



Appeal Decision

Site visit made on 6 October 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th December 2020

Appeal Ref: APP/P1940/W/20/3249758

165-167 Hampermill Lane, Watford, Hertfordshire WD19 4TF

- 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 Hampermill Estates Ltd against the decision of Three Rivers District Council.
 - The application Ref 19/2146/FUL, dated 25 October 2019, was refused by notice dated 13 January 2020.
 - The development proposed is the demolition of existing buildings and the erection of a part two, part three storey buildings with basement to accommodate 9 residential flats (4 x 1 bed, 2 x 2 bed, and 3 x 3 bed) with associated alterations to site access and provision of landscaping, parking and refuse storage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hampermill Estates Ltd against Three Rivers District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the development on the character and appearance of the area and the provision of affordable housing and infrastructure.

Reasons

Character and appearance

4. The appeal site is located within the defined built up area of the South Oxhey secondary centre. However, it is located at the edge of the built-up area with a public footpath to the south-west side of the site with open fields and undeveloped land to the south and west which I understand is designated as Green Belt.
5. The appeal site itself consists of a pair of vacant semi-detached dwellings with large rear gardens and are in a poor state of repair. The site is set at a higher land level than the road and the footpath to the side of the site. There is also a row of trees along the boundary of the site with the footpath.
6. The built form along this section of Hampermill Lane largely consists of semi-detached or detached properties which are two-storey in scale. There is a

- variety of architectural styles in the area, and the general streetscape is one which has a staggered building line with properties set at a higher land level.
7. The appeal proposal would introduce flats into an area where these are not commonplace. That said, and as acknowledged by the Council, this is not a form of development which is objectionable in principle. Therefore, the key issue is whether the proposed building would successfully integrate with the surrounding area.
 8. From the submitted drawings it is clear that the appeal building would be significantly larger than the existing dwellings on the site and would have a depth of building far greater than any other development in the area. The proposed building would also largely fill the visible width of the site when viewed from the roadside and would come closer to Hampermill Lane than the existing development in the vicinity.
 9. Whilst the proposal would provide the suggested distances to the side boundaries as advocated in Appendix 2 of the Three Rivers Local Plan Development Management Policies Local Development Document (2013) (DMP) it is an inescapable fact that the width of the building is far in excess of the other residential development in the area.
 10. That said, the appeal proposal has clearly been designed to appear as a series of individual buildings and this is reflected in the multiple gable features to the frontage, the use of a palette of different materials, together with the crown and flat roof sections. I also acknowledge that the ridge line of the building is stepped down and follows the general trend of roof lines as the land levels change along the road.
 11. Whilst these design elements help to break up the massing and visual bulk of the building, it would still nevertheless be seen as an overly large building given its three storey nature, the elevated nature of the site relative to the road, and the overall width and depth of the building itself. This is particularly the case given the strong vertical emphasis on the front elevation as a result of the four gable ends and the use of the same external material from ground floor to roof level.
 12. Furthermore, when travelling along Hampermill Lane eastwards the side elevation of 163 Hampermill Lane is already a prominent feature. As the appeal development would be sited closer to the road than No.163, it would draw the eye as it would be even more prominent to the extent that it would be dominating on entering the built-up area.
 13. Whilst there is landscaping to the western boundary of the site, this is largely outside of the appeal site and there is no guarantee that this would remain for the life of the development. Even if the tree screening could be maintained, I am of the view that such screening does not justify a building of the scale and depth proposed. Additionally, I am also conscious that the depth of the building would be readily evident from the footpath down the side of the appeal site.
 14. The combined impact of all of these factors is that, to my mind, the development would be overly prominent in the streetscene and would be detrimental to the overall character and appearance of the area. This harm is exacerbated by the fact that it is located at the edge of the developed area of

Oxhey Hall where there is currently a less stark transition from countryside to a built-up area.

