



Appeal Decision

Site visit made on 25 January 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Saturday, 08 May 2021

Appeal Ref: APP/Q0505/W/20/3258485

Lilac Court, Cambridge CB1 7AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Bloomhall against Cambridge City Council.
 - The application Ref: 20/01738/FUL, is dated 16 March 2020.
 - The development proposed is the demolition of existing garages and redevelopment to provide eight residential dwellings (Use Class C3) along with car and cycle parking and associated infrastructure and landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The appeal results from the Council's failure to reach a decision on the information submitted by the appellant. There is no formal decision, as jurisdiction over it was taken away when the appeal was lodged. After the appeal was lodged, the Council considered the application at its Planning Committee and resolved that it would have refused the application. To this effect, the Council has suggested the wording it would have used had it made a formal decision. I have taken this into account, together with the assessment and conclusions submitted in the statement of the Council, which sets out its concerns regarding the proposed development.
3. As part of the appeal process, the appellant submitted a number of additional plans, including drawing numbers 433-(A1)2-01-RevB; 433-(A2)2-01-RevB; 433-(B)2-01-RevB; 433-(C)2-01-RevB; 433-1-12; 433-1-13; 433-3-03; AEL1621 fig 1 002-00 PreDevHabitats; AEL1621 fig 2 003-00 PostDevHabitats; and Tracking. These drawings did not form part of the original application and therefore interested people's views have not been sought upon them. I therefore cannot be satisfied that no party's case within the appeal would not be prejudiced by my consideration of the additional plans. I have determined the appeal on the basis of the scheme and the plans which were before the local planning authority when it made its decision.

Main Issues

4. The main issues are:-
 - i) the effect of the proposal on the living conditions of occupants of Lilac Court and Hinton Avenue with regards to outlook, privacy and light;

- ii) whether the proposal would achieve satisfactory living conditions for future occupiers with regard to outdoor amenity space;
- iii) whether the proposal would make adequate provision for parking, storage of cycles and the collection of refuse;
- iv) the effect of the proposal on trees and biodiversity; and
- v) the effect of the proposal on the reduction of carbon.

Reasons

Living Conditions – Neighbouring occupiers

Outlook - Hinton Avenue

5. The proposed development would be located in close proximity to the common boundary of several dwellings along Hinton Avenue, odd numbers 11 to 29 inclusive (Nos 11-29). Substantial fencing and mature vegetation separates the appeal site from neighbouring dwellings.
6. The proposal would introduce a continuous block of two-storey dwellings. By reason of its unrelenting width and proximity to the common boundary, in combination with the significant height, scale and mass of the proposed scheme, it would overwhelm and appear unacceptably dominant and overbearing to the occupiers of Nos 11-29, particularly when viewed from their rear gardens. Whilst the neighbouring rear gardens are relatively long, it would nevertheless create an unacceptable sense of enclosure from within their private amenity areas. This would be harmful to their outlook and would materially compromise their living conditions. Existing vegetation would partially screen views of the proposed scheme, however, for the most part it would remain readily visible and this situation would worsen during winter months when foliage is less dense.

Privacy - Lilac Court and Hinton Avenue

7. The proposed dwellings would be positioned approximately 11-12metres from the flatted development of Lilac Court. These dwellings contain a large number of windows serving habitable rooms within its front elevations. Although angled louvres are proposed to restrict views from the bay window features, there is little information before me to demonstrate their effectiveness in reducing the degree of direct and in-direct overlooking.
8. A similar situation would be experienced by occupants of Nos 11-29. Whilst the distances between dwellings would be sufficient to limit opportunities for overlooking within habitable rooms, the proposed dwellings would, in some instances, be likely to have uninterrupted views of private amenity areas. Overall, this would be materially harmful to the living conditions of residents of Lilac Court and Hinton Avenue.
9. Albeit, set back from the principal front elevation, there would be some opportunity for overlooking towards Lilac Court from the proposed first-floor terraces. Whilst the submitted plans show the inclusion of high railings, there is little information to demonstrate that these would adequately mitigate the opportunity for overlooking, whilst maintaining an adequate standard of private amenity space for future occupiers. As such, it would not be appropriate to leave the detail of this matter to the wording of a condition. I am not satisfied

that the use of a condition would secure the mitigation required whilst not compromising other elements of the appeal scheme.

10. Whilst some overlooking between properties is inevitable and tolerable in residential areas, the circumstances before me present a case where there would likely be significant impacts on privacy as a result of overlooking.

