



Appeal Decision

Site visit made on 20 August 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/A1910/W/19/3228091

26 Pancake Lane, Hemel Hempstead HP2 4NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by OPM Properties Services Limited against the decision of Guildford Borough Council.
 - The application Ref 4/00010/19/MOA, dated 24 December 2018, was refused by notice dated 18 April 2019.
 - The development proposed is described as demolition of the existing bungalow and construction of two identical dwelling houses with 16 flats within the existing envelope.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved. Highly detailed plans have nonetheless been provided, and the appellant has described the proposal in a similar level of detail. In my view, given the tight limitations placed on layout, scale, access and scope for landscaping by the size of the plot and the amount of development proposed, the plans provide a reasonably good impression of the scheme likely to be presented in clearance of the reserved matters. I have therefore assessed the appeal on this basis, whilst also considering any scope available for variation within my reasons below.

Main Issues

3. The main issues are the effects of the development on:
 - the character and appearance of the area;
 - the living conditions of occupants at 24 Pancake Lane, with particular regard to light and outlook;
 - bats; and
 - flood risk.

Reasons

Character and appearance

4. The appeal site consists of a rectilinear plot containing a single storey bungalow. Whilst the bungalow faces Pancake Lane, the side and rear of the

plot face onto Edenhall Close. The plot thus has a high level of visual prominence within the streetscene.

5. Pancake Lane is predominantly characterised by 2-storey detached dwellings of varied design, and typically domestic scale, which generally feature pitched or hipped roofs. A small number contain accommodation within the roof space. Dwellings are set back from the street frontage, with generally enclosed front gardens and driveways.
6. One of the proposed blocks would occupy roughly the same position as the existing bungalow. In order to accommodate 8 flats, living space would need to be arranged across 3 storeys. Even if this was partly concealed within a mansard roof, as is indicated on the plans, the fact that accommodation was arranged across 3-storeys would be clearly apparent. Whilst a 3-storey building would be at odds with the prevailing pattern along Pancake Lane, the resulting building form would itself have an unavoidably significant scale and mass, that would be atypically bulky viewed in context. This would be visually emphasised in contrast to the single storey bungalow located at No 24, highlighted by the visual prominence of the plot within the streetscene, and further accentuated by the fact that the block would be viewed in combination with a second, apparently matching block, positioned towards the rear of the plot.
7. The second of the proposed blocks would be principally viewed within the context of Edenhall Close. Edenhall Close is a development of 2-storey dwellings, which is distinctly separate to Pancake Lane. Accessed along a broad entry between Nos 26 and 30 Pancake Lane, Edenhall Close runs roughly parallel with Pancake Lane, and to the rear of the long gardens belonging to the dwellings which face onto it. Given that the setting of Edenhall Close is largely made up of garden space, existing development within it has a very spacious and verdant character.
8. In this context, the form, scale, mass and bulk of the second block would be as atypical viewed within Edenhall Close as it would within Pancake Lane. Furthermore, the positioning of the block towards would be entirely at odds with the existing layout of development, and its positioning would cause significant harm to the spacious character of the streetscene.
9. In order to accommodate the amount of development proposed, a substantial proportion of the plot would need to be taken by the buildings themselves, and associated parking space. There would be little or no scope for provision of meaningful outdoor amenity space, as is confirmed by the submitted plans. There is little obvious potential for variation or mitigation, including in relation to landscaping, very limited space for which would exist.
10. Though use of grasscrete in the parking areas is suggested, this would have little beneficial effect when the parking spaces were in use by up to 14 vehicles. The result would be a plot whose level of development, in terms of both amount, coverage and intensity of use, far exceeded that of any other development within its immediate setting. Again this would conflict with the surrounding spacious suburban layout. Indeed, I agree with the Council's view that in this context that the plot would appear overdeveloped.
11. In each of the above regards, though ample potential is available within the reserved matter of appearance to alter the detailing of the development, this

would do little, if nothing, to mitigate the harm caused by the uncharacteristic layout and scale of the development.

12. Planning permission has been previously granted for a 2-storey 4-bed house on the site, reference 4/00230/16/FUL (the previous permission). As 3 years have now passed since the grant of the previous permission, it is unclear whether it remains extant. The approved plans show that the dwelling would occupy roughly the same position as the existing bungalow, and would be similar in character to other 2-storey dwellings within the broader streetscene. Contrary to the appellant's claim therefore, it is apparent that the appeal scheme is both a development of different type to that previously approved, and of entirely different character. Even if the previous permission exists as a fallback therefore, it provides no direct justification for the harm that would be caused by the appeal scheme.
13. I acknowledge that Pancake Lane gains a progressively rural character towards Westwick Row, and that open landscape indeed lies beyond. The immediate setting of the site is however suburban, as outlined above. As such the appeal scheme would not occur within a rural context, or provide potential to cause visual harm to the countryside. This does not however alter the fact that the scheme would cause unacceptable harm to the character and appearance of its developed setting.
14. For the reasons outlined above, I conclude that the development would cause unacceptable harm to the character and appearance of the area. It would therefore conflict with Policy CS4 of the Core Strategy 2006-2031 Adopted 2013 (the CS), which encourages appropriate residential development in residential areas; Policies CS11 and CS12 of the CS, and Saved Appendix 3 of the Dacorum Borough Local Plan 1991-2011 (the LP), which each seek to secure high quality design with regard to existing character; saved Policy 111 of the LP, which restricts the construction of 3-storey buildings; and policy related to design within the National Planning Policy Framework (the Framework).

Living conditions

15. There would be a significant difference in scale between the proposed block fronting Pancake Lane, and No 24. This would be greater than would have occurred in relation to the 2-storey dwelling approved by the previous permission, particularly on account of likely closer proximity of the proposed development to the boundary, as is shown on the submitted plans. Additionally, the second block would be positioned immediately adjacent to the back garden space of No 24.
16. The principal outlook from No 24 is towards the front and the rear, rather than towards No 26. It is nonetheless clear that the development would have a significant visual presence viewed from within the curtilage, and particularly from within the back garden. This is notwithstanding the presence of planting along the boundary, some of which is located within the site itself. Even if some screening was retained, the amount and likely scale of the development proposed would cause a substantial reduction in openness along the boundary with No 24. This would, in my view, have an oppressive effect on adjacent space, and would therefore cause substantial harm to the outlook of occupants at No 24.

17. On account of the fact that the site is located towards the north of No 24, it is unlikely that significant or harmful loss of sunlight to either the dwelling or to the garden would arise as a result of the development. Additionally, given that no principal windows appear to occur on the elevation of No 24 facing the site, it is also unlikely that any unacceptably harmful loss of daylight would occur.
18. For the reasons outlined above I conclude that whilst the development would not have an unacceptably harmful effect on the levels of light reaching No 24, it would nonetheless have an unacceptably harmful effect on the outlook of occupants at No 24. The development would therefore conflict with Policy CS12 of the CS which amongst other things seeks to secure development that avoids visual intrusion to surrounding properties.

Bats

19. Bats are a protected species under the Wildlife and Countryside Act 1981, and a European Protected Species under the Conservation of Habitats and Species Regulations 2017. The Council has not provided any evidence relating to recorded presence of bats either within the site or within the vicinity. However, the dwelling contains features with potential to support the roosting of bats. Furthermore, mature landscaping within the site and its immediate setting, and the close proximity of the open countryside and other green open spaces, provide a range of suitable habitats for bats. There are therefore reasonable grounds to consider that bats may be present within the site, and/or that they may be affected by the proposed development.
20. The planning application was not supported by a bat survey, and none has been provided during the course of the appeal. Therefore the effect of the development on bats cannot be ascertained.
21. Having regard to paragraph 99 of Circular 6/2005, which states that conditions requiring surveys should only be used in exceptional circumstances, I note that no exceptional circumstances appear to exist. As such it would not be possible to address the lack of survey evidence by means of imposing a condition, or indeed for this matter to be addressed within the context of the reserved matters.
22. For the reasons outlined above I conclude that the appellant has failed to demonstrate that the appeal scheme would avoid or adequately mitigate unacceptable harm being caused to bats. Whilst I note the Council's reference to Policy CS26 of the CS in this regard, Policy CS26 does not appear to be wholly relevant given that it relates to green infrastructure. Paragraph 175(a) of the Framework nonetheless states that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.

Flood risk

23. The site is located in Flood Zone 1, and so not at risk of flooding. Despite the fact that Policy CS31 of the CS only requires a flood risk assessment (FRA) in relation to sites in Flood Zones 2 and 3, the absence of an FRA is nonetheless noted by the Council as a reason for refusal. With regard to paragraph 164 and footnote 50 of the Framework, which set out the circumstances where a FRA might be required in Flood Zone 1, none appear to be applicable in this case. It is therefore unclear on what basis an FRA was required in this instance.

24. Indeed, given the site's location, I have not been provided with any clear reason to believe that a suitable scheme of drainage in accordance with that outlined by the appellant could not be provided, or that the development would be likely to cause flooding.
25. Drainage falls outside the scope of the reserved matters, however I am satisfied that a condition could be imposed to require further details and a scheme design.
26. For the reasons outlined above I conclude that the development would not have a demonstrably adverse effect on flooding, and would comply with requirements of Policy CS31 of the CS.

Other Matters

27. The appellant has criticised the way in which the Council dealt with the planning application, but in doing so has, in part, made reference to another Council. Whilst it is therefore unclear to what extent the criticism is relevant, it is not in any case the purpose of this decision to consider such matters.
28. The appellant states that the scheme would provide 50% affordable housing, which would exceed the requirements of Policy CS19 of the CS. However, as the provision of affordable housing has not been secured by a planning obligation, its delivery is open to question. In this regard the PPG states that the use of a condition to require an applicant to enter into a planning obligation or other agreement is unlikely to be appropriate except in exceptional circumstances, such as in the case of complex or strategically important sites. The site is neither complex nor strategically important, and no other considerations have been advanced which would indicate that the exceptional circumstances necessary to justify use of such a condition. Consequently, no mechanism exists to secure the provision of affordable housing. The provision of affordable housing is therefore a benefit to which I can attach only very limited weight.
29. The appellant has drawn attention to appeals APP/U1105/W/17/3177340, APP/R3650/W/183210069, and APP/Y3615/A/13/2210942. I do not have the full details of these cases, though note that the locations differ, and 2 of the sites are in different parts of the country. As such, the circumstances of the sites in question are unlikely to have exactly mirrored those of the appeal site. These appeals have not therefore affected my findings with regard to the current appeal, which I have considered on its own planning merits.
30. The Council accepts, and the appellant emphasises, that it does not have a demonstrable 5-year supply of deliverable housing sites, and so policies most important for determining the application are out-of-date. Under paragraph 11 of the Framework, planning permission should therefore be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal. In this case I consider that the harm caused by the development to the character and appearance of the area, in combination with harm caused to the living conditions of occupants at No 24, and potential harm caused to protected species would significantly and demonstrably outweigh the benefits that up to 16 flats, 8 of which might be affordable, would provide, particularly in helping to relieve the shortfall in

deliverable housing sites. Consequently, paragraph 11 does not support the granting of planning permission in this instance.

Conclusion

31. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR