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## 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: 30 January 2020**

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**Appeal Ref: APP/G3110/W/19/3240150**

**9 Gurden Place, Oxford OX3 9EP**

- 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 Esam Elgerbi (Gateroot Property Limited) against the decision of Oxford City Council.
  - The application Ref 19/00624/FUL, dated 7 March 2019, was refused by notice dated 9 September 2019.
  - The development proposed is demolition of existing bungalow and garage, erection of 4 x 3-bed dwellings (Use Class C3). Provision of amenity space, car parking and bin and cycle stores.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The above description of development is taken from the Council's decision notice rather than the application form. I have based my assessment on this description as the appellant has confirmed its acceptance.
3. As part of the appeal, the appellants have included plans<sup>1</sup> that were not submitted to the Council as part of the planning application. Compared to the application proposal, these new plans show slight changes to the layout of the proposed car parking area, revised back garden boundaries and amendments to the external materials of the proposed houses. As these are only minor changes to the development considered and publicised at planning application stage, I shall accept them for the purposes of determining this appeal. I am satisfied that no interested party would be prejudiced by my consideration of the amended plans.
4. I am advised that hearings related to an emerging Oxford City Local Plan have now closed. However, this document is still being prepared and is not yet adopted, so its policies attract limited weight in my assessment.

### Main Issues

5. The Council has confirmed in its appeal statement that it no longer wants to pursue its fourth refusal reason relating to affordable housing contributions. As such, the main issues are (i) the effect of the proposal on the living conditions of the occupiers of the flats 59 to 73 North Way (Nos 59 to 73) in terms of

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<sup>1</sup> Plans numbered 06A, 07A, 08A, 09A and 196710-001

privacy and outlook, (ii) the effect on the character and appearance of the area, (iii) the effect on highway safety in relation to parking, and (iv) whether acceptable living conditions for the future occupiers of the proposed dwellings on plots 1 to 3 would be provided in terms of the amount of external space.

## **Reasons**

### *Living conditions of the occupiers of Nos 59 to 73*

6. The rear boundary of the appeal site adjoins the back garden of Nos 59 to 73, a 2 storey high apartment building. The appeal site lies above the ground level of the flats and a low hedge lies on the boundary.
7. The rear of the proposed houses would include ground, first and second floor windows that would face towards Nos 59 to 73. Whilst it would be reasonable to require obscure glazing to second floor bathroom windows, 9 first floor windows would need to be clear-glazed to provide outlook from bedrooms.
8. There are no windows above ground floor level in the existing bungalow and so the proposed first floor windows would allow new viewing angles from the site onto Nos 59 to 73. The proposed bedroom windows would be 23.3 m away from Nos 59 to 73's windows and so more than the minimum 20 m distance referred to in the preamble to policy HP14 of the Oxford City Council Sites and Housing Plan 2013 (SHP). Nevertheless, by reason of their height and proximity to the boundary, the proposed first floor windows would allow new and direct views towards Nos 59 to 73's garden.
9. It is common in residential areas for there to be a degree of inter-visibility between properties. However, the proposed bedroom windows would allow significant overlooking from numerous vantage points that would not be prevented or adequately mitigated by the proposed height increase in the boundary hedge. As such, the proposal would be highly intrusive and would result in a significant loss of privacy.
10. Furthermore, the height, width and proximity of the proposed building would result in an increased sense of enclosure and restricted outlook in respect of Nos 59 to 73. These effects would add to the harm caused to the living conditions of occupiers of these properties by reason of loss of privacy.
11. The proposed development would not be unacceptable by reason of noise, disturbance or loss of light to Nos 59 to 73 and would not harm the living conditions of the occupiers of any other property. However, acceptability in these regards fails to override or overcome the harm identified above.
12. For these reasons, I conclude that the development would significantly harm the living conditions of the occupiers of Nos 59 to 73 through loss of privacy and outlook. As such, and in this regard, it would be contrary to policy CP10 of the Oxford Local Plan 2005 (LP), policy HP14 of the SHP and the National Planning Policy Framework (the Framework). These aim, amongst other things, to create places with a high standard of amenity for occupiers of property.

### *Character and appearance*

13. The appeal property lies at the end of a residential cul-de-sac. The other properties on Gurden Place are 2 storey houses, set back slightly from the road. Houses in the wider locality vary in style and age.

14. The proposal would result in the existing bungalow being replaced with a terrace of houses in a similar position. The proposed houses would be clearly seen when entering and travelling along the cul-de-sac towards the site.
15. Whilst larger than the existing bungalow, the houses would be set back from the road and so would avoid appearing unduly cramped. The front elevations would be of a simple design and would include openings in an aligned arrangement. The central covered alley would be an unusual feature, but it would not be prominent and would relate well to the other openings. As there is a mix of housing in the area, the proposed houses would not be incongruous.
16. The proposed parking area would cover a significant part of the site, but would be largely screened from public views by landscaping and so would not be prominent. The size of the parking area would limit the amount of planting that could be provided, although the existing site is also devoid of greenery to the front. Therefore, the parking area would be in keeping with the locality.
17. 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 would accord with policy HP9 of the SHP, policies CP1 and CP8 of the Oxford Core Strategy 2011 (CS), policies CIP1 and GSP4 of the Headington Neighbourhood Plan 2017-2032 and the Framework. These all aim, amongst other things, to ensure that development responds positively to its surroundings and reinforces local identity.

#### *Parking*

18. The proposal incorporates 8 parking spaces to the front of the site, served by an access off the end of the cul-de-sac. In some places, the parking and turning area would be tight, but nevertheless, swept path analysis drawings suggest it would be possible to enter the development, park in all the spaces and leave the site in a forward gear. In any case, a turning head at the end of the cul-de-sac would allow vehicles leaving the proposed development to turn in close proximity if required. The end of the road serves only a small number of properties and so is likely to experience little car or pedestrian movement. In such a context and without any evidence to the contrary, I find that reversing out of the development would not harm highway safety even if the proposed parking area would require such movements.
19. For these reasons, I conclude that the proposal would not cause unacceptable harm to highway safety by reason of the proposed parking. Consequently, in this regard, it would accord with policy CP1 of the CS and the Framework which aim, amongst other things, to ensure developments include acceptable parking and do not cause unacceptable effects on highway safety.

#### *Living conditions of future occupiers*

20. Policy HP13 of the SHP requires new houses of 2 or more bedrooms to have a private garden of adequate size and proportions. The preamble to the policy states that the garden must have adequate space for children's play and for family activities. It also states that the Council will expect an area of private garden for each family house which is at least equivalent to the building footprint.

21. All of the proposed houses would have a rear garden. Figures provided by the appellant indicate these would be as big as the footprint of the associated unit, except the garden to unit 2 which would be 0.2 sqm smaller in area.
22. Whilst noting the Council's concerns, all parts of the proposed gardens would be useable for some purpose. Furthermore, there is nothing within the preamble to policy HP13 that supports the claim that the footprint figures should include the overhang area above the central alley. Also, the preamble does not state that bin storage space is in addition to the requirement for garden space to match the size of the house footprint. I am also mindful that the preamble does not form part of the policy HP13 and that it sets out an expectation rather than a policy requirement.
23. Irrespective of any shortfall against the Council's expectation, all the proposed back gardens would be private and would be large enough to allow some forms of play and activities such as drying clothes and sitting out. In addition, there would be sufficient space to store bins and cycles within the garden, notwithstanding the width constraints of the alley. Furthermore, the proposed development would be a short walk from a public open space and playground, a factor that policy HP13 states will be material in assessing whether adequate garden area is proposed.
24. The Council refer to an appeal decision relating to a site at Sandfield Road<sup>2</sup>. I have not been provided with full details of this scheme and so it is difficult for me to draw any accurate comparisons with the current appeal. However, the Inspector refers to a reliance on proposed garden to the front that is not private, which is not the case with this appeal proposal. From the information provided, it would not be inconsistent with this previous decision to conclude that the current proposal would be acceptable in respect of this main issue.
25. For these reasons, I conclude that the proposal would provide acceptable living conditions for the future occupiers of the proposed dwellings on plots 1 to 3 in terms of the amount of external space. As such, in this regard, it would accord with policy HP13 of the CS and the Framework which, amongst other things, aim to ensure development provides a high standard of amenity for occupiers of property. The proposal would not fully accord with the expectation set out in the preamble to CS policy HP13, but for the reasons set out above a departure from the provisions of this preamble are justified in this case.

### **Other Matters**

26. No substantive evidence has been submitted that disputes the Council's claim that an appropriate level of housing land supply can be demonstrated. However, the appellant states that the development plan is out of date, particularly in respect of its provisions in terms of housing development which are important for determining this appeal. Paragraph 11 d) of the Framework states that in such circumstances planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework.
27. The proposed development would not affect any heritage assets, would not cause flood risk and would provide accessible accommodation with appropriate energy efficiency measures. I have also found the proposal would be

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<sup>2</sup> Appeal ref no APP/G3110/W/18/3216586

acceptable in terms of its effect on the character and appearance of the area, parking provision and garden sizes. However, acceptability in these regards is a neutral factor rather than a benefit of the proposal.

28. The development would be in line with the Framework in terms of boosting the supply of housing on a small site and making more efficient use of land in an urban area. Also, the proposal would create construction employment opportunities and it is likely that future occupiers would support local business without the need to travel by car. However, the benefits in these regards are modest given that the proposal is only for an additional 3 dwellings.
29. Against these benefits, I must consider the identified harm that would be caused by the proposal. Paragraph 127 of the Framework seeks to ensure development creates places with a high standard of amenity for occupiers of property, whilst paragraph 124 states that good design is a key aspect of sustainable development that helps make proposals acceptable to communities. In light of these Framework policies, I attach significant weight to the harm that would be caused to the living conditions of Nos 59 to 73. In arriving at this view, I have paid regard to the Inspector comments in respect of a site in Droitwich<sup>3</sup>, but note that these are of some age and refer to an earlier version of the Framework.
30. Overall, the harm arising from the proposal would significantly and demonstrably outweigh the benefits of the scheme when considered against the policies of the Framework. As such, the presumption in favour of granting permission as set out at paragraph 11 of the Framework does not apply.

### **Conclusion**

31. Whilst the proposal would be acceptable in terms of its effect on the character and appearance of the area as well as in terms of parking and garden provision, the significant harm that would be caused to the living conditions of occupiers of No 59 to 73 is the overriding consideration. The proposal would conflict with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.
32. For these reasons, I conclude the appeal should be dismissed.

*Jonathan Edwards*

INSPECTOR

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<sup>3</sup> Appeal ref no APP/H1840/A/13/2199426