
Appeal Decision

Site visit made on 14 May 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2020

Appeal Ref: APP/P1940/W/19/3243537

16-18 Lower Road, Chorleywood, Rickmansworth, Herts WD3 5LQ

- 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 Kamaljit Grewal (Chorleywood Retail Limited) against the decision of Three Rivers District Council.
 - The application Ref 19/0568/FUL, dated 20 March 2019, was refused by notice dated 4 July 2019.
 - The development proposed is described as 'demolition of the existing supermarket at 16-18 Lower Road, and the construction of a replacement supermarket with eight new apartments above'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Chorleywood Retail Limited against Three Rivers District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effects of the development on the living conditions of future occupiers of the proposed buildings in terms of outdoor amenity space;
 - The effects of the development on the living conditions of neighbouring and future occupiers in terms of outlook, privacy, noise, and disturbance; and,
 - Whether the development would make adequate arrangements for car-parking.

Reasons

Outdoor amenity space

4. Appendix 2 of the Development Management Policies Local Development Document 2013 (DMP) states that one-bedroom flats should provide a minimum of 21 sq.m of external amenity space, with an additional 10 sq.m for each bedroom, which should be provided in the form of private or shared space. The proposal would include residential accommodation comprising six

flats above the retail unit, and a separate block of two flats located towards the rear of the appeal site.

5. The appeal site is located in Chorleywood, with good access to a range of amenities and public transport options. However, Appendix 2 of the DMP does not set different standards for outdoor amenity space according to the site's location. Given the proposal's lack of either individual or communal external amenity space, future occupiers of the flats would be deprived of adequate access to external amenity space within the curtilage of the development, contrary to Appendix 2 of the DMP.
6. There may be some circumstances where a relaxation of the amenity standards set out in Appendix 2 of the DMP would be appropriate. I have taken into account the National Design Guide¹ which acknowledges that the provision of external spaces may require different solutions in places such as town centres. The appellant suggests that alternative outdoor amenity provision lies close by, and on my site visit I walked between the appeal site and Chorleywood Common, along the routes suggested by the appellant. I had to walk along several streets, crossing several of them, before arriving at the common. Whilst I do not dispute the appellant's assertion that the appeal site is a relatively short walk from the common², to my mind it could not reasonably be considered as being 'on the doorstep', and it is located such that it would lack the closeness and convenience of a suitable outdoor amenity space within the buildings' immediate setting.
7. The National Design Guide reinforces the importance of external spaces in supporting the health and wellbeing of their users. Whilst I understand the constraints associated with providing a policy compliant level of external amenity space in this urban location, the proposal would fail to provide any dedicated space, be it private or communal. Furthermore, the layout of the buildings would be such that they would face a large surface car park and roads, so there would be an absence of either formal or informal external areas where residents could relax in comfortable, stimulating surroundings, close to their place of residence. The existence of public open space at Chorleywood Common would not compensate for a private or communal external space within the development, which would allow future residents to sit and relax in a place close to their own home, thus supporting the health and wellbeing of future occupiers. As such, the lack of outdoor amenity space proposed in this case would unacceptably undermine the living conditions for future occupiers of the development.
8. The appellant has referred me to several appeal decisions in this District which have some similarities with the appeal proposal³, where a reduced level of outdoor amenity space was deemed acceptable. However, it would appear that each of the cases proposed varying amounts of outdoor amenity space, as opposed to the case before me where no outdoor amenity space would be provided. Therefore, I am not satisfied that the circumstances of each case are sufficiently similar to the appeal scheme such that it would warrant me reaching a different conclusion on this issue.

