
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: 1st July 2020

Appeal Ref: APP/P1940/W/19/3243908

Land adjoining 15 Lawford Close, Chorleywood, Herts WD3 5JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Troutrise Developments Ltd against the decision of Three Rivers District Council.
 - The application Ref 19/1763/OUT, dated 25 September 2019, was refused by notice dated 20 November 2019.
 - The development proposed is the construction of a detached dwelling with associated land level changes.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached dwelling with associated land level changes at land adjoining 15 Lawford Close, Chorleywood, Herts WD3 5JX in accordance with the terms of the application Ref 19/1763/OUT, dated 25 September 2019, subject to the conditions in the attached Schedule.

Procedural Matters

2. The application date in the banner heading above refers to the date the application was received valid, which is taken from the Council's decision notice, as no date is given on the application form.
3. The application that is the subject of this appeal was submitted in outline form with all matters other than details of access and layout reserved for subsequent approval. Whilst I appreciate that the Council considered a number of other plans which show details of appearance, landscaping and scale (the reserved matters), that is not the basis upon which the application was submitted as is clearly set out on the application form, and also reiterated on the Council's decision notice.
4. When dealing with an outline planning application, Article 5(2) of the Development Management Procedure Order¹ (DMPO) provides a mechanism for determining authorities to request any of the reserved matters to be considered at the same time. Such a request must be made in writing within one month of the date the planning application was received. There is no evidence to suggest any details of the reserved matters were formally requested by the Council during the relevant period. Therefore, on the basis of all that is before me, I have determined this appeal on the basis of its outline

¹ Town and Country Planning (Development Management Procedure) (England) Order 2015

submission, and I have treated any details relating to the reserved matters as being indicative only.

5. A completed and signed section 106 unilateral undertaking (UU) was submitted by the appellant as part of this appeal. This seeks to provide a monetary contribution towards affordable housing. Amended plans have also been submitted with the appeal. The amended 'layout' plan alters the scale of the drawing but does not alter the proposal in comparison with the original. Indicative cross-sectional drawings have been amended omitting an external terrace to the rear of the property, in line with both the original and amended layout drawings.
6. The Council have had the opportunity to comment on the UU and the amended plans as part of this appeal, and I am satisfied that interested parties have not been prejudiced by the late submission of evidence. Consequently, I have considered the UU and the amended plans in determining this appeal.

Main Issues

7. The main issues in this case are:

- The effect of the proposal on the character and appearance of the area;
- The effect of the proposal on a) the living conditions of the occupiers of 107 Quickley Lane with particular regard to outlook, and b) future occupiers of the appeal dwelling with particular regard to outdoor amenity space; and,
- Whether the proposal should provide affordable housing.

Reasons

Character and appearance

8. The steep sloping appeal site lies towards the end of Lawford Close. It is populated by an assortment of vegetation and trees, situated in between several houses and the street.
9. The DMPO clarifies that 'layout' relates to the way in which buildings, routes and opens spaces are to be provided, situated and orientated. In this respect the proposed dwelling would be sited fairly centrally within the plot. According to the indicative details provided, this would leave sufficient space for tree planting along the front boundary. Like the Council, I find that the proposal would not be harmful when viewed from Lawford Close, with details concerning appearance, scale and landscaping being realised at reserved matters stage.
10. On my site visit I walked along the footpath which lies beyond the site boundary to the rear². The presence of boundary fences and trees on either side gives the footpath a verdant but enclosed character. From the footpath there are glimpses of several properties which lie on Lawford Close on a much higher level. Due to the gradient of the appeal site, the dwelling would project out from the slope in the general direction of Quickley Lane and the footpath. However, despite its elevated position, it would lie some distance from Quickley Lane and the footpath, thus reducing its prominence when viewed from these receptors. The dwelling would infill a gap in between existing dwellings without appearing out of step with its suburban surroundings. Its elevated position

² Referred to by the Council as Public Right of Way 'Chorleywood 020'.

would be comparable with nearby houses, and intervening foliage would further reduce its visibility from the footpath and Quickley Lane. To my mind, the proposal would not fundamentally alter the prevailing character of the footpath or Quickley Lane, nor the visual relationships each of them have with their surroundings.

