The Planning Inspectorate

Appeal Decision

Site visit made on 17 November 2020

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2020

Appeal Ref: APP/P1940/W/20/3245738
Land at 44 and 46 Vivian Gardens, Oxhey Hall, Watford, WD19 4PG

- 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 Clovercourtblaise Ltd against the decision of Three Rivers District Council.
- The application Ref 19/1961/FUL, dated 23 October 2019, was refused by notice dated 19 December 2019.
- The development proposed is the erection of 6 semi-detached dwellings with associated access road, car parking and landscaping.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The second reason for refusal refers to the absence of an agreement relating to affordable housing provision. However, the Council acknowledges in its Statement of Case that this reason for refusal would be overcome with the satisfactory completion of a planning obligation. The appellant has provided a signed unilateral undertaking which would provide the commuted sum of £133,000 required by the Council in lieu of the provision of affordable housing on the appeal site. Therefore, the main issue of this appeal now relates only to reason for refusal one.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and appearance

4. The appeal site consists of the rear garden area of 44 Vivian Gardens and part of the rear garden of 46 Vivian Gardens. Properties in this locality are characterised by rear gardens of substantial length and size, which gives the area a spacious and open feel. The proximity of the appeal site immediately adjacent to a large expanse of public open space further adds to the spacious character of the appeal site and its surroundings. The mature trees and vegetation along its boundaries make a strong contribution to the verdant character of the area. Existing dwellings in the surrounding area are arranged in a linear fashion with frontages onto Vivian Gardens.

5. As backland development, the proposal would substantially erode the spacious feel of the surrounding area and it would, by virtue of its positioning in relation to the existing built form along Vivian Gardens, appear as out of character with the prevailing settlement pattern in the area. The plot sizes proposed and those remaining at Nos 44 and 46 would be considerably smaller than typical gardens found in the locality and therefore would also not be in keeping with the character of the surrounding area. Collectively, these factors mean that the proposal would cause significant harm to the character and appearance of the area.

6. The appeal site is constrained to a great degree by the presence of mature trees, most of which are on adjacent land and several of which are subject to Tree Preservation Orders. They are predominantly positioned to the eastern, southern and western boundaries and for the most part are of substantial height. The Arboricultural Impact Assessment Report shows that the proposed dwellings and their gardens would be subject to substantial shading from the trees. There is also a mature protected tree in the garden area that would be retained for No 44, and this tree would dominate the outdoor space that would remain for this dwelling.

7. Ultimately, the proximity between the trees and the proposed dwellings and the impact which would result is likely to lead to conflict between the interests of the long-term retention of the trees and their impact upon the living conditions of the occupiers of the proposed dwellings. From the information before me and my observations during my site visit it would seem there is a real likelihood that the trees, in their form today, would have a severe shading impact on the proposed dwellings. Any future loss or reduction of the trees due to this impact would too cause significant harm to the character and appearance of the area.

8. Due to the topography of the area, it would be necessary to construct a high retaining wall along part of the proposed entrance from Vivian Gardens. This would be clearly visible from the public domain and would be a visually dominant and uncharacteristic feature, and one which would contribute to the harm to the character and appearance of the area that would arise as a result of the proposed development.

9. For these reasons, I conclude that the proposal would cause significant harm to the character and appearance of the area. The proposal would therefore fail to accord with Policies CP1, CP3 and CP12 of the Core Strategy 2011 (CS) and Policies DM1, DM6 and Appendix 2 of the Development Management Policies Local Development Document 2013 (DMP), where they seek to protect character and appearance.

Other considerations

10. The appeal development would deliver new housing, in the form of 6 new dwellings in an urban area. This would make a contribution to the delivery of new housing, against the substantial shortfall in the 5 year housing land supply, which the parties are in agreement is at 2 years. Due to the number of dwellings proposed, this contribution would only be modest but, mindful of the 5 year housing land supply position, I afford moderate weight to the benefits of the delivery of new housing that would arise as a result of the appeal proposal.

11. The Council identifies a pressing need for affordable housing in the district. The proposal would provide a contribution to the off-site provision of affordable housing and in these circumstances, this too must be considered to be a benefit weighing in favour of the proposed development. However, again due to the scale of the proposal and the resultant level of contribution that would be generated, I give this consideration moderate weight.

12. Whilst there would be some associated economic benefit during the construction of the proposed development and from residents using shops, facilities and services, the economic benefits generated by 6 new dwellings would be minimal and means that this consideration carries only limited weight.

13. That the proposal would not have a harmful impact upon ecology or landscaping is not a benefit arising from the development. Mature landscaping is already established around the perimeter of the site and therefore the fact that additional landscaping could be secured as part of the proposed development does not offer support in its favour. These factors are therefore neutral in the planning balance.

The development plan

14. The objectives of Policies CP1, CP3 and CP12 of the CS and Policies DM1, DM6 and Appendix 2 of the DMP, are consistent with The National Planning Policy Framework (The Framework) where it seeks to achieve well-designed places. Therefore, for the purposes of this decision, I afford substantial weight to the conflict that would arise with these policies as a result of the proposal. The conflict with these policies means that, notwithstanding that there are also policies which seek to deliver new housing, the proposed development would conflict with the development plan, when it is taken as a whole.

The paragraph 11d) balance

15. By virtue of the Council not being able to demonstrate a 5 year housing land supply and footnote 7 of The Framework, paragraph 11d)ii) of The Framework is triggered. This states that planning 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.

16. Whilst the delivery of new housing and affordable housing are benefits which carry moderate weight in support of the proposal and there are economic benefits generated which carry limited weight, the adverse impacts arising from the significant harm to character and appearance that would arise carry substantial weight against the proposal. The adverse impacts would therefore significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework taken as a whole, in particular where it seeks to achieve well-designed places.

17. Accordingly, I conclude that the proposal does not benefit from the presumption in favour of sustainable development that is set out in Paragraph 11 of The Framework.

Planning Balance and Conclusion

18. The proposal would not accord with Policies CP1, CP3 and CP12 of the CS and Policies DM1, DM6 and Appendix 2 of the DMP where they seek to protect character and appearance. The conflict with these policies carries substantial weight and means that the proposed development would conflict with the development plan, taken as a whole. Whilst the provision of new housing and affordable housing would be benefits of moderate weight, and there would be economic benefits of limited weight, these considerations do not outweigh the harm that would result from the proposed development and the resultant conflict with the development plan. Furthermore, for the reasons I have outlined, the proposal does not benefit from the presumption in favour of sustainable development set out by The Framework.

19. Therefore, there are no material considerations which indicate that the determination of this appeal should be made otherwise than in accordance with the development plan, and I conclude that the appeal should be dismissed.

Graham Wraight

INSPECTOR