The Planning Inspectorate

Appeal Decision

Site visit made on 14 January 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2020

Appeal Ref: APP/P1940/W/19/3235144
Land to the rear of Clovers Court, Chorleywood WD3 5FD

- 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 G Simm of Simco Homes Ltd against the decision of Three Rivers District Council.
- The application Ref 19/0040/FUL, dated 7 December 2018, was refused by notice dated 29 April 2019.
- The development proposed is the erection of six 3-bed dwellings, associated access and landscaping.

Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have referred to the date of the application as shown on the application form rather than the date received valid on the decision notice.

Main Issues

3. The main issues are the effect of the proposal on:

    - The character and appearance of the area, including the impact on trees;
    - The living conditions of residents at 6 Rendlesham Way, with particular reference to outlook and light;
    - The living conditions of future residents, with particular reference to the amount of garden space, and;
    - The provision of Affordable Housing with reference to local and national policies.

Reasons

Character and appearance

4. The area surrounding the appeal site is predominantly residential in character, and although there are some differences in terms of the design and appearance of dwellings, most comprise semi-detached and detached dwellings fronting onto the road. The established planting and garden spaces between dwellings, many of which contain mature trees and hedgerows, contribute positively to

the setting of the surrounding buildings such that there is a generous, verdant separation between the respective built form along Quickley Lane and Stag Lane. Clovers Court and Juniper Court provide some variety in terms of the plot layout as they have a tighter knit built form with the principal elevations of some dwellings facing away from the road. Nevertheless, these developments broadly respect the building line along Quickley Lane resulting overall, in a pleasant, leafy suburban character.

5. The appeal site previously comprised garden land and is situated to the rear of six recently constructed terraced houses at Clovers Court. Due to this location, it does not have an immediate presence in the street scene. Nevertheless, its notable topography, presence of mature trees and absence of built form when taken in combination, make a positive contribution to the qualities of spaciousness and separation evident in the surrounding pattern of development.

6. The proposal would introduce two sets of three terraced dwellings in a staggered layout and would be split level, thereby utilising the sloping nature of the site. In combination with the existing properties at Clovers Court, the layout would result in a concentration of terraced blocks utilising smaller plot sizes in marked contrast to the prevailing spacious residential development in the wider area. In addition, it would result in a considerable area of hardstanding for parking and turning between the existing and proposed terraces. Furthermore, the built form for dwellings 4-6 would be set at a considerable depth into the site.

7. Taking these factors together, the proposal would undermine the qualities of spacious, verdant separation that contribute positively to the existing suburban character of the area and would therefore, represent a gradual deterioration in the quality of the built environment that Policy DM1 and Appendix 2 of the Three Rivers District Council, Development Management Policies, Local Development Document, July 2013 (DMP) expressly seek to prevent.

8. Moreover, there are a group of established trees near the rear boundary of the site, two of which are protected by a Tree Preservation Order[1]. These trees make a positive contribution towards the sylvan qualities of the area as their elevated position means they are visible from surrounding roads. The submitted tree information[2] indicates that the protected Ash tree is in decline and therefore, would be removed, but that otherwise the trees will be retained, and the erection of protective fencing would safeguard the trees.

9. However, I have concerns regarding the impact on the trees given that the plans show significant alterations to the land levels[3] which appear to extend into the identified root protection areas[4]. The arboricultural assessment confirms that the majority of tree roots are found in the upper metre of soil, and therefore, development works, including even shallow excavation can be harmful to trees.

10. It follows that the tree report findings are predicated on no construction activity taking place in the identified root protection areas, which is not clearly borne out by the submitted plans. Consequently, the proposal, due to the

[1] TPO 0756 dated 15.4.11, Ash and Hawthorn
[2] Arboricultural Impact Assessment and Method Statement, Oakfield Arboricultural Services
[3] Drawing TL-3939-18-16A & TL-3939-18-12D
[4] Drawing No. OAS 19-142-TS01

significant changes in levels, would be likely to be harmful to the health of existing mature trees and furthermore, would inhibit the ability to provide a suitable replacement for the declining protected Ash tree. This would result in an adverse impact on the visual qualities of the area.

11. Reference is made to a previous appeal decision whereby two bungalows were permitted at the site. Although I have not been provided with the full details of the decision, the proposal before me is for six dwellings that are not bungalows and so, the development is of a significantly different nature. It follows that as a result, the proposal will have a different relationship with surrounding development. Therefore, the appeal decision is of limited weight and in any event, I have determined the proposal on its own merits.

12. As the site does not have an immediate presence in the street scene, this would limit the harm to the character and appearance of the area to a degree. Nevertheless, glimpses of the site are possible from the access into Clovers Court, in gaps between the existing surrounding housing and in private views from nearby properties.

13. Accordingly, the proposal would have an adverse impact upon the character and appearance of the area and therefore, would be contrary to policies CP1 and CP12 of the Three Rivers District Council, Core Strategy, October 2011 (CS). Policy CP1(f) seeks to protect the natural and built environment from inappropriate development and CP12 establishes a number of design criteria in order to achieve high quality design that includes having regard to the local context and conserving natural assets.

14. In addition, the development would conflict with policy DM1 and Appendix 2 of the DMP which, amongst other matters, contain detailed design criteria such that the layout of new residential development protects the character of existing areas. Furthermore, it would be contrary to policy DM6 of the DMP which, amongst other matters, seeks to retain existing trees.

Living conditions of residents at 6 Rendlesham Way

15. The layout of the proposal would result in the side elevation of plot 1 in close proximity to the rear boundary of 6 Rendlesham Way. Notwithstanding that the dwelling would be built into the rising ground levels, the structure would attain a height such that a significant proportion of the gable end would be visible above the boundary fence. The depth of the blank elevation would span a significant proportion of the rear garden boundary to 6 Rendlesham Way, which given the limited depth of the garden would make it particularly conspicuous from the garden and rear facing windows of No.6.

16. Whilst no specific indicative distance is given, 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. Taking these factors together, the development would have an unduly enclosing effect upon the residents of No.6 that would be unacceptably harmful to their outlook.

17. Furthermore, the daylight/sunlight information submitted by the appellant shows that there would be occasions particularly in Spring, Autumn and Winter when there would be noticeable overshadowing to the rear south west facing garden of No.6 during the afternoon. This would comprise significant areas of the usable rear garden space in Spring and Autumn which coincides with

seasons when residents are likely to seek to enjoy their rear gardens and cultivate plants. This would exacerbate the adverse impact on the living conditions of the occupants of No.6.

18. Accordingly, I find that the appeal proposal would result in unacceptable harm to the living conditions of the residents at 6 Rendlesham Way as a result of diminished outlook and the reduction of light to the garden. Therefore, the proposal would be contrary to policy CP12 of the CS which, amongst other matters, requires development to provide adequate levels and disposition of prospect and garden space in order to protect the living conditions for residential occupants. It would further be contrary to policy DM1 and Appendix 2 of the DMP which, amongst other things, expects new development to demonstrate that it will not result in the loss of residential amenity.

19. The decision notice also refers to policy CP1 of the CS which is a general overarching policy covering many varied criteria. However, as this does not specifically refer to the living conditions of existing residents, I do not find direct conflict with this policy in relation to this issue.

Living conditions of future residents

20. As the dwellings would have three-bedrooms, it is likely that they would accommodate families with children, who would look to use the garden for outdoor play, or alternatively would have occupants who may look to use the garden space in a range of ways.

21. Appendix 2 of the DMP suggests 84sqm as an indicative level of amenity space/garden space that should be provided for a three-bedroom dwelling. There is no dispute between the parties that four of the six dwellings would provide garden space below this. Plot 2 provides space more akin to the recommended amount for a one-bedroom dwelling and is therefore, significantly below the recommended standard.