Light – Lilac Court

11. In terms of the impact of the development on the availability of sunlight and daylight to dwellings within Lilac Court, the Council's concerns relate to an absence of a BRE daylight and sunlight assessment which would assess these concerns. Although I have had regard to the appellant's Shadow Study, there is little further evidence regarding this matter within the appellants' evidence.
12. Given the height and the proximity of the appeal scheme and taking account of the information of the Shadow Study, it is evident that occupiers of dwellings within Lilac Court will experience some overshadowing as a consequence of the proposal. However, in the absence of any clear assessment of sunlight and natural light, there is no evidence before me to demonstrate how significant the effect would be.
13. Taking everything into account, in the absence of any substantive evidence, I do not support the appellant's view that the distance of separation would ensure no loss of daylight or sunlight. There is considerable uncertainty in this regard and in my view, I cannot overlook that there is likely to be a considerable reduction in the standard of living conditions presently experienced by some of the residents of Lilac Court.

Conclusion on living conditions of neighbouring occupiers

14. Overall, on the basis of the evidence before me, I conclude that the proposed development would result in material harm to the living conditions of neighbouring residents at Lilac Court and Hinton Avenue, with particular regard to outlook, privacy and light. Therefore, the appeal scheme would conflict with Policies 55, 56 and 57 of the Cambridge Local Plan (2018)(LP) insofar as they require high quality development that responds positively to its context.

Living conditions – future occupiers

15. The amenity space for future occupants of the proposed dwellings would be provided through a combination of rear garden and first floor terrace. Whilst the amenity space would be of sufficient size, the use of the amenity space would be compromised as a consequence of extensive shading that would occur for much of the day due to the built form and existing trees as shown within the appellants' Shadow Study.
16. Furthermore, the proposed inclusion of angled louvres to a number of windows would be likely to reduce the amount of light available to those rooms. Taken together with the likely shading effect of nearby vegetation, there is little evidence before me to demonstrate that this would not result in a particularly gloomy living environment.
17. Therefore, I conclude that the proposed development would be likely to result in an unacceptable standard of living conditions for future occupiers of the proposed dwellings. The proposal would conflict with Policy 50 of the LP insofar

as it requires amenity space to be designed of a shape, size and location to allow effective and practical use of the space by residents.

Parking and cycle storage

18. Vehicular parking along Lilac Court is unrestricted. Whilst my site visit provided only a snapshot of conditions, I observed there was considerable demand for on-street parking along its length. Generally, vehicles were parked end to end within the opposite side of the highway from the appeal site. Whilst the appeal scheme would provide an adequate amount of parking space, including a number of visitor spaces, the Swept Path Analysis of the appellant's Transport Statement indicates that vehicles using a number of the proposed on-plot car parking spaces would need to enter the area where vehicles presently park. As such, there would be instances of vehicular conflict. Although it would be unlikely to have a significant impact on highway safety, it nonetheless represents poor quality design that fails to integrate the functional needs of the proposed scheme as is required by Policy 57 of the LP.
19. The existing cycle store used by occupants of Lilac Court would be demolished. There is little evidence before me that demonstrates the capacity and the number of cycles that currently utilise the existing cycle store. However, photographic evidence demonstrates it is considerably well-used.
20. The appellant states that the proposed replacement would provide capacity for 8 cycles and thus be identically sized to the existing facility. I disagree. On the basis of the evidence before me, I am not satisfied that this would provide a similar facility. It is likely that cycles would be displaced as a result of the appeal scheme.
21. Albeit the appellant has suggested an additional cycle store, there is no detail before me regarding this additional facility, nor any clear evidence that taken in combination, the two proposed cycle stores would adequately address the existing demand for cycle storage. As I cannot be certain that the appeal scheme would overcome the harm I have found above, it is not a matter for which an appropriately worded condition can be relied upon.
22. In relation to the proposed dwellings, cycle storage would be provided on the basis of one space per bedroom in accordance with the Council's Cycle Parking Guide. However, the plans indicate a 'study' at first floor level within a number of dwellings. Whilst it is not the appellant's intention that 'study rooms' would be used as a bedroom, in my view, it is reasonably sized, with adequate windows and door, located in proximity to other bedrooms and the bathroom. It is reasonably likely that future occupants would use it as a bedroom and there is no control to prevent it from being so used if an occupier should choose to do so. Therefore, it is appropriate to consider that each dwelling with a 'study room' should make additional cycle storage provision.
23. Whilst I accept that it is often the case that the detailed requirements of cycle storage can be dealt with by condition, given the constrained size of plots, there is no clear evidence before me that leads me to the view that the additional cycle storage can be accommodated without encroaching into space required for the parking of a vehicle or private amenity space.
24. For this reason, I find that the proposed scheme fails to integrate the functional needs of the proposed scheme with regards to parking and cycle storage. Thus,

it would conflict with LP Policies 57 and 82 insofar as these policies require a high-quality development that provides minimum levels of cycle parking.

