationship with the street of the mostly 2 storey semi-detached dwellings. No. 101 adjoins Little Green Lane, noted as an ancient byway in the NP, which forms a definite edge to the settlement with open countryside

beyond. The area has an ordered, pleasant sub-urban character with a palpable change in character to the north of Little Green Lane.

4. Although 101 Durrants Drive has a 2 storey rear extension which has some prominence in Little Green Lane, it otherwise respects and conforms to the distinctive homogenous form and layout. As the appeal site currently provides part of the rear garden and accommodates a detached garage for the property, it makes a positive contribution towards the regularly spaced dwellings and general character of the area.
5. It is proposed to introduce a contemporary designed two storey dwelling that would front onto Little Green Lane, perpendicular to No. 101. Due to its gable frontage employing a first floor overhang and variety of fenestration proportions, the development would take a form and incorporate features that would be very different to the established dwellings. Given that there is otherwise generally a high degree of coherence in the form and appearance of nearby houses, the siting of the development in such proximity to more conventional dwellings would result in a marked, discordant effect. For this reason, it would differ from the detached modernist property at 155-157 Links Way¹, which relates to a site that is not located directly adjacent to more traditional properties in the same way.
6. In addition, the siting of the dwelling would be at a somewhat awkward angle with Pen-Y-Bryn and would be closer to the street than is generally the case for nearby dwellings. Whilst I accept the ground floor would be set further into the site than the upper portion of the building, the use of the overhang would do little to overcome the proximity of the overall mass of the building with Little Green Lane. This would make it unduly prominent in Little Green Lane thereby exacerbating the dissonance with the surrounding built form.
7. The appeal proposal would, to a greater extent, be read within the context of the building line established by the principal elevations of the properties to the west rather than the flank wall of No. 101, which in any event, due to the two storey rear extension, is itself conspicuous in the street scene. As such, the position of the flank wall relative to Little Green Road would not be an appropriate example to follow.
8. Furthermore, the proposed new dwelling would displace the parking area for No.101 necessitating the provision of a hardstanding for parking and turning area on most of the front corner garden. The loss of greenery at this prominent corner entrance into Durrants Drive would further diminish the character and appearance of the area.
9. The appeal proposal would have a smaller rear garden than most of the established properties within the grid like layout. However, I accept that this would not be readily apparent from public areas and therefore, is unlikely to adversely affect the character and appearance of the area to a significant extent. Nevertheless, this does not outweigh the harm I have found above.
10. Accordingly, the appeal proposal would have an adverse impact upon the character and appearance of the area and therefore, would be contrary to policies CP1, CP3 and CP12 of the Three Rivers District Council, Core Strategy, October 2011 (CS). Policy CP1(f) seeks, amongst other matters, to

¹ Reference 13/1342/FUL

protect the built environment from inappropriate development, policy CP3 seeks to promote residential development that respects the character of the district and CP12 establishes a number of design criteria in order to achieve high quality design that has regard to its local context.

11. In addition, the development would conflict with policy DM1 and Appendix 2 of the Three Rivers District Council, Development Management Policies, Local Development Document, July 2013 (DMP) which, amongst other matters, contain detailed design criteria such that the design and layout of new residential development protects the character of existing areas. Furthermore, there would be conflict with policy CA1 of the NP which requires new development to conserve, and if possible, enhance key elements of defined character areas set out within Appendix B of the NP. It states that particular attention should be given to the layout, building line and architectural scale and detail.

Living conditions of residents at 99 and 101 Durrants Drive

12. Due to the orientation and proximity of the upper floor windows within the rear elevation of the proposal, it would allow for some views of the rear garden of 99 Durrants Drive. I accept that restricted opening and obscure glazing employed for the loft light and robe area, and a perforated screen around the window to bedroom 2, would prevent intrusive views towards the dwelling at 99 Durrants Drive. Even so, the presence and height of this number of upper floor windows directly facing towards the lower portion of the rear garden of No.99 would nevertheless give the perception of overlooking that would diminish the adjacent occupiers' enjoyment of a more private area of their garden to an unreasonable degree.
13. Appendix 2 of the DMP indicates that the relationship between the rear and flank walls of development should not harm the prospect of existing residential occupiers. Whilst no specific indicative distance is given, the flank wall of the proposed dwelling would at some points be approximately 10.6 metres away from the rear wall of No.101. In addition, given the depth of the footprint of the proposal, it would directly align with the rear of 101 for approximately half the width of the property and would furthermore, continue beyond that towards Little Green Lane. When this is combined with the height of the dwelling at approximately 8.2 metres, there would be a considerable enclosing effect on the outlook from the upper floor rear windows of No.101 that would adversely affect the occupants of the property.
14. The lack of harm arising to the occupants of Pen-Y-Bryn, and adequacy of the garden space remaining for No.101 and absence of objections from nearby residents would not outweigh the harm I have identified.
15. Accordingly, I find that the appeal proposal would result in unacceptable harm to the living conditions of nearby residents as a result of overlooking and harm to outlook. Therefore, the proposal would be contrary to policies CP1 and CP12 of the CS which, amongst other matters, seek to prevent inappropriate development by the protection of living conditions for residential occupants. It would further be contrary to policy DM1 and Appendix 2 of the DMP which, amongst other things, indicates that new development should demonstrate that it will not result in the loss of residential amenity.

Living conditions of future residents

16. Appendix 2 of the DMP suggests 63sqm as an indicative level of amenity space/garden space should be provided for a two-bedroom dwelling. The parties disagree as to the size of the garden provided. Drawing reference 1836/101 refers to the rear amenity space for the dwellings as comprising 65sqm. However, the Council consider that once space is deducted for cycle and refuse storage, as well as hedging the usable amount remaining would be 49sqm.
17. Nevertheless, appendix 2 refers to indicative levels which suggests some room for flexibility and is not prescriptive about whether certain factors should be deducted in the calculation of amenity/garden space. Furthermore, the south east facing, rectangular space includes a patio and provides sufficient room for sitting out and some gardening activities. On this basis, the quantum of garden space would be adequate without compromising the living conditions of future occupants.
18. Nevertheless, the rear garden area is located directly behind No.101, and as a result, would allow for significant overlooking from its upper floor rear windows. As this would affect the majority of the garden area, including the patio which is likely to be used most intensively for sitting out, therefore, the degree of impact would be greater than the level of mutual overlooking to gardens often experienced within sub-urban areas. It follows that the privacy of future occupiers would be unreasonably compromised when using their rear garden. I acknowledge that for the most part, potential future occupiers are best positioned to make decisions about the suitability of their accommodation, but this would not justify the provision of harmful living conditions in new development.
19. The limited depth of the rear garden for No.101 would be likely to prevent an effective planted screen that would fully address this harm without having knock-on effects on the living conditions of future occupants of both No.101 and the proposed dwelling.
20. Therefore, I find that the development would result in unacceptable harm to the living conditions of future residents as a result of the degree of overlooking to the rear garden. As such, the proposal would be contrary to policies CP1 and CP12 of the CS which, amongst other matters, seek to prevent inappropriate development that includes the protection of living conditions for residential occupants. Furthermore, it would conflict with policy DM1 and Appendix 2 of the DMP which, amongst other things, seek to safeguard the living conditions for residents of new development.

Highway safety

21. Policy DM13 of the DMP requires new development to provide parking in accordance with the parking standards set out in Appendix 5 of that document. For a 2 bedroom dwelling it is suggested that this should be 2 spaces. Drawing reference 1836/106 shows two spaces in a tandem arrangement to the side of the new dwelling which, notwithstanding the Council's concerns, the appellants have confirmed would meet the standard size for parking spaces² referred to in the DMP. The evidence indicates that

² 2.4m x 4.8m, paragraph 15.7 DMP

there would be approximately 2.5m between the flank wall of the new dwelling and boundary fence such that there would be sufficient room for the provision of standard spaces to be conditioned.

22. Whilst there may be plans in the future to increase the size of standard parking spaces to reflect the size of modern cars, given that the document 'Parking: Design and Good Practice' is still under preparation it attracts little weight. The Highway Authority comments do not raise concerns in relation to the accessibility of the spaces, and little evidence is provided to substantiate the Council's concerns in this regard. Hence, there is insufficient evidence provided to demonstrate that spaces that meet the current adopted standard would be unusable.
23. On this basis the proposal would make appropriate provision for off-street parking, and I find no conflict with the overarching criteria for sustainable development set out in policy CP1 of the CS, nor policies CP10 and CP12 of the CS which, amongst other matters, require new development to make adequate provision for car parking. Furthermore, in this regard, the proposal would accord with the relevant parts of policies DM1 and DM13 and Appendix 5 of the DMP which in combination, require adequate parking to be provided, and specify minimum standards.

