The Planning Inspectorate

Appeal Decision

Site visit made on 21 January 2020

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/G3110/W/19/3240111
Garage Site, Minster Road, Oxford OX4 1LX

- 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 Edward Bell against the decision of Oxford City Council.
- The application Ref 19/01720/FUL, dated 25 June 2019, was refused by notice dated 21 August 2019.
- The development proposed is the construction of two new dwellings including on-plot parking, private amenity space, bin and cycle stores. The proposed new dwellings are both two-storey, one-bedroom houses with a gross internal floor area of 59.8sqm. The existing garage would be demolished.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

3. I am informed that hearings related to an emerging Oxford City Local Plan have now closed. However, as they are still being prepared and are not yet adopted, the emerging policies attract limited weight in my assessment.

Main Issues

4. The main issues are (i) the effect on the living conditions of the occupiers of 104 Divinity Road (No 104) in respect of outlook and light, (ii) the effect on biodiversity, particularly in respect of bats, and (iii) the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

5. The appeal site adjoins the side boundary of No 104's back garden. The rear wall of the existing garage and a fence lie on the common boundary. A tall tree lies in No 104's back garden near to the site.

6. The proposed houses would lie close to the rear site boundary and would be clearly seen from No 104's back garden. The remaining branches of the nearby tall tree would be too high to provide any meaningful screening of the proposal. Single storey elements would to a degree break up the mass of the rear elevations but, nevertheless, by reason of their height and size, close proximity and prominence, the proposed houses would cause a significant overbearing effect onto No 104 and would lead to a subsequent loss of outlook. The proposal would be closer to No 104 than the flank wall of 1 Minster Road (No 1) and so would have a greater harmful effect compared to the current situation.

7. Furthermore, the houses would lie to the south west and so would at times obstruct direct sunlight from reaching No 104's back garden. The proposed houses would be significantly higher and wider than the existing garage on the appeal site and so would cause a significant loss of light to No 104 compared to the existing situation.

8. The appellant states that the land immediately to the rear of the appeal site is not currently being enjoyed as amenity space. Also, the proposed dwellings would be positioned away from the part of No 104's back garden closest to the house. Nevertheless, the proposed development would be seen from and have an impact upon most of the neighbouring property.

9. Full details of the houses built at 52 Beech Croft Road and 96b Hurst Street are not before me and so I am unable to draw any comparisons with the appeal proposal. In any case, I have considered this scheme on its own merits and developments elsewhere fail to affect my view in respect of this main issue.

10. The proposed development would not lead to overlooking onto No 104 and would be sufficiently screened or far enough away to avoid harm being caused to the living conditions of occupiers of any other property. However, acceptability in these regards fails to address or override the identified harm.

11. For the above reasons, I conclude that the proposed development would significantly harm the living conditions of the occupiers of No 104 in terms of loss of outlook and light. Consequently, and in this regard, it would be contrary to policy CP10 of the Oxford Local Plan 2005 (LP), policy HP14 of the Oxford City Council Sites and Housing Plan 2013 (SHP) and the National Planning Policy Framework (the Framework). These all aim, amongst other things, to create places with a high standard of amenity for occupiers of property.

Biodiversity

12. Regulations[1] impose a duty on me to consider whether European Protected Species (EPS) would be affected by the proposed development and whether associated mitigation measures would be effective in mitigating any harm. Policy CS12 of the Oxford Core Strategy 2026 adopted 2011 (CS) is generally consistent with the Framework in resisting development that would harm species of biodiversity importance, unless appropriate mitigation is provided.

13. The appellant's preliminary bat roost assessment identifies the habitats surrounding the appeal site are of moderate suitability for commuting and foraging bats with high suitability further afield. Moreover, a survey has found gaps under roof tiles on the existing garage that are potentially suitable for roosting bats. The potential for the garage to host bats is rated as being low,

[1] The Conservation of Habitats and Species Regulations 2017

but the preliminary assessment recommends dusk and pre-dawn bat surveys be carried out between May and end of August to confirm the roost situation. No such surveys have been carried out and whilst the appellant's assessment recognises mitigation may be required, no details are provided.