Refuse collections

25. The proposal makes provision for adequate space for the storage of waste receptacles within the curtilage of each proposed dwelling. Nevertheless, the appellant's evidence is contradictory in terms of the location and arrangements for refuse collection. Firstly, it suggests that refuse bins would need to be collected from Cherry Hinton Road¹ and there is little evidence before me to identify the location of the proposed collection point. I therefore cannot be satisfied that the proposed collection point would accord with guidance within the Manual for Streets (2007) which requires waste collection vehicles to be able to get to within 25metres of the storage point and furthermore, that residents should not be required to carry waste more than 30 metres.
26. Based upon my observations, even if the collection point were to be positioned at the junction with Cherry Hinton Road, it would appear that future residents would have to transport their refuse bin(s) a considerable distance from storage in the property's rear garden to the collection point. The appellant's appeal submissions are silent on this matter. In my judgement, this would be an unacceptably long distance to transport refuse receptacles.
27. Secondly, in contradictory evidence, its is suggested that the refuse service vehicle presently enters Lilac Court. However, even if this were to be the case and future occupants did not have to transport their refuse bins over a lengthy distance, there is nevertheless dispute between the parties regarding the resultant size of the turning head, which I am unable to resolve on the basis of the provided evidence. I therefore cannot be certain that refuse would be capable of being collected from the roadside of Lilac Court after the appeal scheme were built.
28. The Council together with interested parties are concerned about the displacement of existing waste receptacles from the appeal site. The appellant disputes this matter and suggests the bins are stored on the appeal site on an informal basis. Nevertheless, several large commercial type bins were present within the appeal site at various locations during my site visit. It is not clear to me whether the bins have a right to remain there.
29. Overall, I find that the proposal fails to demonstrate adequate arrangements for refuse and recycling and therefore whether the proposal would provide satisfactory living conditions for future occupiers of the proposed scheme and neighbouring occupiers. It would conflict with LP Policy 57 insofar as it requires high quality new buildings that successfully integrate functional needs such as refuse and recycling.

Trees

30. The Arboricultural Report (AR) prepared on the appellant's behalf, identifies a number of Category B and C trees within the appeal site and neighbouring gardens. In particular, tree numbers T003 and T004, a horse chestnut and a sycamore, respectively, form part of a group which are protected by a Tree Preservation Order. Albeit these trees are located within the rear gardens of neighbouring dwellings, they nonetheless occupy prominent positions and

¹ Section 6.3 Transport statement of SLR dated March 2020

despite the presence of garages buildings and boundary fencing obscuring views of their trunks, the trees are clearly visible from the Lilac Court together with neighbouring dwellings.

31. Although the trees were not in leaf due to the timing of my site visit, by reason of their height, extensive spread and likely shape of their canopies, these trees are imposing specimens which I consider make an important contribution to the verdant character and appearance of the area and which is indicated by their TPO status.
32. The construction of the foundations for one of the proposed dwellings would be within the Root Protection Area (RPA) of tree T004. As a result, the AR details how the dwelling could be constructed without causing harm to the tree. In particular, excavation and root pruning would be undertaken along the line of the proposed foundation, with roots being severed. A range of measures including ground protection, would be implemented to protect the remaining roots and trees during construction.
33. However, BS 5837:2012² states that *'the default position should be that structures are located outside the RPAs of trees to be retained. However, if there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree'*. There is no evidence before me to suggest that alternatives that would avoid any incursion into the RPA have been considered. Furthermore, I find no overriding justification for construction within the RPA.
34. I am mindful that some trees can recover from disturbance to their roots, however, the RPA indicates the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability, and where the protection of the roots and soil structure is treated as a priority. The AR suggests that the incursion into the RPA would be *'minor'*. Even if I were to accept the appellant's view that the existing structures are likely to have limited the extent to which roots have permeated to the footprint of new structures, given that these trees lie within adjoining land, the AR has been undertaken on the basis of a visual assessment. Moreover, the AR indicates that some views of the trees were at a distance and/or obscured by fencing, garage buildings and other vegetation such as Ivy. As a result, I find that this limits the accuracy of the findings of the AR.
35. On the basis of the evidence presented, I cannot be certain of the extent to which the works would encroach into the RPA of trees and it is by no means certain that a tree would recover from the root pruning works. Consequently, it has not been satisfactorily demonstrated that the proposal would not compromise a very important part of the tree's root area. There is a clear risk that the proposal would threaten the integrity and long-term future of the trees thereby compromising its significant contribution to the character and appearance of the area.
36. Additionally, there would be pressure on the Council to allow periodic removal or the cutting back of branches, or at worst, the removal of a tree in its entirety, so as to prevent tree growth from compromising the structure of the dwellings and the living conditions of future occupants. Such extensive crown