Affordable Housing

24. Policy CP4 of the CS expects development resulting in a net gain of one or more dwellings to contribute to the provision of affordable housing. Where the net gain is below 10 houses, it is specified that there should be a financial contribution to off-site provision, calculated in accordance with the guidance in the Three Rivers District Council, Affordable Housing Supplementary Planning Document, Approved at Executive Committee, June 2011 (SPD). This would reflect the 45% provision of all new housing to be affordable housing specified in policy CP4. In relation to this case the Council suggests the figure would be £57,000.
25. The appellants have not provided any mechanism to secure such an off-site contribution, and I have not seen evidence that such a contribution would make the development unviable. Accordingly, on the face of it the proposal would conflict with the requirements of policy CP4 of the CS and the advice in the SPD.
26. However, both policy CP4 of the CS and the SPD predate the National Planning Policy Framework (the Framework) which states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect it to be met on-site unless specific circumstances are met. Paragraph 63 of the Framework states that provision of affordable housing should not be sought for residential development that are not major development, other than in designated rural areas.
27. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise³. The Framework must be taken into account when preparing the development plan and is a material consideration in planning decisions. Moreover, in relation to development plan policies that pre-date

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

the Framework, Paragraph 213 states due weight should be given to them according to their degree of consistency with the Framework.

28. The appeal proposal is not a major development as defined in the Framework, and the Council do not suggest it lies in a designated rural area. Accordingly, seeking a contribution towards affordable housing in these circumstances would conflict with the policy set out in paragraph 63.
29. I am referred to the Needs Analysis dated July 2018⁴, which shows a very high need for affordable housing in the district stating that the lowest quartile house price in Three Rivers as of September 2017 made it the sixth most expensive authority in England and Wales, excluding London, with the fifth worst median affordability ratio. The report sets out local circumstances which outline the shortfall in the provision in affordable housing and the nature of development proposals within the district show that it is particularly reliant on small sites to make contributions to affordable housing. Taking these factors in combination, this amounts to considerable recent evidence that underpins the approach in policy CP4 as an exception to national policy.
30. I am also referred to a number of recent appeal decisions⁵ in the district which support this approach. Although some of these were considered in relation to earlier versions of the Framework, they postdate the introduction of the wording in paragraph 63 which is similar to that in the current version of the Framework⁶ and are therefore relevant to the scheme before me and as such, carry considerable weight.
31. The appellant refers to a recent appeal decision⁷ for 6 houses whereby the Inspector gave greater weight to paragraph 63 of the Framework than the development plan and found that a planning obligation in relation to affordable housing provision was not justified. However, that proposal related to a different district and development plan policy. Furthermore, it appears that there was little evidence before the Inspector to substantiate the approach in the development plan. As such, it is of little weight in relation to the proposal before me, which I have determined on its merits and on the evidence presented.
32. Therefore, I find that the proposal would fail to make appropriate provision for affordable housing and as such, would be contrary to policy CP4 of the CS which seeks to secure such provision, which although does not attract full weight, in light of the evidence provided, attracts significant weight sufficient to outweigh paragraph 63 of the Framework.

Planning balance & conclusion

33. The development proposal would provide an additional dwelling in a reasonably accessible location and would provide accommodation for the appellants who wish to downsize. In addition, there would be local economic benefit deriving from the construction of the development, and from the economic activity associated with future occupants. However, given the modest scale of the development such benefits attract limited weight.

⁴ Evidence for Re-Instating the Affordable Housing Threshold in Core Strategy Policy CP4: Affordable Housing

⁵ Referenced APP/P1940/W/18/3213370, APP/P1940/W/19/3219890 & APP/P1940/W/19/3222318, APP/P1940/W/19/322136.

⁶ February 2019

⁷ Reference APP/Z3825/W/18/3201430

34. There is no dispute between the parties that the Council cannot demonstrate a 5-year supply of deliverable housing sites. Paragraph 11 of the Framework states that in these circumstances where the policies which are most important for determining the application are out of date, the presumption in favour of sustainable development means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
35. However, although I have found that the development would not cause harm to highway safety, the adverse impacts that I have identified in relation to the character and appearance of the area, the living conditions of existing and future residents and the provision of affordable housing would significantly and demonstrably outweigh the modest benefits accruing from the provision of a single dwelling. Therefore, for the reasons given above, the appeal is dismissed.

Helen O'Connor

Inspector