



Appeal Decision

Hearing Held 26 January 2021

Unaccompanied site visit made on 2 February 2021

by L Fleming BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 04 March 2021

Appeal Ref: APP/P1940/W/20/3246212

Banstead Down Old Chorleywood Road, Rickmansworth, WD3 4EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Vince Millen of Millen Homes Ltd against the decision of Three Rivers District Council.
 - The application Ref 19/1737/OUT, dated 9 September 2019, was refused by notice dated 20 December 2019.
 - The development proposed is 3 detached self-build plots with parking and new access on land at Banstead Downs and Dell House, Old Chorleywood Road, Rickmansworth.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Three Rivers District Council against Mr Vince Millen of Millen Homes Ltd. This application is the subject of a separate Decision.

Procedural Matters and Main Issues

3. The application was submitted in outline. However, the only matter reserved for future approval is landscaping. I have dealt with the appeal on that basis, treating the details relating to landscaping as illustrative only.
4. It is disputed whether or not the proposal would be self-build housing. The Self Building and Custom House Building Act 2015 states self-build and custom housebuilding means the building or completion by (a) individuals, (b) associations of individuals, or (c) persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals. It also states it does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person. Furthermore, the relevant Planning Policy Guidance¹ says in considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout. Off-plan housing, homes purchased at the plan stage prior to construction and without input into the design and layout from the buyer, are not considered to meet the definition of self-build and custom housing.

¹ Paragraph: 016 Reference ID: 57-016-20210208

5. I note the need for self-build dwellings in the area and the Council's record in providing sufficient plots. I also acknowledge the appellant's comments about the site specific circumstances, the need to provide sufficient certainty for self-builders and for valuation purposes and the use of planning passports.
6. However, in my view, selecting the finishing materials and designing landscaping and fixtures such as kitchens and bathrooms within the parameters of approved layouts and elevational drawings is not having primary input into the final design and layout. Thus, I am not satisfied the proposal would meet the definition of self-build and the unilateral undertaking seeking to secure them as self-build, even if duly executed would not overcome this. Therefore, irrespective of the appellant's description, I have not treated the proposed dwellings as self-build and instead treated them as market housing.
7. Part of the appeal site already has planning permission² for the erection of three detached dwellings with a different access to that before me (the approved scheme). There is no substantive evidence before me to suggest that should this appeal fail, the approved scheme would not be implemented. I therefore attach significant weight to the approved scheme as a valid fall-back position which I have considered accordingly in my reasoning.
8. The appellant has submitted an Arboricultural Planning Report with the appeal. The Council confirm in their statement that its contents are suitable to ensure the protection of trees within and around the site. I find no reason to disagree and therefore find no harm to protected trees, I do not therefore consider the associated reason for refusal any further.
9. The main issues are therefore:
 - the effect of the proposed development on the character and appearance of the area
 - the effect of the proposed development on the living conditions of the occupiers of the dwellings on The Drive with particular regard to privacy
 - whether the proposal should make appropriate provision for affordable Housing.
10. Only procedural matters and matters relating to affordable housing were dealt with at the hearing. Matters in relation to character and appearance, living conditions and all other matters were dealt with by way of written representations. I am satisfied that no party has been prejudiced by my approach.

Reasons

Character and appearance

11. The proposed dwellings would be accessed by a driveway taken from Old Chorleywood Road to the side of Banstead Down, a large detached dwelling. The dwellings immediately nearby are generally arranged along the road frontage but set back with mature planting in front gardens. Overall, the area in the immediate vicinity of the appeal site has a relatively spacious, verdant, residential character and appearance.

