



Appeal Decision

Site Visit made on 26 January 2021

by R E Jones BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/P1940/W/20/3260602

8 -10 Claremont Crescent, Croxley Green, WD3 3QR

- 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 Mike MacWhirter against the decision of Three Rivers District Council.
 - The application Ref 20/1148/FUL, dated 12 June 2020, was refused by notice dated 28 August 2020.
 - The development proposed is construction of two single storey dwellings to rear gardens of 8 to 10 Claremont Crescent including associated access, parking and gardens.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 January 2021, the Government published the 2020 Housing Delivery Test (HDT) results. The HDT results show that the Three Rivers District Council has delivered 54% of its housing requirement over the latest 3-year period. Consequently, the presumption in favour of sustainable development contained within paragraph 11 d) of the National Planning Policy Framework (the Framework) would be engaged. The Council and appellant have had an opportunity to comment on the implications of this.
3. In the banner heading above, I have used the development description from the appeal form and the Council's refusal notice, in the interests of clarity.

Main Issues

4. The main issues are:
 - (i) the effect of the proposed development on the character and appearance of the area;
 - (ii) whether the proposed development would make adequate provision for affordable housing;
 - (iii) the effect of the proposed development on biodiversity; and
 - (iv) the effect of the proposed development on the living conditions of Nos 8 and 10 Claremont Crescent (Nos 8 and 10), having regard to the access arrangements.

Reasons

Character and Appearance

5. Residential properties on Claremont Crescent, together with those fronting Baldwins Lane and Winton Drive, form a perimeter block of uniformly designed and arranged two storey dwellings. The large majority of these dwellings have long rear gardens, that contain mature trees, shrubs and modest ancillary buildings. These gardens form a spacious and verdant backdrop, that combine to create an attractive residential environment.
6. The proposed bungalows, access road and parking areas would replace much of the existing gardens and introduce substantial built form onto the site. These would be visible from a number of nearby gardens and houses. The access road and hard spaces around the proposed dwellings would appear harsh in contrast to the softer appearance of the surrounding gardens. Although the proposed dwellings would be single storey in scale, they would have expansive roof areas that would rise significantly above boundary enclosures and be appreciably at odds in terms of their scale with the smaller ancillary buildings within neighbouring gardens. Consequently, the combined scale and position, of the proposed dwellings and associated works would appear as dominant and intrusive features, that would unacceptably erode the spacious and verdant character of this backland setting.
7. From Claremont Crescent, the proposed dwellings would be largely screened by Nos 8 and 10, and in this context, would not be seen to visually detract from the uniform appearance and arrangement of buildings along the frontage. Nevertheless, the rear of dwellings and the spaces that relate to them are also components of the area's character and it is in this context that the proposal would be inconsistent and significantly at odds with the prevailing pattern of development.
8. I acknowledge that there are already a large number of outbuildings on the appeal site, yet these are modest in terms of their height and massing, while also being evenly spread around the gardens of Nos 8 and 10. In contrast the proposal would be an altogether more intensive development of greater scale and coverage, while being more prominent when viewed from surrounding properties.
9. The appellant has referred to other developments in the area that are positioned behind the main street frontage. However, these examples are not comparable to the proposal as they are larger in scale while located amongst different surroundings. In any case, I have assessed the appeal on its individual merits.
10. For these reasons, therefore, the proposed development would harm the character and appearance of the area. It would be contrary to Policies CP1, CP3 and CP12 of the Local Development Framework - Core Strategy, adopted 17 October 2011 (Core Strategy), Policy DM1 and Appendix 2 of the Local Plan - Development Management Policies, Local Development Document, adopted July 2013 (DMP) and Policies CA1, HO1 and Appendix B of the Croxley Green Neighbourhood Plan (adopted December 2018). These collectively seek to ensure high quality residential development that respects the character and appearance of the surrounding area, including private gardens and open spaces, while avoiding backland development which is inappropriate.

Affordable Housing

11. Policy CP4 of the Core Strategy requires small new residential developments to make a financial contribution to the provision of affordable housing. This is unless site circumstances and financial viability indicate otherwise. In relation to this case the Council require a contribution of £137,025.
12. Paragraph 63 of the Framework, however, indicates that affordable housing contributions should not be sought for major development at proposals for less than 10 dwellings. The appeal proposal is not a major development as defined in the national policy. Accordingly, seeking a contribution towards affordable housing in these circumstances would conflict with the policy set out in the Framework.
13. The Council's case is that Policy CP4 should continue to apply to all housing developments, notwithstanding its lack of consistency with the more recent Framework. In justifying this position, it has provided robust evidence of a high affordable housing need in the district as well as an independent viability assessment in relation to this appeal. Furthermore, a number of similar appeal decisions, cited by the Council, show that Inspectors have considered development plan policies with lower affordable housing thresholds to outweigh national policy given the local evidence of substantial affordable housing need.
14. Whilst the Framework is a material consideration of very considerable weight, based on the local circumstances of this case, in this instance it does not outweigh the relevant development plan policy. In making this judgement, I have given considerable but not full weight to Policy CP4.
15. The appellant has shown a willingness to provide the required contribution towards affordable housing, however, difficulties have been encountered in producing a completed legal agreement that would include all relevant parties with an interest in the land. Whilst this is regrettable, I have no mechanism before me that would secure an off-site contribution.
16. The use of a planning condition to secure the contribution has been considered, but, the Planning Practice Guidance (PPG) is clear that no payment of money can be positively required when granting planning permission¹. Furthermore, I have considered whether a planning condition requiring the appellant to enter into a planning obligation would make the development acceptable. However, the proposed development is neither complex nor strategically important, and there is no clear evidence that the delivery of the development would be otherwise at serious risk. As such, it does not meet the exceptional circumstances for a negatively worded condition as set out in the PPG².
17. In the absence of a completed legal agreement I cannot be satisfied that the affordable housing provision would be secured. The proposed development would therefore conflict with Policy CP4 of the Core Strategy and the Affordable Housing Supplementary Planning Document (June 2011), which amongst other things requires all new development resulting in a net gain of one or more dwellings to contribute to the provision of affordable housing.

¹ PPG paragraph: 005 Reference ID: 21a-005-20190723

² PPG paragraph: 010 Reference ID: 21a-010-20190723

Biodiversity

18. The appellant's appointed ecologist confirms that no bats were found. Nevertheless, she considers that a number of buildings, proposed for removal, have low potential for roosting bats and recommends that further surveys of these buildings are carried out. The Council's ecological advisor agrees with this position and confirms that these would be required before the scheme was determined.
19. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. In this case, without any survey of the relevant features it is simply not known whether bats are present and, if there are, whether mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures. The appellant would accept a planning condition relating to the submission of further bat surveys, which they consider, would reflect a more up to date position. However, given the degree of uncertainty relating to the findings of those surveys, the use of a condition would not be reasonable in this case.
20. Therefore, the absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, it would be contrary to Policy CP1 of the Core Strategy and Policy DM6 of the DMP, where they state, in part, that development should protect the natural environment and avoid impacts on protected species.
21. The Council's biodiversity refusal reason referred to Policy CP9 of the Core Strategy, yet, this does not specifically relate to the protection of species, therefore it does not form part of my conclusion on this main issue.

Living Conditions

22. The new vehicular access into the site would be in close proximity to windows in the flank walls of Nos 8 and 10. Vehicles entering and leaving the site would pass these windows, although given the small number of dwellings that would use the new access, movement numbers are likely to be modest throughout the day. Moreover, vehicle speeds are expected to be low as they traverse through the site's narrow entry point, to the extent that they would be unlikely to result in levels of noise or disturbance that would cause material harm to the adjacent occupiers.
23. Accordingly, the effect of the proposed development's access arrangements would not harm the living conditions of Nos 8 and 10 Claremont Crescent. The proposal would therefore be in accordance with Policies CP1 and CP12 of the Core Strategy and Policy DM1 and Appendix 2 of the DMP, that in part, require development proposals to have regard to the amenities of existing occupiers.

Planning Balance and Conclusion

24. The 2020 HDT results show that the Council has underdelivered against its housing requirement over the latest 3-year period. Consequently the presumption in favour of sustainable development contained in the Framework is engaged whereby 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.
25. Taking into account the current shortfall, 2 dwellings would provide a modest contribution to the housing supply in the area. There would be social benefits arising from the contribution to the Council's housing supply, noting the Framework highlights the contribution small and medium sized sites can make to meeting the housing requirement in the area. The development would also give rise to some economic benefits during the construction phase and provide limited support to local services.
26. Nevertheless, the identified adverse impacts of the development in respect of character and appearance, a lack of a mechanism to secure a financial contribution towards the District's affordable housing shortfall and the absence of bat surveys to fully assess biodiversity interests, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, including its presumption in favour of sustainable development.
27. There are no other material considerations to indicate that the proposal should be determined otherwise than in accordance with the development plan, with which I have already found conflict. Therefore, I conclude that for the reasons given above, the appeal should be dismissed.

RE Jones

INSPECTOR