



Appeal Decision

Site visit made on 28 January 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2020

Appeal Ref: APP/C1950/W/19/3239713

55 Roe Green Close, Hatfield, AL10 9PF

- 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 Ms Sarah Coley against the decision of Welwyn Hatfield Borough Council.
 - The application Ref: 6/2019/1268/FULL dated 20 May 2019, was refused by notice dated 6 August 2019.
 - The development proposed is the erection of 3-bedroom chalet bungalow with associated parking and private amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's reasons for refusal refer to policies of the Welwyn Hatfield Draft Local Plan Proposed Submission August 2016 (DLPPS). From the evidence before me, the DLPPS was submitted for examination in May 2017 and the examination is ongoing. Paragraph 48 of the National Planning Policy Framework (the Framework) explains that weight may be given to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections and the degree of consistency of the relevant policies in the emerging plan to the Framework.
3. Although the DLPPS has reached an advanced stage in its preparation the independent examination has yet to be concluded. Whilst emerging Policies SP9, SADM11, SADM16 and SADM18, which are cited in the reasons for refusal, are broadly consistent with the Framework, I have not been advised whether or not there are any unresolved objections to those policies. I can therefore only give limited weight to these emerging policies in my determination of this appeal.

Main Issues

4. The main issues are i) the effect of the proposed development on the character and appearance of the area, with particular regard to trees and ii) whether the site is an appropriate location for development, with particular regard to land stability.

Reasons

Background

5. The proposal before me seeks to address the reasons for refusal of permission for a previous proposal for a dwelling on the site Ref: 6/2019/0516/FULL, through revisions and additional information. The Council's reasons for refusal of that previous application related, in summary, to the scale and design of the proposed dwelling, its relationship to its plot, a loss of privacy to the occupiers of 53 Roe Green Close, the potential harm to a tree subject to a Tree Preservation Order (TPO) and a lack of evidence on the stability of the site. I consider these matters below.

Character and appearance

6. Roe Green Close comprises predominantly 2-storey detached, link-detached and semi-detached dwellings set in regularly shaped and sized plots fronting the Close. Many of the dwellings have open frontages which, together with open grassed areas and the gaps between the dwellings, give the Close a spacious character.
7. The triangular form of the appeal site is at odds with the prevailing regular pattern of development in the Close. Although the garden of the proposed dwelling would be of an adequate size for its occupiers, the shape of the plot would mean that the development would appear cramped in comparison with other properties on Roe Green Close and the properties on College Lane to the west of the site. The orientation of the proposed dwelling would also be inconsistent with the pattern of development around the appeal site.
8. From the evidence before me, the proposed dwelling would be approximately 8.3 m high to the ridge and would therefore be higher than other detached properties, which the Council contends are approximately 6.7 m high. I observed during my site visit that the properties on College Lane immediately to the west of the site are bungalows and that the land slopes from Roe Green Close down to College Lane.
9. Although the proposed dwelling would be largely hidden from Roe Green Close and College Lane by existing dwellings and, particularly during the summer months, by vegetation, it would be clearly visible from a private road / public footpath off College Lane that provides, from the evidence before me, access to the College Lane campus of the University of Hertfordshire. From here the proposed dwelling would be dominant and intrusive due to its height and the full gable to the front elevation.
10. In addition, on this private road / public footpath, just beyond the boundary of the site, is an oak tree protected by TPO421 2009 and identified as T4 in the TPO. I observed during my site visit that the tree makes an important contribution to the amenity of the area, forming the end of a line of trees, also covered by TPO421 2009, extending from an area of woodland and being visible from Roe Green Close and College Lane as well as the public footpath running past it.
11. The access to the proposed dwelling would be via this road / footpath. The submitted proposed site plan indicates that the parking spaces for the proposed dwelling would be partially under the canopy of this tree. The access to these spaces would also be under the canopy, close to the trunk. The appellant

- contends that vehicle movements have been tracked out to enable movement without impacting the trees surrounding the area, but this contention is not supported by any evidence that this could be the case.
12. In fact, I cannot see how the proposed parking spaces as shown could be accessed without passing under the canopy and over the roots of the protected oak. The proposed development would therefore lead to additional vehicular movements over the roots of the tree. Although the appellant suggests that the entrance to the site would be a 'no dig' zone, no evidence has been submitted to indicate the extent of the Root Protection Area nor the potential effect of compaction of the root zone arising from vehicles accessing and parking at the proposed dwelling.
 13. The appellant has therefore failed to demonstrate that the proposed development would not cause harm to the protected oak tree, with consequent harm to the character and appearance of the area.
 14. I therefore conclude that the proposed development would be contrary in this respect to Policies GBSP2, D1 and D2 of the Welwyn Hatfield District Plan 2005 (WHDP) and Policy SP9 of the DLPPS which, in summary, in combination and amongst other things, require new development to respect and maintain the character of the area. The development would fail to enhance and contribute to the legibility of the area and so would conflict with Policy D6 of the WHDP. The appellant has not demonstrated that the development would accord with Policies D8 and R17 of the WHDP or Policy SADM16 of the DLPPS which seek to protect trees.
 15. Policy SADM11 of the DLPPS was also drawn to my attention. However, as this policy principally relates to the protection of living conditions it is not as relevant to character and appearance as the policies cited above.
 16. The proposed development would be contrary in respect of character and appearance to the principle in the Council's Supplementary Design Guidance (2005) (SDG) that new development must be sensitive to local character and not detrimentally affect the townscape and landscape. However, this is only guidance and the weight I can attach to it is less than that of a development plan policy.
 17. In addition, the proposed development would be contrary to paragraphs 127 c) and 170 of the Framework which respectively require planning decisions to ensure that developments are sympathetic to local character and recognise the benefits of trees and woodland.

Land stability

18. Paragraph 178 of the Framework, to which the Council's Delegated Report refers, requires planning decisions to ensure that a site is suitable for its proposed use taking account of any risks arising from land instability, including risks arising from former activities such as mining. The Delegated Report refers to the Council's risk assessment indicating that the proposed development would be at 'very high risk' and indicates that this risk is associated with former chalk mining.
19. I have not been provided with a copy of the Council's risk assessment or any other evidence to demonstrate that the appeal site is not an appropriate location for development having regard to land stability. However, the

Council's risk assessment and conclusion have not been contested by the appellant, who proposes a raft foundation to provide a stable sub-structure.

20. I have no evidence, however, that such a foundation would ensure the stability of the proposed dwelling. I am unable to conclude therefore, from the evidence before me, that the site is suitable for a dwelling taking account of the risks associated with the indicated former chalk mining. Policies R2 of the WHDP and SADM18 of the DLPPS, cited in the Council's reason for refusal, are not relevant to the issue of land stability as they relate to contaminated land and pollution. Nevertheless, to grant planning permission based on the evidence before me would be contrary to paragraph 178 of the Framework.

Other Matters

21. The proposed dwelling would contribute to the housing stock in the Borough and would accord with the support in the Framework for increasing the supply of housing. However, this contribution would be very modest, and I have no evidence that there is any shortfall in the housing supply. I have found conflict with other policies of the Framework's in respect of the main issues and therefore do not consider that the Framework, taken as a whole, indicates that a decision should be made other than in accordance with the policies of the development plan.
22. I acknowledge that, from the evidence before me, the proposed dwelling has been re-orientated from that previously refused under Ref: 6/2019/0516/FULL to address the Council's concerns over a loss of privacy to the occupiers of 53 Roe Green Close. I am satisfied that with the orientation of the dwelling as now proposed and the distance to No. 53, the proposed dwelling would not result in an unacceptable effect on the living conditions of the occupier of No. 53 due to overlooking.
23. I note the objection from the occupiers of 106A and 108A College Lane on the grounds, amongst others, that the proposed dwelling would be very close and would affect outlook. However, as the proposed dwelling would be the other side of the private road / public footpath to these properties and partially screened by two large trees, the dwelling would not be materially harmful to the living conditions of the occupiers of these properties. I note that the Council came to the same conclusion and the effect on living conditions did not form a reason for refusal of the proposed development. I give this lack of material harm neutral weight in my determination of this appeal.

Conclusion

24. For the reasons given above, and having regard to the other matters raised, I conclude that the appeal should be dismissed.

Martin Small

INSPECTOR