¹ MHCLG – National Design Guide – planning practice guidance for beautiful, enduring and successful places 2019

² The appellant states that Chorleywood Common is a 9 minute walk from the appeal site

³ Appeal references - APP/P1940/W/18/3217113, APP/P1940/W/19/3229274, APP/P1940/W/18/3212421

9. The appellant has also informed me that nearby developments, including a residential scheme adjacent to the appeal site, do not provide any outdoor amenity space. Be that as it may, I do not know the full circumstances which led to the consents for nearby developments, nor when such decisions were made and the policies that were relevant at that time, thus they carry limited weight. Therefore, this consideration does not justify me departing from the development plan, and I have had regard to the specific circumstances of the appeal case, and find harm for the reasons set out.
10. Therefore, for the foregoing reasons, the proposal would not provide sufficient outdoor amenity space, thus it would result in unacceptable living conditions for future occupiers of the development. The proposal would fail to accord with Policies CP1 and CP12 of the Three Rivers District Council Local Development Framework Core Strategy 2011 (Core Strategy), and Policies DM1 and Appendix 2 of the DMP which require, amongst other matters, that development protects residential amenities and provides an appropriate level of either private or shared outdoor amenity space. The development would fail to provide a high standard of amenity for future users, and the development would not function well or add to the quality of the area, contrary to paragraph 127 of the National Planning Policy Framework (the Framework).

Living conditions for existing and future occupiers

11. The residential accommodation would be situated in two blocks which would face each other. The rearmost building would generally align with an adjacent residential building, whilst the street facing accommodation situated above the retail unit would lie either side of existing properties.
12. In respect of privacy and outlook for future occupiers, Annex 2 of the DMP states that facing buildings should generally be located 28m away from each other so as to avoid unacceptable levels of overlooking. Whilst a number of the habitable room windows in both of the proposed buildings would face each other at a distance of approximately 17m at their closest point, this distance would be comparable with the gap between neighbouring opposing buildings. Therefore, a closer relationship could reasonably be expected in an urban environment such as this, and I do not find that the distance between habitable room windows would be sufficiently close such that it would lead to an unacceptable loss of privacy for future occupiers of the flats.
13. In terms of the relationship between the rearmost proposed building and No 20 Lower Road, the facing windows would be even closer than 17m. However, No 20 would be offset from the proposed building, which would result in an oblique angle of view. Therefore, occupiers of No 20 would not be directly overlooked due to the orientation of windows in the proposed building. Moreover, given the distance and angle involved, and the scale of the proposed building which would not be dissimilar in height to buildings nearby, it would not appear oppressive or overly prominent for those residing in No 20. For the same reasons, there would be no unacceptable loss of privacy, nor would the development appear oppressive, for occupants of No 14 Lower Road, given the greater distance between respective buildings. Finally, obscure glazed first floor windows in the rearmost building's façade would prevent unacceptable overlooking of the rear gardens of nearby properties.
14. The proposal would generate additional traffic movements along the access which runs parallel to Lower Road to the rear of the appeal site. However, this

access is already used by vehicles to access several garages and parking spaces along it, as well as the residential accommodation that lies adjacent to the appeal site. Given this context, I am not persuaded that the relatively modest increase in traffic associated with the proposed car park⁴ would markedly increase noise and disturbance over and above the existing situation.

15. Furthermore, neighbouring residents are already accustomed to views of the roof of the existing retail store, thus obtainable views of the proposed car park would not represent a significant visual change in comparison with the existing urban form. The proposed car park and its use would not adversely affect the living conditions of neighbours in terms of outlook, noise, or disturbance.
16. Due to the close proximity of retail, commercial and residential uses, I see no reason why the provision of additional residential accommodation would markedly increase noise levels for nearby residents so as to unacceptably diminish the quality of their living conditions. In respect of the proposed retail element, there is no evidence before me to suggest it would be any more intrusive in terms of noise and disturbance than the existing retail store. Noise from any plant required in association with the retail unit could be controlled, and construction activities and delivery traffic could also be appropriately managed, through the imposition of appropriate planning conditions.
17. For all the reasons set out above, and taken together, the development would not unacceptably affect the living conditions of the occupiers of surrounding properties or future occupiers of the development in terms of privacy, outlook, noise, and disturbance. The development would comply with Policy CP12 of the Core Strategy, and Policies DM1, DM9 and Appendix 2 of the DMP which require, amongst other matters, that residential amenity is protected with regards privacy and outlook. The development would comply with paragraph 180 of the Framework which requires that noise from development should not give rise to significant adverse impacts on health and quality of life.

Car parking

18. The Council raises no objection to the 15 residential parking spaces proposed, and I agree that the number of spaces would be in line with the requirements set out in Appendix 5 of the DMP. In relation to the proposed retail unit, the appellant points to the fact that parking is available locally, both on the street (for a limited duration) and in a nearby public car park. Whilst I acknowledge the assertions made by the Council and several third parties that local parking availability is severely restricted at times, the Council have not submitted any evidence detailing the extent to which nearby roads suffer from undue parking stress.
19. The proposal would provide a total of 3 off-street car parking spaces for retail staff. According to Appendix 5 of the DMP, the appeal site lies within 'Zone 2' which, when taking into account the extent of the proposed retail floorspace, means that between 3.6 spaces and 7.2 spaces should be provided based on demand. The Council suggests that the latter higher parking standard would be appropriate in this case but, as set out above, no tangible evidence in terms of the prevailing on-street parking situation has been submitted as evidence to support this assertion. Consequently, and given the site's relatively accessible

⁴ having regard to its intended use mainly by residents of the proposed flats as opposed to those visiting the retail unit

location, I am satisfied that the lower requirement of 3.6 spaces would be appropriate in this case. Therefore, even if this figure was 'rounded up', the proposal would only be one space short of the requirement.

20. In any event, the appeal site is already occupied by a retail unit with no allocated parking. Based on the similar size of the replacement retail unit proposed, there is nothing to suggest that parking demand from staff or visitors would increase as a result. Therefore, I see no reason why the proposal would increase parking stress and affect the ability of local residents to park on surrounding streets over and above the current situation. Due to the presence of a similarly sized retail unit, and a lack of evidence to suggest a significant highway safety issue either presently, or as a result of the proposal, I am not persuaded that the level of parking proposed would be detrimental to highway safety, or otherwise unacceptably affect the living conditions of nearby occupiers.
21. In conclusion therefore, the development would make adequate arrangements for car parking and would not unacceptably compromise highway safety or the living conditions of residents in the area. The proposal would comply with the requirements of Policies CP1, CP10 and CP12 of the Core Strategy and Policies DM1, DM13 and Appendix 5 of the DMP which taken together require the safety of all road users is taken into account and residential amenity is protected. In accordance with paragraph 109 of the NPPF, there would be no unacceptable impact on highway and pedestrian safety.

Planning Balance and Conclusion

22. There is no dispute between the main parties that the Council are unable to demonstrate a five-year supply of deliverable housing sites. As a result, Footnote 7 of the Framework triggers the need for a development proposal to be considered against paragraph 11d, which states that 'where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the LPA cannot demonstrate a five year supply of deliverable housing sites), 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'.
23. The Council states that a 2-year housing land supply of deliverable sites can be demonstrated, and I consider this represents a substantial shortfall against the requirement. The proposed development would make a modest contribution towards the District's housing supply, providing small residential units as opposed to larger family homes, thus contributing to the area's housing mix by providing accommodation suitable for younger buyers. It would also provide a new retail unit which would be significantly more energy efficient than the existing store.
24. On the other hand, for the reasons given earlier in my decision, I find that the residential units would provide unacceptable living conditions for future occupiers as they would be devoid of any meaningful outdoor amenity space, thus the proposal would not constitute a high-quality, well-designed development. Even taking account of the objective of significantly boosting the supply of homes and the Council's position, the conflict between the proposal and the Core Strategy and DMP policies I have referred to should be given significant weight in this appeal.

25. The development would provide acceptable living conditions for existing occupiers and for future occupiers in all respects other than the suitability of the outdoor amenity space proposed. The proposal would make sufficient parking provision, and the Council raises no objections in respect of other issues, including the impact of the development on the character and appearance of the area. However, whilst the proposal would be policy compliant in these respects, they do not attract weight in favour of the appeal scheme.
26. Consequently, the adverse impacts on the living conditions of future occupiers would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
27. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Matthew Woodward

INSPECTOR