11. As a result of the dwelling's footprint, the Council concludes that the proposed level of outdoor amenity/garden space would fall short of the requirements set out in Appendix 2 of the Three Rivers District Council Development Management Local Plan Document 2013 (DMP), thus they contend that the layout would appear cramped and out of character with the local area. Whilst I agree that neighbouring plots generally comprise longer rear gardens than the proposal, several plots on the opposite side of Lawford Close appear smaller, and the prevailing shape of plots in the area varies. Consequently, the proposal would be acceptable in this regard.
12. Whilst accepting that details of the final appearance and scale of the proposal are indicative, whatever the final form of the development, the proposed layout would ensure that a single dwelling could be positioned within the site without appearing unduly harmful, and the final form would be capable of being designed so as to respect the character and appearance of the area.
13. For the foregoing reasons I conclude that the development would not harm the character and appearance of the area. The development would comply with Policies CP1 and CP12 of the Three Rivers District Council Core Strategy 2011 (Core Strategy), and Policy DM1 and Appendix 2 of the DMP, which require, amongst other matters, that new development is not excessively prominent, respects the character of the street scene, and comprises high quality design.

Living conditions

14. There are a number of tall coniferous trees in between the appeal site and 107 Quickley Lane (No 107). Even though the facing distances between the two dwellings would be 17m as opposed to the 28m advocated in Appendix 2 of the DMP, it is common ground between the main parties that the proposed dwelling could be designed in a manner so as to prevent direct overlooking of No 107 and its associated garden area. This could be achieved through the detailed design, in particular by paying attention to the position and glazing of rear windows, thus I am also satisfied that the development could be designed so as not to result in unacceptable levels of overlooking and subsequent loss of privacy for occupiers of No 107 or other neighbouring properties.
15. The Council's main area of contention relates to a loss of outlook for the occupiers of No 107, which they state would arise due to the close proximity of the proposed dwelling, the height of it, and the difference in land levels between the two sites. Whilst the scale of the dwelling would be a reserved matter, the indicative drawings provide me with a good indication as to how the layout proposed could be accommodated on the appeal site, taking into account its relative steepness.
16. A combination of tall trees on the common boundary and the steep gradient of the appeal site has an enclosing effect on the rear garden of No 107, significantly reducing obtainable views beyond the rear garden boundary for its occupants. The Council accepts that the existing situation means that the proposed dwelling would not result in an additional loss of light for occupiers of

No 107. Therefore, even though the proposed dwelling would lie relatively close to the common boundary, there would remain sufficient space to provide a landscape buffer and, having regard to the existing landscaping and sloping nature of the appeal site which restricts the outlook obtainable from the garden area of No 107, the dwelling could be designed in accordance with the layout proposed so as not to appear overpowering or oppressive for neighbouring occupiers.

17. The appellant has also drawn my attention to the Council's decision to grant a permission in principle (PiP) for a single dwelling on the appeal site³. This confirms that the Council are satisfied that the appeal site is capable of accommodating a single dwelling without it having an unacceptable effect on the living conditions of neighbours. Whilst I appreciate that the PiP did not permit technical details including the dwelling's scale, appearance, or layout; I find nothing to suggest that the layout proposed as part of the appeal scheme would be detrimental to the living conditions of neighbouring occupiers.
18. Turning now to living conditions for future occupiers of the proposed dwelling. Even though the Council have not specifically raised the quality or amount of outdoor garden/amenity space in their reasons for refusal, they nevertheless conclude in their evidence that the amenity space proposed would be insufficient to meet the requirements of the DMP⁴. I also find that there would be a material shortfall in outdoor amenity space in this case and also consider that the north facing position of the proposed garden area, and its proximity to trees, would limit the amount of sunlight entering the garden, reducing its overall quality as private amenity space. In combination therefore, the garden space would not meet the quantum or quality of outdoor amenity space envisaged by Appendix 2 of the DMP. However, despite its shortcomings, I acknowledge that the amenity space would still be sufficiently spacious so that future residents could sit outside and relax in relative privacy.
19. Consequently, taking all the above into account, I conclude that the proposal would not harm the living conditions of the occupiers of nearby properties. It would comply with Policies CP1 and CP12 of the Core Strategy, and Policy DM1 and Appendix 2 of the DMP which require, amongst other things, that development is not excessively prominent in outlook and respects privacy. However, the proposal would fail to provide high quality living conditions for future occupiers, thus it would be contrary to the aforementioned policies in this regard which, in summary, seek to preserve the amenities of the area and ensure that adequate amenity space is provided in all new developments.

Affordable housing

20. Policy CP4 of the Core Strategy requires that housing developments include 45% affordable housing units, with a monetary contribution deemed appropriate for smaller sites, subject to viability. Whilst the proposal did not include affordable housing provision when the Council considered the planning application, the UU submitted with this appeal addresses one of the Council's reasons for refusal by ensuring a monetary contribution towards affordable housing in the district.

³ Under the Town and Country Planning (Permission in Principle) Order 2017

⁴ Outdoor amenity space of circa 60m² as opposed to the 84m² required by Appendix 2 of the DMP

21. Paragraph 63 of the Framework states that affordable housing should not be sought for residential developments that are not major developments other than in designated rural areas. However, whilst the Framework is a material consideration and is more up to date than the local plan, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Council have also provided me with several recent appeal decisions where affordable housing contributions were required for non-major developments, as well as evidence to justify Policy CP4 on the basis of local circumstances.
22. The appellant does not contest that an affordable housing contribution is required, and the Council do not object to the monetary contribution proposed as part of the UU, taking into account viability considerations. I have no reason to take an alternate view and find that the affordable housing contribution proposed would satisfy the requirements of Policy CP4 of the Core Strategy.
23. Therefore, I conclude that the development would make appropriate provision for affordable housing. It would comply with Policy CP4 of the Core Strategy which seeks, amongst other matters, a contribution towards affordable housing on sites providing fewer than 10 dwellings, having regard to the specific circumstances of the site.

Other Matters

24. Consideration of appearance, landscaping, and scale have been reserved for future consideration and the Council retains control over these elements to be determined as and when they are sought. Should a proposal be submitted at reserved matters stage then the Council retains the power to refuse it, should they find any reserved matters proposal unacceptable. Allowing this appeal would not prejudice the Council's position with regard to the reserved matters.
25. The Council does not object in principle to the access and, in connection with a single dwelling, the proposal would not markedly increase the amount of traffic using the cul-de-sac and surrounding road network. The layout shows that vehicles could be accommodated off-street, thus ensuring that any manoeuvring vehicles at the end of the cul-de-sac would not be impeded by vehicles parking on the street in connection with the dwelling. I am satisfied that there would be no unacceptable impact on highway safety.
26. I have received a copy of a Tree Preservation Order⁵ (TPO) relating to the appeal site but, as I saw on my site visit, and as corroborated by the Council, the TPO tree is no longer in situ. The proposal includes the retention and protection of some trees within and close to the site and the Council raises no objection. I understand that the proposed dwelling would be sited close to an existing Ash tree, but it is not subject to a TPO and, in any event, the proposal would retain this tree. Therefore, I am satisfied that no valuable trees would be lost by the proposal.
27. Despite third party accounts of a variety of wildlife within the appeal site, the Council does not consider that the proposal would adversely affect protected species, and I saw nothing on my site visit to suggest that the appeal site is of significant ecological value. Moreover, the recently granted PiP reaffirms that

⁵ Tree Preservation Order reference 143 relating to a Beech Tree located 'at the frontage of land at Number 15 Lawford Close'

the Council are satisfied that housing is acceptable in principle on this site. Consequently, these matters carry only limited weight, and do not result in conflict with relevant policies.