² Paragraph 5.3.1

works would inevitably have a detrimental effect on the balanced shape of a tree, its ability to mature in size and its overall contribution to the area.

37. The proposal would result in the removal of a group of trees at the far end of Lilac Court and a number of hedges. Albeit these have an unmanaged and unkempt appearance, they nonetheless contribute pleasantly to their surroundings and provide relief within the existing built form. New planting would be introduced within the site however, its intended effect and benefits would not be realised for several years nor given the constraints of space within the site.
38. The appellant questions whether the tree officer has visited the appeal site. However, even if this were to be the case, based on the appellant's evidence and my own observations at the site visit, I conclude that the proposal fails to demonstrate that there would not be an unacceptable effect on the amenity value of the protected trees. Therefore, the proposal would conflict with LP Policies 59 and 71 insofar as these policies require high quality development that demonstrates existing features including trees that positively contribute to the quality and character of the area are retained and protected.

Biodiversity

39. The Council suggested it would have refused the proposed scheme on the grounds of the loss of mature planting and its subsequent impact on biodiversity. LP Policy 57 requires development proposals to include an appropriate scale of features and facilities to maintain and increase levels of biodiversity in the built environment.
40. However, the garages proposed for demolition are noted to be unlikely to provide a suitable bat habitat. Moreover, despite the removal of mature hedging and some trees, the scheme would be capable of maintaining levels of biodiversity through swift boxes, hedgehog gapping within boundaries and additional planting including the inclusion of sedum roofs. I am satisfied that these matters could be secured through appropriately worded conditions requiring details of such measures and their long-term retention within the scheme. Accordingly, the proposal would accord with the requirements of LP Policy 57, the requirements of which are set out above.

Carbon reduction

41. LP Policy 28 states, among other things, that all development should take available opportunities to integrate the principles of sustainable design and construction. It goes on to set minimum standards of sustainable construction and carbon reduction. Whilst I accept that the supporting evidence for the proposed scheme is brief in addressing these matters, I note the appellant's intention to incorporate sustainable construction to reduce carbon emissions. I am satisfied that an appropriately worded condition requiring the detail of carbon reduction could be imposed upon any grant of planning permission such that the proposal would accord with the provisions of LP Policy 28, the requirements of which are set out above.

Other Matters

42. Reference has been made to the 'Ironworks' development at the Mill Road Depot site and a scheme at 48 New Square. However, there is little information relating to the particular circumstances of these developments and whether the

circumstances are therefore comparable to the appeal proposal. As such, a comparison is of little relevance in this instance and I have considered the appeal before me on its individual planning merits.

43. The appeal site is sustainably located with good access to services and facilities. The scheme would make use of a brownfield site and would tidy up and improve the visual appearance of the site. It would contribute eight additional dwellings towards housing supply. There would be economic benefits generated as a result of additional spending within the locality by occupants of the new dwellings and during the construction process. Whilst these are matters that weigh in favour of the proposal, to my mind, they are of insufficient weight to outweigh the significant harm I have described above with regards to the living conditions of neighbouring and future occupants, trees, parking, cycle storage and refuse collection.

Conclusion

44. Whilst I have concluded that there would not be any significant harm caused to biodiversity or as a result of carbon reduction, these matters have a neutral effect in the overall planning balance. The proposal would conflict with the development plan as a whole and there are no other considerations, including provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

E Brownless

INSPECTOR