² Council reference 16/1669/OUT & Appeal Reference APP/P1940/W/19/3242846

12. The three detached dwellings would be positioned behind Banstead Down and Dell House. The dwelling and detached garage proposed as plot 1 would be directly behind Banstead Down, behind which would be the dwelling proposed on plot 2. Next to and roughly in-line with the dwelling proposed on plot 2 would be the dwelling proposed on plot 3.
13. The approved scheme, which could be implemented, permits three dwellings in a row behind Woodlands, Dell House and Banstead Down. However, although the dwellings proposed on plots 2 and 3 would be in roughly the same location as two of the proposed dwellings on the approved scheme, proposed plot 1 would not and instead would be positioned much closer to Old Chorleywood Road and Banstead Down.
14. I accept the density of development in the wider area is varied. I also note the existing landscaping to be retained and the potential for additional landscaping subject to details. I have also considered other access drives nearby which lead to dwellings which are behind those along the Old Chorleywood Road frontage. I note the proposed height of the buildings and the crown roofs which in my view would not look out of place in this varied context. I also fully acknowledge the topography of the appeal site.
15. However, the scheme would be widely visible from surrounding dwellings and their gardens. Furthermore, the proposed access drive would involve the removal of a significant amount of greenery close to Old Chorleywood Road, opening up views deep into the appeal site from Old Chorleywood Road. As a consequence, the dwelling and detached garage proposed on plot 1, the side elevation of Banstead Down, and to a lesser degree the roof of the dwelling proposed on plot 2 would be noticeable through the access drive when passing by on Old Chorleywood Road. At this point the scheme would be experienced in the context of Banstead Down, Dell House and Woodlands where the spacious verdant quality of the area is particularly noticeable.
16. In contrast the dwelling proposed on plot 2 with its attached garage, would be wide such that it would almost fill the full width of its plot at the head of the access drive. The dwelling proposed as plot 1 would also be positioned close to its plot boundaries, with its large detached garage positioned in the space between it and Banstead Down.
17. Thus, the removal of significant greenery to create the lengthy access drive, combined with the bulk of buildings with limited spaces between them and the plot boundaries would lead to a cramped form of development which would be noticeably at odds with the relatively spacious pattern of development in the immediate vicinity of the appeal site. Whilst landscaping would inevitably soften the scheme, I am not satisfied suitable landscaping could be incorporated to overcome the harm I have identified.
18. For these reasons the proposal would cause significant harm to the spacious and verdant character and appearance of the area. It would therefore conflict with Policies CP1, CP3 and CP12 of the Three Rivers District Council Core Strategy (2011) (CS) and Policies DM1 of the Three Rivers District Council Development Management Policies Local Development Document (2013) (DMPLDD) which taken together, aim to ensure good design and that new development does not harm the character and appearance of an area. Insofar as is relevant to the proposal and in seeking to achieve good design these

policies are consistent with the good design aims of the National planning Policy Framework (the Framework).

Living conditions

19. The rear elevations of the dwellings proposed on plots 2 and 3 would look towards the dwellings on The Drive which sit on much lower ground. However, the dwellings proposed on proposed plots 2 and 3 would be in roughly the same location as two of the proposed dwellings on the approved scheme which could be implemented.
20. Furthermore, the dwellings on The Drive are set a significant distance away in well landscaped plots and trees along the shared boundary within the appeal site would be retained and would limit views between the dwellings on The Drive and the proposed dwellings.
21. Thus, I find the proposal would not harm the living conditions of the occupiers of the dwellings on The Drive with particular regard to privacy. In this regard, it would therefore accord with Policy CP12 of the CS and Policy DM1 of the DMPLDD which taken together, aim to ensure good design and that new development does not harm the living conditions of residents. In this regard these policies are consistent with the Framework.

Affordable Housing

22. The appellant disputes the need to provide affordable housing and there is no mechanism before me, to secure a commuted sum towards the provision of off-site affordable housing in accordance with Policy CP4 of the CS.
23. Policy CP4 of the CS makes clear that the Council will in view of the identified and pressing need for affordable housing in the district, seek an overall provision of around 45% of all new housing as affordable housing. It says, all new development resulting in a net gain of one or more dwellings will be expected to contribute to the provision of affordable housing. Furthermore, it makes clear the Council will in most cases require affordable housing provision to be made on site, but in relation to small sites delivering between one and nine dwellings, consider the use of commuted payments towards provision off site. Such payments will be broadly equivalent in value to on-site provision but may vary depending on site circumstances and viability.
24. Policy CP4 of the CS is consistent with the requirements of paragraph 62 of the Framework. However, there is inconsistency with paragraph 63 which says that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The appeal proposal is not major development and is not in a designated rural area. The proposal is therefore in direct conflict with Policy CP4 of the CS unless its requirements are demonstrated to prejudice the viability of the scheme, which I return to below.
25. The Council are also some way short of being able to demonstrate a five-year supply of deliverable housing land, indeed the Housing Delivery Test 2020 measurement is 54%. Policy CP4 of the CS is a policy which is most important for my determination and must therefore be considered out of date. For this reason and its conflict with paragraph 63 of the Framework, I find the conflict with Policy CP4 of the CS should be afforded limited weight.

26. Numerous appeal decisions have been put before me where Inspectors have considered whether or not proposals which are not major development within the terms of the Framework should make provision for affordable housing in the district. I have taken account of all those decisions and the comments about the various Inspector's findings. I accept that at the time of the Bell Public House appeal³ only approximately 3.8% of affordable homes secured came from non-major developments. This and the appellant's other related evidence indicates generally that the Council rely on major development sites for the delivery of the majority of affordable homes in the district. Furthermore, on the basis of the evidence before me the level of non-major planning applications for housing received by the Council does not appear extraordinary.
27. However, paragraph 5.25 of the CS states average house prices are some of the highest in the Country outside London. Furthermore, informed by ONS data the Council's evidence states as of September 2017 the lowest quartile house price in the district was the sixth worst local authority out of 350 local authority areas. Various alternative figures based on different datasets were quoted in the evidence and put to me at the hearing. However, even if I accepted those alternative figures, housing affordability remains broadly as acute as it was when the CS was examined and adopted. Whilst I accept the consistent under delivery of homes in the district will have negative consequences for affordability, it also means that securing as many affordable homes as possible in the district is as important as ever.
28. Over the plan period there have been times when the Council have applied Policy CP4 of the CS and times when they have not. I accept that this may have implications for the delivery of non-major sites, perhaps encouraging whether or not developers will bring forward proposals. However, it cannot be the only factor which influences whether or not such sites are brought forward. Furthermore, there is no substantive evidence to suggest that if Policy CP4 of the CS was not applied it would significantly increase the supply of housing in the district. Moreover, Policy CP4 of the CS was subject to an assessment of viability alongside all other requirements through the Local Plan process. There is also no substantive evidence before me to suggest the requirements of Policy CP4 of the CS are making non-major housing proposals unviable generally at the current time.
29. Furthermore, the financial requirements and expectation that proposals will need to be supported by viability evidence where the requirements of Policy CP4 of CS cannot be viably met are clearly stated and I am not convinced the costs associated with preparing such evidence is prohibitive. Overall, on the basis of the evidence before me I am not convinced that the Council's application of Policy CP4 of the CS is directly discouraging developers from bringing forward small sites due to the need to provide or contribute towards affordable housing or demonstrate that it viably cannot.
30. Turning to the appellant's detailed viability assessment. Whilst the requirement is disputed this seeks to demonstrate that financial contributions towards affordable housing cannot be provided without making the proposed development unviable. However, the Council's own viability evidence suggests the scheme can viably make the required financial contributions. The main

³ Appeal Decision APP/P1940/W/19/3238285

areas of disagreement were discussed at the hearing and the appellant whilst questioning the Council's evidence accepted its own assessment may require some minor adjustment in-line with the Council's comments, the effects of which are not before me. I have therefore been unable to reach a definitive conclusion on viability grounds necessary to justify a nil affordable housing contribution. However, as I set out in my overall conclusion this matter is not determinative, I have therefore not pursued it any further.

31. Drawing together all of my findings in this issue, the proposal is in direct conflict with Policy CP4 of the CS, although for the reasons given, I attach limited weight to that conflict. However, housing affordability in the district is acute such that, based on the specific circumstances of this case and the evidence presented, I find on balance the proposal should make appropriate provision for affordable housing. As set out above, there is no mechanism before me to secure affordable housing, which would be a benefit of the scheme, and therefore this failure carries weight against the proposal. Although as set out in my conclusion below this matter is not determinative.

Other Matters

32. I acknowledge the comments about the Council's handling of the planning application and the appeal. Nevertheless, I must determine the appeal on its planning merits and these matters or any other raised do not alter my overall conclusions.

Conclusion

33. The presumption in favour of sustainable development is engaged, which means 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.
34. I have found no harm associated with living conditions. There is no objection in principle to residential development on this site which is in a location which would give residents good access to a range of facilities without being car dependent. The scheme would deliver three new homes with associated economic benefits of construction, new customers for local services and a contribution to the local labour force. Those dwellings would be energy efficient, incorporate renewable energy technology and have living roofs. I also note the appellant has a track record in the delivery of housing, including affordable housing in the district and nationally. The proposal would also represent an efficient use of land in line with the Council's Housing Delivery Action Plan. However, even acknowledging the scale of the shortfall of housing in the district, the proposal would only make a small contribution to housing supply and the local economy, as such the social, economic and any environmental benefits carry limited weight.
35. On the other hand, the proposal would cause significant harm to the character and appearance of the area. The adverse impact of such is sufficient to significantly and demonstrably outweigh the limited benefits when assessed against the policies in the Framework taken as a whole, consequently the presumption in favour of sustainable development is not a material consideration which weighs in favour of the proposal. The harm arising from failing to make appropriate provision for affordable housing, whilst not determinative, would only add to the proposals adverse impact.

36. The proposal is in a location where the Local Plan encourages new homes. However, it is also in conflict with Local Plan policies which relate to character and appearance. This conflict is significant and in my view prevailing, such that on balance the proposal fails to accord with the development plan as a whole. There are no other considerations, including the provisions of the Framework, that outweigh that conflict. The appeal should therefore be dismissed.

L Fleming

INSPECTOR

APPEARANCES

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