15. I have also had regard to the fact that the proposal would still provide for a good-sized garden area to the rear, albeit that elements of this would be above the underground parking area. Whilst the proposal would still have an open area to the rear, this does not in itself indicate that a building of the depth and size proposed is appropriate to the area.
16. In coming to the above views I acknowledge that the current buildings do not make the best use of the land available at the site and that the Councils Housing Delivery Test Action Plan 2019 (HDTAP) identifies that there is a need to increase density and optimisation of sites to deliver more housing.
17. The Council also acknowledge this and that it is supportive of a higher density of development than the present situation. However, this is also conditional that the development proposed is not detrimental to the character and appearance of the area and I agree with that view. Therefore, whilst the need to provide higher density development to achieve a greater level of housing provision weighs in favour of the development, it does not mean that the development before me is an acceptable way to achieve this objective.
18. The Appellant has drawn my attention to the recent dwellings at 157-159a Hampermill Lane, which I also observed at my site visit. I noted that these dwellings were all detached properties albeit that they are more tightly packed than other developments. Significantly, they are set much further away from the road than the appeal proposal and this has the effect of reducing their visual impact.
19. The Appellant has also drawn my attention to two flatted developments¹. However, these developments are some way from the appeal site and as such provide me with very little justification for an otherwise unacceptable development. Moreover, each proposal must be considered on its individual merits.
20. I also acknowledge that the number of residential units and the overall height of the proposal has been reduced since the initial pre-application advice. However, whilst this has no doubt resulted in a scheme which has less harm than the original concept, this does not provide for a compelling reason why permission should be granted.
21. Turning to the trees along the western boundary of the site it is noted that these are located on the adjoining land but have root protection areas which are within the appeal site.
22. At my site visit I observed that these trees had been pruned back to around the boundary line so that the canopies of the trees would not interfere with the appeal proposal. I also observed that a trench had been dug which was broadly parallel to the side site boundary and appeared to be between the appeal building and the trees themselves.
23. The Appellants latest arboricultural report dated 20 March 2020 sets out the condition of the trees on and adjacent to the site and their respective root

¹ Tanner House (Hampermill Lane/Eastbury Lane) and the former Happy Hour Public House which is within the administrative area of Watford Borough Council.

protection areas as derived from BS5837:2012. The condition of the trees and the extent of the root protection areas is not disputed by the Council, but concerns are raised regarding construction works required for the basement parking area and whether that would result in a significant level of battering back of the soil between the building and the trees themselves.

24. It is clear that the trees exhibit some amenity value and also form part of the Appellants case in screening the proposal, albeit that I have given this point only limited weight.
25. Whilst the construction of the basement level of the proposal would result in a greater amount of ground disturbance than a proposal without such a basement, I consider that it is significant that no part of the proposal would be within the root protection area for any of the trees along the western boundary. I also consider that the exact details of the construction and excavation works (and a methodology of the works) could be controlled by a suitably worded planning condition should I be minded to allow the appeal.
26. The Council have also raised concern over the construction process in relation to the storage of materials and, in essence, access to the rear parts of the site. However, whilst the width of the building would constrain access to the rear, it could be possible to achieve access to the rear through the building itself. On balance, I therefore consider that this could also be dealt with by means of a suitably worded planning condition which could include details of the location for the storage of materials, and the phasing of the construction works to ensure that only limited access is gained within the root protection areas of the trees along the western boundary.
27. In coming to the above views, I acknowledge that there is an element of contradictory information in the various documentation associated with the application and appeal. However, I give greater weight to the later published documents.
28. Taking all of the evidence before me in respect of the trees I find that the proposal would accord with the provisions of Policy DM6 of the DMP and that this matter is not a barrier to the granting of planning permission. However, that does not outweigh the harm I have found to the overall character and appearance of the area.
29. For the above reasons the proposal would harm the character and appearance of the area and would be in conflict with Policies CP1, CP3 and CP12 of the Three Rivers Local Development Framework Core Strategy (2011) (CS) and Policy DM1 of the DMP which amongst other matters seek to promote high quality residential development which respects the local context and character of the District and protects the built environment from inappropriate development. It would also be at odds with the overarching design aims and objectives of the National Planning Policy Framework (the Framework).

Affordable housing and infrastructure

30. It is common ground between the main parties that the development should make provision for affordable housing together with a financial contribution of £7,375 towards a formalised pedestrian crossing on Hampermill Lane and I have no reason to disagree with that assessment.

