
Appeal Decision

Site visit made on 16 February 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/G3110/W/20/3261850
40 Van Diemens Lane, Oxford OX4 3QD

- 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 Harris Caan against the decision of Oxford City Council.
 - The application Ref 20/01841/FUL, dated 27 July 2020, was refused by notice dated 2 October 2020.
 - The development proposed is the demolition of the existing bungalow and construction of two new 2-bed dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on (i) the living conditions of the occupants of 38 Van Diemens Lane having regard to light and outlook and (ii) the character and appearance of the area.

Reasons

Living conditions

3. The proposal would introduce a pair of two storey semi-detached houses with substantial rear box dormers in the rear roof plane. Consequently, the overall height of the built form adjacent to 38 Van Diemens Lane would be increased. Furthermore, in comparison to the hipped and flat roof at the existing bungalow, the gable end and box dormer roof form of the proposal would significantly increase the bulk and volume of the roof at a point close to the side boundary with No.38.
4. The proposal would be set back further from the road than No.38 and therefore, would not directly align with that property. Moreover, the development would extend close to the boundary with No.38 for a considerable depth. Whilst some of this would comprise a single storey projection, it would nevertheless be higher than the boundary wall and therefore, visible to the occupants of No.38 from their rear garden as well as from windows closest to the boundary in their rear elevation.
5. My observations were that No.38 has a ground floor and first floor window in the rear elevation close to the boundary with the appeal site. The upper floor window appeared to have an obscurely glazed window which suggests it may be used as a bathroom. However, the ground floor window appeared likely to

serve a habitable room, and I have not seen evidence to the contrary. The configuration of depth, height and massing close to the boundary would exacerbate the impact of the presence of built form such that it would result in a material sense of enclosure to the neighbouring occupants. Therefore, it would be unreasonably harmful to their outlook from within the ground floor of the property. In addition, it would make a portion of the garden close to the house feel unreasonably confined.

6. The proposal would be south east of the closest ground floor window at No.38. When this is combined with the proximity, height and considerable depth of the proposal, it would noticeably reduce levels of natural morning light to the window. Guidelines outlined in Appendix 3.7 of the Oxford Local Plan 2036, June 2020 (LP) state that in normal circumstances, no development should intrude over a line drawn at an angle of 45° in the horizontal plane from the midpoint of the nearest window of a habitable room and rising at an angle of 25° in the vertical plane from the cill. I have had regard to the drawing in appendix 1 of the appellant's appeal statement which illustrates that the 45° rule is broken in respect of the nearest windows at No.38. In these circumstances, the guidelines state that the proposal may be acceptable if the line drawn outwards at 45° is tilted upwards at 25° from the cill level and is unbroken by the highest part of the extension.
7. The appellant states that the proposal would have a mono-pitched roof that would allow the uplifted line to rise above the proposed single storey rear projection. However, this is not depicted in the drawing provided. The roof of the single storey element would have a ridge broadly level with the midpoint of the upper storey windows in the rear elevation¹. This contrasts with the height and orientation of the roof plane shown in Example 2 of Appendix 3.7 of the LP that illustrates the 25° guideline. In these circumstances, it is doubtful that the guideline would be met, which reinforces my concerns regarding the impact on the ground floor window of No.38.
8. In combination these factors would unacceptably compromise the living conditions of the adjacent occupiers at No.38. Paragraph 127 f) of the National Planning Policy Framework (the Framework) stipulates that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. For the reasons outlined, the proposal would fall short of this.
9. The appellant points out that No.38 has a long rear garden that faces a southerly direction. Whilst this would reduce the degree of harm arising from the proposal to an extent, it would not fully overcome my concerns, nor justify a harmful development. Moreover, notwithstanding the presence of the existing shed, the part of the grounds most affected lies close to the house and back door and therefore, is likely to be more intensively used.
10. Accordingly, I find that the proposal would cause unacceptable harm to the living conditions of the adjacent occupiers at No.38. This would be contrary to policy H14 of the LP which, amongst other matters, seeks to ensure that new development provides reasonable daylight and sunlight for occupants of both existing and new homes. It further stipulates that planning permission will not be granted for any development that has an overbearing effect on existing homes.

¹ Drawing number 40vandiemansND4.2.2, proposed rear elevation

Character and appearance

11. Van Diemens Lane is a residential road comprising a mixture of single and two storey properties arranged in an assortment of detached, semi-detached and short terraces. Despite the variety in form and materials, coherence is derived from the reasonably regular building line whereby dwellings are situated fairly close to the street and face onto it with an open aspect. The houses on the southern side of the road, near to the appeal site, have long rear gardens. This gives glimpses of greenery between properties and a sense of spaciousness to the rear. Overall, the street has a mixed suburban residential character.
12. The existing bungalow has a building line and generous rear garden that reflects these common characteristics. Therefore, despite the overly prominent presence of a flat roofed garage sited forward of the bungalow, it generally contributes positively to the overall character and appearance of the area.
13. The proposal would replace the existing dwelling with a balanced pair of two-storey semi-detached houses. The footprint of the dwellings would broadly follow that established by the existing bungalow. As such, the set back, building line and open relationship to the street would be maintained.
14. Although the Council describes the increase in height of the dwellings relative to the bungalow as significant, two storey properties are prevalent in the vicinity. Drawing number 40vandiemansND5.2.2 shows the ridge height of the proposed houses would be slightly lower than No.38 adjacent. As such, the height of the houses would retain a modest domestic scale that would be in-keeping with their varied surroundings. Moreover, they would be set back further from the road than No.38. This, in combination with the conventional appearance of the front elevations of the dwellings, would prevent them from being visually overbearing in the street as is asserted.
15. The Council is further concerned that there would be a harmful reduction in openness due to limited spacing between the proposed houses and 42 Van Diemens Lane. Nevertheless, my observations were that the sense of spaciousness was primarily derived from the generous gardens to the rear of the dwellings rather than the limited space to the front or the irregular modest gaps between them. The siting of the proposal would not harmfully encroach on spaciousness to the rear. Despite the increase in the massing of built form at the site, it would retain sufficient gaps either side of the pair of dwellings to allow for glimpses to the rear. Hence, it would not result in harm.
16. Furthermore, the variety of housing along Van Diemens Lane does not result in such a strong sense of uniformity or rhythm such that the subdivision of the plot lengthways as proposed would undermine its character.
17. Concerns were expressed regarding the bulk and appearance of the proposed box roof dormers which, from my observations, do not appear to be otherwise prevalent in the surrounding roofscape. However, given the set back and that they would be in the rear roof slopes of the dwellings, they would be fairly inobtrusive and not easily seen from the street. Furthermore, they would read as a balanced pair in the symmetrical rear elevations proposed.
18. Therefore, overall, the design would strike a reasonable balance between retaining the contribution of gardens to local character, and the need to ensure

that suitable land can be used for residential development as is advocated in the supporting text to policy G6 of the LP.

19. Accordingly, I find that the proposal would not result in harm to the character and appearance of the area. It follows that I find no conflict with policy DH1 of the LP which stipulates that planning permission will only be granted for development of high quality design that creates or enhances local distinctiveness. Furthermore, in relation to this main issue, it would be supported by policy G6, which generally supports new dwellings on residential garden land.

Planning balance and conclusion

20. The main benefit of the proposal would be the provision of an additional dwelling in an accessible location making more efficient use of previously developed land. The importance of small sites in this regard is recognised in paragraph 68 of the Framework and paragraph 118 generally supports the use of suitable brownfield land within settlements for homes. However, the degree of benefit accrued from a single additional dwelling would be modest. Hence, overall, I give moderate weight to these benefits.
21. Balanced against this, is the harm I have identified to the living conditions of the neighbouring residents at No.38 which would conflict with paragraph 127 f) of the Framework and policy H14 of the LP. This attracts significant weight.
22. My attention is drawn to the absence of harm in relation to highway safety, parking, bin storage and the living conditions of other nearby residents. Moreover, I found that no harm would result to the character and appearance of the area. However, these would be required to make the development policy compliant, and therefore, I consider that these are neutral factors in the overall balance.
23. Planning law requires decisions to be made in accordance with the development plan, unless material considerations indicate otherwise². The benefits of the proposal do not attract sufficient weight to justify a decision other than in accordance with the development plan.
24. For the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990.