Planning Balance

28. There is no dispute between the main parties that the Council are unable to demonstrate a 5-year supply of deliverable housing sites, and as a result of the provisions contained within footnote 7 of the Framework, the most important policies for determining the proposal are deemed to be out of date, thus it should be considered against paragraph 11d of the Framework. This states that 'where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date 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'.
29. The proposal would conflict with development plan policies which support the provision of appropriate outdoor amenity space in the interests of ensuring satisfactory living conditions for future occupiers. However, the policy conflicts would not be substantial, taking into account the meaningful amount of private garden space that the proposal would provide, despite the quality and amount being compromised.
30. The Council submits that a 2-year housing land supply of deliverable sites can be demonstrated⁶. In this context, the proposal would make a small but meaningful contribution to housing in an accessible location at a time when the Council's housing land supply shortfall is substantial. The site's acceptability for housing has been reinforced by the Council's recent decision to grant PiP for a dwelling on the appeal site. The proposal would also make an off-site contribution towards affordable housing, resulting in modest social benefits for the local area. Furthermore, in association with a single dwelling, the proposal would result in small economic benefits during the construction period along with indirect contributions that future occupiers of the dwelling would make to the local economy.
31. I have had regard to Council and third-party objections in relation to the proposal. However, I find no conflict with policies in relation to the proposal's impact on the character and appearance of the area, or the living conditions of nearby occupiers. There is no substantive evidence to justify dismissal of the appeal on the grounds of other matters raised.
32. In summary, no adverse impacts have been identified that would significantly and demonstrably outweigh the benefits and the proposal therefore represents sustainable development having regard to the terms of paragraph 11 of the Framework.

⁶ Three Rivers Housing Local Plan Land Supply Update December 2019

Planning Obligation and Conditions

33. A signed S106 UU has been provided and includes a monetary contribution towards the provision of off-site affordable housing. As I have detailed in my decision, the Council have justified an affordable housing requirement in this case and, on the basis of viability circumstances, the planning obligation would mitigate the impact of the development by ensuring that affordable housing could be delivered elsewhere in the district. No substantive evidence has been provided questioning the necessity or viability of the obligation.
34. Therefore, I find that the planning obligation would be directly related to the development proposed, fairly and reasonably related in scale and kind, and would be necessary to make the development acceptable. The proposal would therefore comply with the requirements of Regulation 122 of the CIL Regulations⁷ and the tests set out in paragraph 56 of the Framework.
35. The Council have suggested a number of planning conditions which I have considered against the relevant guidance contained within the Planning Practice Guidance (the PPG). I have amended some of them for clarity and in order to meet the PPG, and to avoid repetition.
36. I have applied the standard 'reserved matters' conditions relating to time limits and the submission of the reserved matters details. I have included the 'approved plans' and 'materials' conditions, in the interests of certainty and character and appearance. For clarity, the approved plans condition includes a list of plans which relate solely to the outline matters which relate directly to this appeal, including tree protection and tree removal details, and not the indicative drawings which are reserved matters.
37. A highways related condition is required in order to ensure that the access and layout is provided in a manner that ensures safe access for vehicles entering and leaving the site.
38. The Construction Management Plan condition is 'pre-commencement', required so that measures can be put in place before any development starts on site to ensure the protection of the living conditions of existing occupiers of nearby properties, and in the interests of highway safety.

Conclusion

39. The proposal represents sustainable development having regard to paragraph 11 of the Framework and there are no adverse impacts which would significantly and demonstrably outweigh the benefits in this case. This justifies a decision otherwise than in accordance with the development plan. Therefore, the appeal is allowed.

Matthew Woodward

INSPECTOR

⁷ Community Infrastructure Levy Regulations 2010 (as amended)

Schedule of Conditions

- 1) Details of the appearance, landscaping, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 0001, 0100 SPL2, TPP/LLCCH/010 B1, TPP/LLCCH/010 B2.
- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development; and,
 - iv) measures to control the emission of dust and dirt during construction;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) No works involving the provision of hardstanding areas for the parking of vehicles (including driveways) shall take place until the following have been submitted to and approved in writing by the Local Planning Authority:
 - Surface water drainage details within the site so that water does not discharge from or onto the highway.
 - Details of the vehicle crossover in order to ensure a safe and suitable access from the appeal site to the main carriageway.
 - Details of the relocation of the existing telegraph pole.
 - Details of the gradient of the driveway.

The development shall thereafter be carried out in full accordance with the approved details.

End of conditions