31. Policy CP4 of the CS sets out that developments should provide around 45% of all new dwellings as being affordable housing. In the absence of on-site provision, the Council have set out that a fully policy compliant off-site contribution would amount to £128,100.
32. That said, the Framework sets out that affordable housing should not be sought for a residential scheme which is not a major development, which is the case here. However, there is a very high demand for affordable housing in Three Rivers, which is also acknowledged in the HDTAP, and I consider that the provisions of the Development Plan in this respect should take precedence over the Framework. Therefore, the proposal should make such a provision.
33. The Appellant has provided a viability assessment which concludes that such a contribution to provide affordable housing would make the development financially unviable. However, the viability assessment does conclude that there is a total of £75,000 available for any infrastructure necessary to support the development and any contributions towards affordable housing provision off-site. From what I have seen, I consider that the development cannot support a fully compliant affordable housing contribution, and this is not contested by the Council.
34. With the above in mind, the Appellant has provided a signed unilateral undertaking dated 3 August 2020 as part of the appeal process which provides for the required highway contribution with the remaining amount of money identified by the viability assessment being set aside for an affordable housing contribution (£67,625).
35. For the above reasons the proposal would make suitable provision for affordable housing and infrastructure and would accord with Policy CP4, CP8 and CP10 of the CS which amongst other matters seek to ensure that sufficient affordable housing provision is made in the District and that appropriate infrastructure to support development is provided, including providing a safe network for pedestrians.

Other matters

36. The Appellant has also set out that there are permitted development rights under Part 20 of Schedule 2 Class AC of The Town and Country Planning (General Permitted Development) Order 2015 (as amended) which allows for the construction of new flats in the airspace above terrace dwellinghouses (including semi-detached houses). This includes provision that two storeys may be added if the existing building is two or more storeys tall.
37. However, this permitted development right is also subject to a prior approval process and there is no guarantee that this would be granted. Furthermore, the scale of development which could be undertaken would be far less than the appeal proposal before me. As such, this limits the amount of positive weight I can give this as a fallback position.

Planning balance

38. The Framework indicates that planning decisions should apply a presumption of sustainable development. For decision taking, where Development Plan policies which are the most important for determining the application are out of

- date², 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.
39. The Appellant has set out that the Council cannot demonstrate a deliverable five-year supply of housing and indicated that the 'tilted balance' set out at paragraph 11d) of the Framework should apply. The Council have also acknowledged that they cannot demonstrate a deliverable five-year supply of housing and that the tilted balance should be applied and I have no reason to disagree with that view.
40. In this case, I have found that the proposal would harm the character and appearance of the area. To my mind, this weighs very heavily against allowing the proposed development.
41. The Council has produced the HDTAP which seeks to respond positively to the challenges of increasing housing delivery. It is also recognised that it will be crucial that new developments coming forward make the most efficient use of land and increasing density through the delivery of more flats and smaller homes.
42. The proposal would result in a total of seven much needed additional dwellings on the site, together with the provision of a financial contribution towards the delivery of affordable housing off-site. Whilst this amount is not the equivalent of the full extent of the 45% requirement from Policy CP4 of the CS owing to financial viability reasons, the proposal does nevertheless make some affordable housing provision which is also a clear benefit of the scheme.
43. I also acknowledge that the site is small scale, free from major constraints, has a single landowner, and the Appellant is keen to start the development as soon as reasonably possible. All of these factors indicate that it is possible to deliver the development of the site quickly and weigh in favour of the development.
44. In addition to the above, the development would bring social benefits as a result of an additional dwelling and economic benefits from the construction process together with the ongoing occupation of the dwellings. However, these benefits are limited in the overall balance.
45. Taking all of the above factors into account, whilst there are obvious benefits arising from the proposal in terms of housing delivery I consider that the harm I have identified to the character and appearance of the area significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework when taken as a whole. The proposal cannot therefore be considered to be sustainable development.

Conclusion

46. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

² Footnote 7 includes situations where the local planning authority cannot demonstrate five-year supply of deliverable housing sites.