22. Furthermore, the significant changes in levels across the rear gardens of the dwellings, would be likely to compromise the use of the limited space provided by curtailing the range of pursuits and outdoor play activities to a degree.

23. In support of the proposal, the appellant points out the limited garden sizes of properties at Clovers Court. However, my observations of those properties indicated that the gardens were not subject to the same dramatic changes in level as the scheme before me. Accordingly, the presence of these gardens would not lead me to a different view.

24. Therefore, I find that overall the development would fail to provide an appropriate level of garden space to meet the needs of the intended occupants of the dwellings which would unacceptably compromise their living conditions. As such, the proposal would be contrary to policy CP12 of the CS which, amongst other matters, expects development to provide adequate levels and disposition of garden space 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.

25. The decision notice also refers to policy CP1 of the CS which is a general overarching policy covering many varied criteria. However, as this does not

specifically refer to the living conditions of future residents, I do not find direct conflict with this policy.

Affordable Housing

26. 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 £513,750, and I have not seen evidence to the contrary.

27. The appellants have not provided any mechanism to secure such an off-site contribution, and nothing before me indicates 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.

28. 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.

29. The Framework is a material consideration in planning decisions. Moreover, in relation to development plan policies that pre-date the Framework, Paragraph 213 states due weight should be given to them according to their degree of consistency with the Framework. 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.

30. I am referred to the Needs Analysis dated July 2018[5], which shows a very high need for affordable housing in the district. Furthermore, there is no dispute between the parties that the district is amongst the most expensive in the country for house prices[6]. The report further 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 towards 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.

31. I am also referred to a significant number of recent appeal decisions[7] in the district which support this approach. With regards to the weight to be

[5] Evidence for Re-Instating the Affordable Housing Threshold in Core Strategy Policy CP4: Affordable Housing, Appendix 5 Council's Appeal Statement
[6] Paragraph 5.5.6 Appellant's statement of case
[7] Appendices 6-12, Council's appeal statement: Referenced APP/P1940/W/18/3213370, APP/P1940/W/19/3219890, APP/P1940/W/19/3222318 & APP/P1940/W/19/3225325, APP/P1940/W/19/3221363, APP/P1940/W/19/3225445, APP/P1940/W/19/3229274 & APP/P1940/W/19/3230999.

attributed to policy CP4, these decisions are relevant to the circumstances of the scheme before me and as such, carry considerable weight.

32. Although the appellant asserts that policy CP4 threatens the delivery of smaller housing schemes, there is little evidence provided that would undermine the Council's substantive evidence in this regard. I note the appellant's views regarding systematic failures in the housing supply and the need for a Green Belt review. Nevertheless, I am required to determine the scheme before me on its own merits, taking into account the evidence presented.

33. 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

34. There is no dispute between the parties that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. It is not shown that the policies referred to in footnote 6 of paragraph 11 of the Framework are applicable in this case. Therefore, footnote 7 of the same paragraph indicates that in these circumstances 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. The proposal would provide six three-bedroom dwellings in a reasonably accessible location which would contribute towards boosting and diversifying the overall housing supply in an area of unmet need in line with paragraph 59 of the Framework. In addition, there would be associated short and long term economic benefits. However, the comparatively modest scale of the development tempers the extent of such benefits such that overall, I attribute moderate weight to these factors in favour of the proposal.

36. Nevertheless, harm would result to the character and appearance of the area contrary to paragraph127(c) as the development would not be sympathetic to local character. Additionally, the proposal would fail to achieve a high standard of amenity for adjacent occupants and future residents contrary to paragraph 127(f). These amount to adverse impacts of significant weight that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. As such, having applied the balance set out in paragraph 11d)ii), the presumption in favour of permitting the development does not apply.

37. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise[8]. The benefits that the proposal would bring do not outweigh the significant weight given to the conflict with the development plan policies identified above. Therefore, they do not justify my determining the development other than in accordance with the adopted development plan.

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

Conclusion

38. Accordingly, for the reasons outlined, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector