



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/D3125/W/20/3261904

2 Witney Road, Long Hanborough, Oxfordshire OX29 8BJ

- 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 Luke Carter of LC Holdings Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 20/01954/FUL, dated 21 July 2020, was refused by notice dated 16 October 2020.
 - The development proposed is the erection of 10 one bed flats together with associated works including closing two accesses, forming one new vehicular and one new pedestrian access, and landscaping and biodiversity works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Luke Carter of LC Holdings Ltd against West Oxfordshire District Council. This application is the subject of a separate Decision.

Procedural Issues and background

3. The appeal site originally accommodated two bungalows (2 and 4 Witney Road). The appellant has planning permission¹ to demolish those dwellings and erect 9 flats. The structure approved comprises a two storey L shaped front and central section, with single storey element (Unit 5) to the rear. The appeal proposal is similar in many regards to the permission granted but would add a further unit above Unit 5 and make some changes to the fenestration. At the time of my visit construction of the approved scheme was underway.

Main Issues

4. The main issues are the effect of the proposal on (i) the character and appearance of the area, (ii) the living conditions of the occupants of 7 Millwood End having particular regard to privacy and (iii) whether the proposal would make suitable provision for sports and recreation facility infrastructure.

Reasons

Character and appearance

¹ Planning reference 19/02902/FUL dated 7.7.20

5. Although there are commercial and community buildings nearby, the prevailing character of Witney Road near to the appeal site is residential. As such, most built form is of a modest or domestic scale. Predominantly detached residential properties of various types line the northern side facing onto the road. Coherence is derived from the broadly regular set back, low stone front boundary walls, established planting and spacing between buildings. This results in a pleasant spacious residential character and appearance to the area.
6. Construction is underway on the approved 9 flat scheme. Accordingly, it is highly material to the determination of the scheme before me. The approved plans² illustrate that the front elevation is set back into the site and therefore, respects the established building line. It will also be set behind a low stone wall continuing a feature seen along the northern side of the road. Furthermore, the restrained height and traditional form and materials shown in the symmetrical front elevation conveys a domestic scale and sense of balance. The single storey component to the rearmost section, due to the lower roof ridge and eaves level appears subordinate to the front section. The reduction in roof ridge also assists with integrating the proposal with the lower height of the adjacent bungalow. Hence, the single storey element makes an important contribution towards the overall composition by facilitating the successful assimilation of a building with a notably larger volume than most of the surrounding structures.
7. The proposal would add a storey to the single storey rear section of the approved scheme. However, this seemingly modest increase in volume and footprint would have a disproportionate effect on the impact of the overall building on the character and appearance of the area for the following reasons. Firstly, it would add bulk and massing to the overall structure such that it would cumulatively appear markedly larger than the mostly domestic scale of development in the surrounding area. Furthermore, as the roof ridge height would be similar to the section nearest to the road, the rear flank section would no longer be overtly subordinate to the principal elevation. This would emphasise the increase and difference in scale.
8. Secondly, much of the rear section would be to the side of the front component of the building and would therefore feature in contiguous views of the frontage. The street scene diagram on drawing reference 1101-6B illustrates that the width of the resulting two storey structure would appear overly elongated in comparison to nearby domestic and modest buildings. It would have a somewhat looming presence that would harmfully undermine the balance and proportions of the front component of the structure and erode the sense of space between buildings.
9. Finally, notwithstanding that the rear section is set back further into the site, as it relates primarily to the upper part of the structure, it would only be partially screened by the front part of the building, low front wall and planting. This is illustrated by the photograph montage/sketch provided. Therefore, it would be apparent in the street scene which exacerbates the harm identified.
10. Whilst paragraph 122 of the National Planning Policy Framework (the Framework) generally encourages the efficient use of land, it also states that the desirability of maintaining an area's prevailing character and setting must be taken into account. It follows that a balance will often need to be struck between the more effective use of land and the requirement to ensure that

² Appendix 2a, Council's Appeal Statement

development is sympathetic to local character and history while not preventing or discouraging appropriate innovation or change, such as increased densities³. To my mind, the approved scheme would successfully achieve that balance but, for the reasons outlined, the scheme before me would fail to do so. Taking these factors together, the proposal would be unacceptably harmful to the character and appearance of the area.

11. In coming to my view, I have had regard to the advice in the West Oxfordshire Design Guide 2016 which states that new buildings should respect the form, siting, scale and massing of the surrounding buildings.
12. Reference is made to the proposal being similar to other recently approved developments along Witney Road. However, other than the permission at the site itself and 39 Witney Road⁴, no others are explicitly mentioned. The development for 7 one-bed flats at 39 Witney Road is some distance to the west and on the opposite side of the road. As such, the context of that proposal differs from the immediate surroundings of the appeal site. Moreover, it is a smaller development. Therefore, as it is not directly comparable, it is of limited weight in my determination. In any event, I have determined the proposal on its own merits.
13. Accordingly, I find that the proposal would be harmful to the character and appearance of the area contrary to policies OS2, OS4 and H2 of the West Oxfordshire Local Plan 2031, September 2018 (LP). In combination and amongst other things, these policies require development to be of a high quality design that is proportionate and of an appropriate scale to its context.

