



Appeal Decision

Site visit made on 19 January 2022

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2022

Appeal Ref: APP/X1925/W/21/3280231

35 Common Rise, Hitchin SG4 0HN

- 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 Ms Natasha Rataj against the decision of North Hertfordshire District Council.
 - The application Ref 21/00286/FP, dated 28 January 2021, was refused by notice dated 18 March 2021.
 - The development proposed is demolition of existing workshop and the subdivision of the plot, retaining the original single family dwelling and creating two additional single family dwellings.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of neighbouring occupiers with regard to their privacy and outlook.

Reasons

3. The appeal site comprises the rear part of the property at No. 35. The proposed dwellings would be formed as a pair of 2-storey, semi-detached houses. They would both have a window at first-floor level on their rear elevation. The plans show that the rear gardens of the proposed houses would be 8 metres deep, and hence the rear elevation of the dwellings would be 8 metres from the retained rear garden at No. 35. Due to this limited distance and the elevated position of the facing first-floor windows, the proposal would allow for direct and close views over most of the rear garden of No. 35. As such, the occupiers of No. 35 would not have sufficient privacy when using their rear garden.
4. Furthermore, the distance between these windows and the rear conservatory at No. 35 would be around 16 metres and, as advised by the appellant, the gap between the development and the first-floor windows on the rear extension at No. 35 would be 22 metres. Both these distances are substantially less than the 30 metres required in saved Policy 57 of the adopted District Local Plan No.2 with alterations (2007) in order to achieve a minimum degree of privacy. Although, there is no corresponding distance guidance in the emerging Local Plan, I nonetheless consider the distances between the development and the dwelling at No. 35 would be insufficient to retain an acceptable degree of privacy for its occupiers.

5. The houses forming Foundry Terrace to the north also have first-floor rear windows which face the rear of the houses on Common Rise. However, the gap between those properties is greater than the corresponding gap would be at the appeal site and therefore any overlooking effect is less severe.
6. With regard to outlook, the development will appear prominently from the rear of No. 35 as well as from its neighbours at Nos. 33 and 37. The development would be around 1 metre from the side boundaries with Nos. 33 and 37. However, at No. 37, the part of the garden that would be adjacent to the development is occupied by a brick shed, and at No. 33 the nearest part of the garden to the development is currently being excavated, possibly in connection with a planning permission granted for a new dwelling there¹. As such the proposal would not be immediately adjacent to the outdoor parts of the neighbours' gardens. Also, as stated above, the garden at No. 35 would be 8 metres from the development. Generally, the rear gardens surrounding the site are open and not enclosed by trees or substantial landscaping. In that context, it is considered that the outlook from these rear gardens would remain to be substantially open.
7. In addition, the gap of at least 16 metres between the proposed houses and Nos. 33 and 35 is significant. When combined with the relatively compact form of the proposed building at less than 7 metres wide, it is not considered that, despite its height, it would appear excessively obtrusive or overbearing such that the outlook from these houses would be unacceptably harmed.
8. Overall, although the development would not harmfully affect the outlook from the neighbouring properties, it would adversely affect the privacy of the occupiers of No. 35 such that their living conditions would be unacceptably harmed. The development would therefore conflict with policy 57, as set out above, and draft policy D3 of the emerging Local Plan (2011 – 2031) which both aim to ensure development does not cause unacceptable harm to living conditions. It would also fail to accord with draft policies SP1, SP9 and D1 of the emerging Local Plan and saved Policy 26 of the adopted Local Plan, which all aim to ensure development responds positively to its local context.

Other Matters

9. The appellant has provided evidence that suggests there is only a 1.7 year supply of housing land, which the Council have not disputed. This is a significant shortfall. Paragraph 11 (d) ii. of the National Planning Policy Framework (the 'Framework') therefore applies. This states that 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.
10. The adverse impacts are set out above. Set against that is the benefit of providing two additional units, and the visual benefit of removing the existing workshop. However, these benefits carry limited weight as planning permission² already exists for two dwellings on the site and the removal of the workshop, and therefore the proposal provides no advantage in this regard.
11. The Framework advises that developments should have a high standard of amenity for existing and future users. As such, even taking account of the

¹ Ref 20/01458/FP

² Ref 21/01688/FP

objective of significantly boosting the supply of housing, making a more effective use of land and the Council's housing land supply position, the failure to provide satisfactory living conditions for neighbouring occupiers would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

12. Moreover paragraph 219 of the Framework is clear that the weight to be given to development plan policies depends on their consistency with the Framework. The most relevant development plan policies, 57 and D9, are consistent with the Framework and so the conflict between them and the proposal can be given significant weight.

Conclusion

13. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which would support a decision otherwise than in accordance with the development plan. Therefore, for the reasons given, the appeal is dismissed.

Andrew Owen

INSPECTOR