
Appeal Decision

Site visit made on 10 September 2019

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

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Appeal Ref: APP/V3310/W/19/3229178

Land north of Walrow, Walrow, Highbridge TA9 4AB

- 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 Thorner of Flower and Hayes Ltd against the decision of Sedgemoor District Council.
 - The application Ref 11/18/00071, dated 13 July 2018, was refused by notice dated 21 March 2019.
 - The development proposed is described as erection of 46 dwellings, with garages, formation of accesses and ancillary works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Applications for costs were made by Mr Thorner of Flower and Hayes Ltd against Sedgemoor District Council, and by Sedgemoor District Council against Mr Thorner of Flower and Hayes Ltd. These applications are the subject of separate Decisions. I have named Mr Thorner in relation to each of these applications for sake of consistency with the original planning application.
3. The original proposal was for 47 dwellings. This was reduced to 46 during the course of the Council's determination of the planning application, which was made on the basis of revised plans. As both parties have subsequently used the revised figure, I too have used it in the banner heading above.

Main Issues

4. The main issues are the effect of the development on:
 - the living conditions of future occupants of the development with regard to outlook and privacy, and the living conditions of occupants of The Firs with regard to outlook, privacy and traffic;
 - the character and appearance of the area; and
 - the local provision of affordable housing.

Reasons

Living conditions

5. Unit 13 would occupy part of the ground and first floor of the block proposed adjacent to the site access. All of the windows of this unit would be located in the south and east elevations. These would face towards Walrow Road, and the access

- road respectively. The surface of each of these roads would be raised relative to the ground floor level of Unit 13. A ramped pedestrian access would furthermore be accommodated immediately to the south of the south elevation.
6. Two of the 3 windows serving the principal living space of Unit 13 would face south. These windows would fall almost entirely below the level of Walrow Road. Aside from the pedestrian ramp, within the narrow strip between the difference in height would be accounted for by a wall and steeply sloping ground. This would have an oppressive effect the outlook from the windows in question, which would be accentuated by any boundary treatment placed along the edge of the footway serving Walrow Road. The harm caused would be worsened by the sense of visual intrusion and loss of privacy that would arise from pedestrians passing the windows at raised level on the adjacent ramp. Given the limited space available, if landscaping was to be relied upon to provide effective screening to these windows, it is apparent that the outlook from them would be severely compromised if not rendered almost non-existent.
 7. The third ground floor window serving the principal living space of Unit 13 would face the access road. The sill level of this window would be similar in height to the surface of the pavement running along the site access. As on the south elevation, the outlook would therefore be directly compromised by raised levels and lack privacy. The adverse effect would again be worsened by the sense of intrusion caused by pedestrians passing the window in close proximity at a raised level. If landscaping was to be relied upon to provide effective screening, this would again almost entirely eliminate the outlook.
 8. It is not uncommon within the surrounding area for ground floor windows of dwellings to be positioned facing directly onto pavements. As such pedestrians can pass very close to the windows of some existing dwellings. These pavements are however typically at the same level, or lower than the ground floor of the dwellings in question. Thus the outlook from these dwellings is not directly obstructed, and the effects on privacy, and associated sense of intrusion appear less pronounced than would the case for future occupants of Unit 13. The existence of such windows does not therefore provide justification for the unacceptable harm that would be caused to the living conditions of future occupants of Unit 13.
 9. The appellant states that the privacy of users of the principal living spacing space of Unit 13 would be less important than if it were a bedroom space. However, as the principal living space would be an open-plan combination of living and dining room, onto which the kitchen would also be attached, it is reasonable to consider that when at home future occupants would spend the majority of their waking hours within it. As such the sensitivity of the principal living space would be increased, and the adverse effects of intrusion would be acutely perceived.
 10. It is possible that users of the pavement serving the bridge over the railway would be able to see into some of the windows on the upper floors of adjacent units. This would however take some effort on account of the amount of space between the units and the pavement, and intervening boundary treatments and structures. As such it appears unlikely that any unacceptable effects on the privacy of future occupants would arise.
 11. Given that a reasonably high wall is proposed along the edge of the reduced garden area of The Firs it is unlikely that pedestrians or road users would be able to see into the garden. As such there is little reason to believe that users of the garden would form the perception that they were being overlooked from these locations.

12. The wall itself would be a substantial feature viewed from within the garden of The Firs. At its highest point this would however be little different to the boundary treatment currently provided along the Walrow Road frontage. The height would furthermore gradually fall along the boundary. Therefore though parts of the garden would feel much more heavily enclosed than at present, this would not have an unacceptably overbearing effect overall.
13. Whilst the garden of The Firs is set away from the road, it could not be described as providing a 'tranquil' space given the close proximity of the railway line and Walrow Road. Each generates significant amounts of noise, fumes and vibration which are accentuated by the rising level of the road. In this context the development would clearly increase both the proximity and amount of traffic to which occupants of The Firs were exposed. Considered relative to the existing situation however, it appears unlikely that this would give rise to significant or unacceptable harm.
14. For the reasons outlined above I conclude that the development would not have any unacceptable effects on the living conditions of occupants of The Firs, or of the development in relation to overlooking from the bridge. It would however provide unacceptable living conditions for the future occupants of Unit 13. The development would therefore conflict with Policy D25 of the Sedgemoor Local Plan – Adoption Version 2019 (the LP), which states that development proposals that would result unacceptably impact upon the residential amenity of potential future occupants of proposed dwellings will not be supported; and relevant provisions of the National Planning Policy Framework (the Framework) relating to standards of amenity.

Character and appearance

15. The current setting of the site is characterised by a mix of nineteenth century and more recent housing. Nineteenth century housing is mostly of terraced type, whilst modern developments feature mixed compositions whose layout varies. Typical materials are brick, slate and various forms of orange/red Roman tile, with double Roman tiles most frequent. Set against the somewhat generic designs of both nineteenth century and more modern housing, the predominant use of Roman tiles across developments of all periods provides a key marker of local distinctiveness and identity.
16. Roofing within the proposed development would be largely provided by grey concrete 'slates'. Grey double Roman tiles would see more sparing use. Whilst it is unlikely that concrete slates would reflect the visual character of natural slate, grey double Roman tiles would appear entirely at odds with the almost exclusive use of orange/red tiles within the immediate area. The balance between 'slate' and tile would furthermore be inconsistent with that seen in nineteenth century and existing modern developments alike. In these regards the development would appear sharply at odds with its setting, visually undermining the distinctiveness of the locality.
17. The extent to which this matter could be addressed by condition is unclear. Whilst a substitution of grey for orange/red tiles of the same type would presumably be simple, the more widespread use of tiles, or indeed natural slate, in place of concrete slates, might be less straight forward. In each regard the cost implications are unknown, and so too is the effect that this would have on scheme viability. On this basis the use of a condition requiring roofing materials to be subject to further consideration would not be appropriate.

18. With regard to detailed design, the use of windows lacking distinct sills and lintels would again be at odds with both nineteenth century and more recent developments alike. In each case lintels and sills in stone or artificial stone are typical, if generic features. Viewed in combination with the atypical scheme of proposed roofing, this would further reduce the extent of the scheme's visual integration with its setting. The effect would be accentuated by the further specification of materials in grey, matching that of the roofing.
19. Use of brick would nevertheless reflect the local pattern, and whilst the layout and roof pitches would not directly mirror those of adjacent nineteenth century housing, they would be broadly consistent with those of more modern developments within the setting of the site. In neither regard therefore would the development harm the character and appearance of the area.
20. For the reasons outlined above I conclude that the development would undermine the local distinctiveness of the area, causing unacceptable harm to its character and appearance. The development would therefore conflict with Policy D2 of the LP, which amongst other things requires development to respond positively to and reflect the particular local characteristics of the site and the identity of the surrounding area, and relevant provisions within the Framework relating to standards of design.

Affordable housing

21. Policy D6 of the LP sets out the requirement for developments involving 11 or more dwellings to contribute towards affordable housing need. This is less demanding than paragraph 64 of the Framework, which seeks at least 10% provision of affordable housing in relation to major development; defined in the Framework Glossary as 10 or more dwellings. With regard to the size of the development, the requirements of Policy D6 nonetheless align with those of the Framework. The 30% rate of provision and mix is set out within the LP.
22. The supporting text of Policy D6 sets out a substantial need for affordable housing over the plan period. As such, I am satisfied that a requirement and need for the provision of affordable housing have been demonstrated. A planning obligation securing the provision of affordable housing is consequently necessary, and would, for the above reasons, meet the tests set out in paragraph 56 of the Framework, and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
23. The development proposes a policy-compliant total of 14 affordable housing units. Two Unilateral Undertakings (UUs), one of which is in counterpart, have been submitted to secure provision during the course of the appeal.
24. The first of these UUs is not a certified copy, and pre-dates the submission of the planning application. Consequently, it does not contain the planning application reference number, and the attached plan shows a scheme which differs from that on which the Council made its decision. Indeed, this plan does not appear to have formed part of the planning application at all. As the UU does not directly relate to the appeal scheme, it would be ineffective in securing the provision of affordable housing were the appeal to be allowed. As such, it does not attract any weight.
25. The counterpart UUs similarly lack certification, and it is unclear whether the original documents have been supplied to the Council. These incorporate 2 versions of the site layout, including the plan attached to the original UU. This is labelled as 'Plan 2' on the copy signed by the developer, and not labelled on the copy signed by the owners. Plan 2 is defined as showing the layout of affordable housing. As noted above however, the layout shown on this plan, including that of

the affordable housing, does not match the layout which would be approved were the appeal to be allowed.

26. The counterpart UUs make further reference to an 'Affordable Housing Plan'. This is defined as identifying the proportion and the distribution of the affordable housing units, but cross-reference to Plan 2 is lacking. The uncertainty created by inconsistency in labelling and definition, and the attachment of an irrelevant plan, indicate that the counterpart UUs would again not be effective in securing the provision of affordable housing. As such I accord little weight to provisions within the counterpart UUs related to affordable housing.
27. In view of local need, the failure of the development to make secure provision of affordable housing would cause unacceptable harm. Even if I had concluded that the proposed provision of affordable housing had been properly secured however, the associated public benefits of such provision, which would be substantial, would not justify or therefore outweigh the harm that would be caused by the provision of unacceptable living conditions for future occupants of Unit 13; or, indeed, the harm that would be caused by this, in combination with harm caused to the character and appearance of the area.
28. For the reasons outlined above I conclude that the development would have an unacceptably harmful effect on the local provision of affordable housing. It would therefore conflict with Policy D6 of the LP, as outlined above.

Other Matters

29. The absence of a planning obligation securing the provision and future management of open spaces was not a reason for refusal of the planning application. The need for such an obligation is however a matter which has been raised by the Council. The provision of public open space is required by Policy D34 of the LP. This serves to mitigate increased demands for use of such space generated by a development. The original UU lacks any provision related to open space. Open space is however covered within the counterpart UUs. As I am dismissing the appeal for other reasons however, it is not necessary to consider this matter in any further detail.
30. The site is located in a sustainable location, adjacent to a railway station and within walking distance of local services. It would meet a general requirement for housing, and make efficient use of the site. These points do not however justify or outweigh the harm that would be caused in relation to the main issues as outlined above.

Conclusion

31. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR