



Appeal Decision

Site visit made on 25 August 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/A1910/W/20/3245645

Land adjacent to 26 Station Road, Berkhamsted, Hertfordshire HP4 2EY

- 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 Rivergate Homes Ltd & Paul and Elizabeth Rooksby against the decision of Dacorum Borough Council.
 - The application Ref 4/00528/19/FUL, dated 4 March 2019, was refused by notice dated 19 November 2019.
 - The development proposed is the erection of a pair of semi-detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of two 3-bed semi-detached dwellings at land adjacent to 26 Station Road, Berkhamsted, Hertfordshire HP4 2EY in accordance with the terms of the application, Ref 4/00528/19/FUL, dated 4 March 2019, subject to the following conditions in the schedule to this decision letter.

Application for costs

2. An application for costs was made by Rivergate Homes Ltd & Paul and Elizabeth Rooksby against Dacorum Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The Council's decision notice describes the proposal as the construction of two 3-bed semi-detached dwellings. I also note that the Appellant has utilised this description on their appeal form. Given this, and that the revised description reflects the proposal before me, I have utilised this for my decision.

Main Issue

4. The main issue is whether the proposal would provide for suitable living conditions for the future occupiers of the development.

Reasons

5. The appeal site is located on the north side of Station Road and is currently an undeveloped parcel of land. The land rises away from the road with a row of trees to the rear. Beyond the row of trees is the West Coast mainline railway line which is set at a lower land level than the trees. On the south side of Station Road there are residential properties.

6. My attention has been drawn to a previous appeal decision¹ at this location, which was for a similar development, albeit on a smaller site than the current appeal proposal. In summary, this appeal was dismissed on the basis that it provided insufficient functional garden space for the future occupants of the dwellings.
7. The current appeal proposal is similar in that the development would still be for two dwellings which would be sited a similar distance back from the street and the rear boundary. However, the width of the site has been increased so that additional garden space would be provided to the side of each dwelling.
8. From the Appellants statement, the side garden for each dwelling would be around 100 square metres in area, with a further area of around 32 square metres to the rear of each dwelling. Therefore, given the size of the appeal dwellings it is clear that the amount of space would be sufficient for the future occupiers of the development.
9. In coming to that view, I acknowledge that the rear garden space is somewhat limited and constrained by land level differences. However, given the level of garden area to the side, I consider that this is not a factor which indicates that planning permission should be withheld. Additionally, it must also be acknowledged that there are rooms to the rear of the dwelling which are dual aspect with windows or doors facing the side garden area. The other rooms with rear facing windows are either non-habitable rooms or have windows to both the front and rear aspect thereby ensuring that there is a sufficient amount of light and outlook to these rooms.
10. The Council have drawn my attention to Appendix 3 of the Dacorum Borough Local Plan 1991-2011, (2004) (DLP) which states that private gardens should normally be positioned to the rear of the dwellings. However, this does not indicate that gardens to the side would be unacceptable per se and therefore each case must be considered on its individual merits. The key issue is therefore whether such a side garden would provide an appropriate space which affords a sufficient degree of privacy.
11. The plans indicated that the side garden area would be largely set at the same finished floor level of the dwellings themselves with a terraced garden/retaining structure towards the rear of the site. I am also conscious that the plans indicate some form of screening of the garden area from the streetscene which would provide the necessary level of privacy for the future occupants of the dwellings.
12. Whilst I agree that a fence of a sufficient height to provide such privacy would not necessarily be acceptable given the location of the public parking (and the fact that the site is within a Conservation Area), I am conscious that a fence is not the only method of providing such a screen. One such alternative method could be the provision of a suitably designed wall. Taking this into account, the exact details of the necessary screening could be secured by a suitably worded planning condition should I be minded to allow the appeal.
13. In terms of the visual aspects of the acoustic fence, it is an inescapable fact that this would be in an elevated position in relation to the garden and dwellings themselves. However, given the amount of garden space to the side,

¹ Reference APP/A1910/W/18/3195787 dated 15 November 2018

and the dual aspect habitable rooms, I consider that this is not so harmful to justify the withholding of planning permission on this ground.

14. In addition to the above, I have considered the proximity of the railway line to the rear of the site and the noise and vibration issues which may arise. However, as acknowledged by the Council, these matters can be addressed by suitably worded planning conditions. Furthermore, and from what I observed on site with passing trains (including freight trains which are likely to cause greater noise and vibration issues), I consider that any such concerns can be addressed in this manner.
15. The Council have suggested that as a result of the harm they considered would arise in respect of the future living conditions of the occupiers of the proposal it would constitute an overdevelopment of the site. However, given that the proposal easily provides for all the facilities one would expect for such a development this cannot be the case.
16. Finally, I have also considered the proximity of the trees to the rear of the site and whether the development would result in any undue pressure for their removal or reduction in size. In that sense, I consider that the amenity areas would be provided with sufficient sunlight and daylight given the position of the trees in relation to sunrise through to sunset. Furthermore, whilst the dwellings themselves would be close to the trees, in this case, I consider that the relationship between the dwellings and the trees themselves is not unacceptable.
17. The Council have referred to Policy CS12 of the Dacorum Core Strategy 2006-2031 (2013) in their reason for refusal. However, this policy does not concern itself with the living conditions of the future occupants of a development. As such I find that there is no conflict with it.
18. For the above reasons the proposal would provide suitable living conditions for the future occupants of the dwelling and it would accord with the National Planning Policy Framework and the aims of Appendix 3 of the DLP which seeks to ensure that new housing developments are provide with suitable amenity space.

Other matters

19. As noted above, the appeal site is located within the Berkhamstead Conservation Area (BCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the character or appearance of the Conservation Area. That said, the Council have not identified any harm to the character or appearance of the BCA and from the evidence before me (and what I observed on site) I have no reason to disagree with that assessment.
20. I have also had regard to the representations made by local residents and other interested parties including matters relating to the traffic and parking characteristics in the area. At my site visit, I observed that there were a large amount of cars parked on street and across the site frontage. Whilst my visit was only a snapshot in time, I have no reason to conclude that this was not a typical occurrence.
21. That said, whilst it is clear that larger vehicles would struggle to traverse this section of the road, the appeal proposal would provide for a better more

formalised parking area on that side of the road together with a pedestrian footpath. To my mind, this would improve the current situation. Furthermore, the introduction of two additional dwellings, each with their own off-street parking provision, would not introduce a significant amount of additional traffic.

22. Taking all of this into account I consider that the traffic and parking characteristics of the area, and how the development would impact on them, does not provide a compelling reason why planning permission should not be granted.

Conditions

23. The Council has suggested a number of conditions that it considers would be appropriate and I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording, including combining some of the suggested conditions to avoid duplication.
24. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty.
25. In the interests of the character and appearance of the area (including the BCA) conditions are necessary in relation to the external materials of the development, details of the fenestration and eaves, landscaping, tree protection measures and slab levels.
26. In the interest of highway safety, conditions are necessary in relation to the provision of parking spaces. In the interest of highway safety and in order to protect the living conditions of the occupiers of nearby residential properties during the construction process, a construction management plan (CMP) condition is necessary. In respect of the living conditions of the future occupiers of the development, a condition is necessary in respect of noise mitigation measures.
27. For environmental reasons, conditions relating to contaminated land matters are also necessary. For nature conservation reasons, a condition relating to a method statement for the translocation of any common lizards from the application site is also required.
28. With the exception of the conditions relating to the CMP, contaminated land matters, lizard translocation and tree protection measures, it is not necessary for any of these to be pre-commencement conditions. It is however necessary for these matters to be agreed prior to any works commencing as they involve matters which relate to the period of construction works or could affect the initial site works.
29. In relation to the suggested condition restricting permitted development rights, given the Conservation Area status of the site I consider that there is no need to remove the rights from Class A which still apply. Furthermore, I consider that it is not necessary to remove rights relating to other roof alterations or means of enclosure.

Conclusion

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

Chris Forrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 26SR/5 revision B; DPL/19/06-1 and DPL/19/06-2.
- 3) No development above slab level shall take place until samples and / or details of the materials proposed to be used on the external walls and roofs of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The approved materials shall be used in the implementation of the development.
- 4) No development above slab level shall take place until full details of the design of the eaves joinery and corbelling detail, and all new windows, roof lights, external doors and openings (including materials, finishes, cills, window headers and vertical cross sections through the openings at a scale of 1:20) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. The assessment shall include:
 - i) a survey of the extent, scale and nature of any contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters; and
 - ecological systems.
- 6) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan.

The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out. Upon completion of the approved remediation scheme a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority prior to the first occupation of either dwelling.

- 7) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 8) Notwithstanding the submitted details, no development above slab level shall take place until full details of both hard and soft landscape works shall have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i. hard surfacing materials;
 - ii. means of enclosure (including those necessary to ensure that the side gardens are a private amenity space);
 - iii. soft landscape works which shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate;
 - iv. Biodiversity features such as bat boxes;
 - v. proposed finished levels of the site;
 - vi. proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines, manholes, supports etc);
 - vii. arrangements for how surface water from the site will be intercepted and disposed of separately so that it does not discharge into the highway.
- 9) All hard landscaping shall be completed prior to the first occupation of the dwelling it relates to and soft landscaping, including planting, seeding or turfing comprised in the approved details of landscaping, shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling it relates to or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) No construction works shall take place until details of the proposed slab and finished floor levels of the building in relation to the existing and proposed levels of the site and the surrounding land shall have been

submitted to and approved in writing by the local planning authority. The buildings shall be constructed in accordance with the approved levels.

- 11) Prior to the first occupation of each dwelling, the new access and parking spaces relevant to that dwelling shall be provided in accordance with the approved details and shall be maintained as such for the life of the development.
- 12) Prior to the first occupation of either of the dwellings hereby approved, details of the how the parking spaces across the site frontage will be implemented and maintained shall be submitted to and approved in writing by the local planning authority. The parking spaces shall be implemented in accordance with the approved details prior to the first occupation of either dwelling.
- 13) No development shall take place (including any site clearance works) until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of :
 - i. the parking of vehicles of site operatives, contractors and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. construction access arrangements;
 - v. wheel washing facilities;
 - vi. measures to control dust and dirt during construction;

The construction works shall only be carried out in accordance with the requirements of the CMP.

- 14) Prior to the first occupation of the either of the dwellings, a 2 metre high acoustic fence shall be erected along the northern, eastern and western boundaries of the site. This barrier will be imperforate, have a minimum surface density of 10kg/m² and shall be retained as such for the life of the development.
- 15) No development above slab level shall take place until an alternative ventilation scheme to protect each habitable room from railway noise has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented to each dwelling prior to its first occupation and shall be maintained as such for the life of the development.
- 16) No development shall take place (including any site clearance works) until a detailed method statement for the translocation of any common lizards from the application site has been submitted to and approved in writing by the local planning authority. The statement should include details of the proposed receptor site; its current condition and the management required to maintain and enhance the receptor site to ensure it remains in a condition sufficient to support the translocated population for at least the following 5 years, consistent with their otherwise continued presence at the development site, and a timescale of when the translocation would take place in relation to the development.

The development shall only be carried out in accordance with the approved method statement.

- 17) No development shall take place (including any site clearance works) until a scheme for the protection of the retained trees shown on drawing no. DPL/19/06-1, including a tree protection plan (TPP) and an arboricultural method statement (AMS), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the
- i. Details of construction/excavation within any root protection area that may impact on the retained trees;
 - ii. location and installation of services/ utilities/ drainage; and
 - iii. details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well as concrete mixing.

The development shall only be carried out in accordance with the approved scheme for the protection of the retained trees.