Living conditions

14. The Council raises concerns that the proposal would introduce a first floor dormer window into the eastern elevation that would compromise the privacy of the occupants of 7 Millwood End. This would serve the living area to proposed Unit 9. By comparison, although the physical relationship would be similar, the approved 9 flat scheme has rooflights rather than a dormer window.
15. The dormer window would be approximately 6m from the boundary with the rear garden of No.7 and, due to the length of the rear garden, the property itself would be a considerable distance away. Moreover, the proposed dormer window and angle of the rear elevation of No.7 would not directly align. These factors would prevent direct inter-visibility between windows that would be harmful to privacy.
16. I acknowledge that the dormer window could increase the amount of overlooking to the end of the rear garden of No.7. However, the lower portion of the garden is likely to be less intensively used for activities such as sitting out or socialising than areas nearer to the house. Moreover, some separation distance would be retained. In combination, whilst there would be some impact from an additional dormer window, it would not be intrusive and therefore, would not unacceptably compromise the privacy of the residents at No.7.
17. Therefore, I find that the proposal would not result in unacceptable harm to the living conditions of the occupants of No.7 having regard to privacy. It follows

³ Paragraph 127 c) National Planning Policy Framework

⁴ Planning reference 19/01077/FUL

that there would be no conflict with policies OS2, OS4 and H2 of the LP, which amongst other things, seek to prevent development from having a harmful impact on the amenity of existing occupants.

Provision for sports and recreation facility infrastructure

18. The Council relies on a consultation response from its Leisure Services Manager who calculates that a financial contribution of £18,140 is necessary towards off site provision and future maintenance of football pitches over a 15 year period using the Fields in Trust standard. Although the appellant has confirmed a willingness to provide this contribution, I have not been provided with a completed planning obligation.
19. Policy EH5 of the LP states that where appropriate, development will be expected to provide or contribute towards the provision of necessary improvements to open space, sports and recreational buildings and land. Policy OS5 of the LP indicates that new development will be required to deliver or contribute towards the timely provision of essential supporting infrastructure either directly as part of the development, or through an appropriate financial contribution.
20. The consultation response indicates that the contributions sought have been calculated using a standard formula based on the number of units. However, the evidence provided fails to define the extent of any local deficiencies in football pitch provision or the effect that the appeal proposal might have on them. Nor has detailed information been provided to show how and where the contributions would be spent. Furthermore, the formula used assumes an average occupancy of 2.4 persons per dwelling which does not reflect the nature of the proposal which comprises entirely of one-bed flats.
21. Accordingly, based on the evidence before me I cannot be certain that the contribution sought would be necessary to make the development acceptable or that it would be directly related to the development and fairly and reasonably related in scale and kind. The appellant's apparent accession to providing the obligation does not amount to evidence that the thresholds of the statutory tests have been met.
22. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide this contribution would comply with the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). In these circumstances, it is not demonstrated that the proposal would conflict with policies EH5 or OS5 of the LP and therefore, the absence of a planning obligation does not weigh against the development.

Other matters

23. The proposal would provide an additional one bed flat over the approved scheme. This would contribute towards the overall housing supply in an accessible location, make more efficient use of previously developed land and diversify the housing stock by providing smaller units for which there is some evidence of demand. The proposal would also secure biodiversity enhancements but there is little to show that this would be to any significantly greater degree than the approved scheme. Overall, given the modest increase

in benefits relative to the 9 flat scheme under construction, these matters attract limited weight.

24. Reference is made to the absence of harm in terms of drainage and impact on nearby residents. However, these would be required to make the development policy compliant, and therefore, I consider that these are neutral factors in the overall balance.
25. The site lies close to, but outside of the Millwood End Conservation Area. Furthermore, 3 and 5 Millwood End, Grade II listed buildings, lie to the east of the site. Although the general statutory duty with regards to conservation areas does not mention their setting, I have a statutory duty to have special regard to the desirability of preserving listed buildings and their setting⁵. Even so, the appeal site does not feature in significant views into or out of the conservation area. Moreover, it would be some distance from the listed buildings, with the recreation hall in the intervening space. As such, the proposal would not result in harm to the significance of these designated heritage assets.
26. The appellant is critical of the Council's communication and behaviour during the planning application. Nevertheless, these are matters that do not relate to the planning merits of the proposal and therefore, lie outside the scope of this determination.

Planning balance and conclusion

27. Planning law requires decisions to be made in accordance with the development plan, unless material considerations indicate otherwise⁶. The limited weight given to the benefits of the proposal would not justify a decision other than in accordance with the development plan.
28. For the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁵ Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

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