14. Government advice[2] says it is essential to establish the extent to which EPS may be affected by a proposal before granting planning permission. Without the recommended summer surveys, there is only limited knowledge on the possible presence of bat roosts and on the risk of bats being harmed by the proposed development. Also, as no mitigation measures have been proposed, I am unable to assess whether such measures would be effective in addressing any harm that may be caused by the proposal to the bat population. The imposition of planning conditions to address this matter would not allow me to carry out a proper assessment as required under the aforementioned Regulations and would be contrary to the provisions of the referred to government advice.

15. For these reasons, I conclude that insufficient information has been provided that demonstrates the proposal would not have a harmful effect on biodiversity through potential harm to bats or that any harm could be appropriately mitigated. Consequently, and in this regard, the development would be contrary to policy CS12 of the CS and the Framework, that aim, amongst other things, to avoid harm to biodiversity unless appropriate mitigation is provided.

Character and appearance

16. Minster Road is a residential street characterised by mainly 2 storey houses with a degree of uniformity in terms of architectural features. The close proximity of houses to each other as well as to the pavement creates a sense of enclosure along the road.

17. The front of the proposed houses would follow the established building line and incorporate typical features such as 2 storey bay windows. Despite the proposed houses being smaller in overall size, their front elevations would mimic the proportions of other nearby properties and so would not appear incongruous by reason of scale. The proposed side gardens would be unusual, but the gap between the proposed houses and side boundaries would reflect the space at first floor level to the side of No 1. Also, the proposal would lead to a greater sense of enclosure than the existing garage and thereby bring the appearance of the site more in line with the rest of the street. For these reasons, the proposed houses would be compatible to the area.

18. Whilst the depth of the appeal site is markedly shorter than nearby properties, the depth of plots is generally not evident from the road. Also, the proximity of the proposed houses to the rear boundary would not be readily apparent from the street due to the screening effect of the houses themselves and the proposed fences to the front of the side gardens. Moreover, the gaps between the houses and the side boundaries would give the development a sense of space when viewed from the street. As such, the development would not appear cramped from public views, despite the relatively small size of the plots.

19. For these reasons, I conclude that the development would not cause harm to the character and appearance of the area. Consequently, and in this regard, it

[2] Paragraph 99 of the Office of the Deputy Prime Minister Circular 06/2005

would accord with policies CP.1, CP.6 and CP.8 of the LP, policy HP9 of the SHP, policy CS18 of the CS and the Framework. These all aim, amongst other things, to ensure that development shows a high quality of design that is compatible with, and respects, the character and appearance of the area. LP policy CP.10 is referred to in the Council refusal reasons but includes no provisions relevant to this main issue. I am informed that the site is not residential garden land and so SHP policy HP10 is also not relevant in respect of this main issue.

Other Matters

20. The proposal would be acceptable in terms of parking provision, ground contamination and flood risk and would incorporate acceptable internal and external space, energy efficiency features and drainage infrastructure. Acceptability in these regards is a neutral factor in my assessment.

21. The proposal would make more efficient use of urban land that is close to facilities and would add smaller units to the housing stock. However, the benefits of the scheme in these regards are modest given that the proposal is only for 2 units. These benefits fail to outweigh or override the identified harm that would be caused by the proposed development.

22. The appellant is concerned that the Council has acted inconsistently in refusing planning permission compared to previous decisions. However, I have considered the appeal proposal on its own merits and I have no information in respect of any other development that alters my conclusions.

Conclusion

23. Whilst the proposal would be acceptable in terms of its effect on the character and appearance of the area, the significant harm that would be caused to the living conditions of occupiers of No 104 and the potential harm to bats are the overriding considerations. The proposal would conflict with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

24. For these reasons, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR