



Appeal Decision

Site visit made on 25 January 2022

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/R3650/W/21/3280190

Land to Rear of 37 - 38 Downing Street, Farnham, GU9 7PH

- 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 Jonathan Glanz against the decision of Waverley Borough Council.
 - The application Ref WA/2020/1260, dated 27 July 2020, was refused by notice dated 19 May 2021.
 - The development proposed is erection of a new dwelling with relocation of the existing vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021, after the Council made its decision, the Government published its revised National Planning Policy Framework (the Framework). The Council refers to paragraph 127 of the 2019 Framework in its decision. The wording of this paragraph is identical to that of paragraph 130 of the 2021 Framework. I therefore do not consider it necessary to invite further comments from the parties on this matter.

Main Issue

3. The effect of the proposal upon the living conditions of the occupiers of No. 1 Ivy Lane, with particular regard to daylight and outlook.

Reasons

4. No. 1 Ivy Lane stands to the north of the site. It is a three storey building divided into three flats. I accept that there are no details before me relating to how the ground floor of this building is laid out, however the three windows are a regular size with clear glass suggesting they serve primary rooms. They would supply the room or rooms that they serve with good levels of daylight and direct sunlight owing to their southerly orientation, and they appear to be the main windows serving the ground floor.
5. It is suggested that Flat 1 may not be in residential use. The Council accept that a company is registered to this address. However, it is not clear whether using the Flat for business purposes is ancillary to its residential use. In any case, any alternative use, regardless of its scale, could cease at any time and the building be used fully for its intended purpose as a residential flat. I am therefore satisfied that I should assess the proposal on the basis that the ground floor of the neighbouring building is in residential use.

6. The three ground floor windows of this neighbouring building would face towards and be very close to the end of the proposed building. Whilst I accept that occupiers of dwellings do not have a right to a particular view, the proposal would severely restrict the general outlook from these windows. The building would be close and appear overbearing to those looking out from these windows. The impact would be felt from all three ground floor windows, and these are the main openings to the ground floor accommodation that currently enjoy a south facing orientation towards an open site. Occupiers of this flat would not appear to benefit from alternative well orientated openings where outlook could be maintained.
7. The very modest distance between the proposal and the ground floor windows of the neighbouring building, and its position to the south of that building, mean that the proposal would also have an adverse impact on daylight reaching the interior of the ground floor. This would be particularly felt during the winter months when the sun is lower in the sky. I accept that the Council's Residential Extensions Supplementary Planning Document is not relevant to a new dwelling. However, the 25 degree rule is a commonly applied rule of thumb, which would appear to be a relevant test for a building that would sit to the front of another. The proposed building would appear to breach a 25 degree line when drawn from the window position set out on drawing no 2034-SK-113a, which would support the view that it would have an adverse impact on daylight.
8. The appellant advises that a survey to understand daylight impacts was not requested by the Council; and neither was a request made for further investigation to better understand the nature of the affected rooms. However, given the clear position of the Council set out in its officer report and decision it is not clear why such further work could not have been considered at the appeal stage to support the appellant's case.
9. Most examples of tightly packed development nearby appear to be historic, and many in the immediate area of the appeal site are not in residential use. No examples are before me to show that the Council accepts similarly modest distances in the context of a new proposal. Evidence relating to the previous development at the site is limited, and there is no evidence to suggest that the site was occupied by buildings at the time No. 1 Ivy Lane was converted into dwellings. These matters do not therefore outweigh my findings on this main issue.
10. There has been no objection to the proposal from the owner or occupier of the flat. However, whilst I would take into account any representations received, I need to assess the proposal on its own merits, applying my own professional judgement.
11. In summary, these combined impacts would significantly diminish the quality of accommodation at ground floor level, harming the living conditions of the occupiers of the ground floor of No. 1 Ivy Lane. The proposal would thus not accord with Policy TD1 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites 2018 (LP 2018), Policy FNP16 of the Farnham Neighbourhood Plan 2013-2032 (FNP), Saved Policies D1 and D4 of the Waverley Borough Local Plan 2002 (LP 2002) and paragraph 130 of the Framework, which together seek to ensure that development proposals are well designed to

secure a high standard of amenity for existing users that safeguards their daylight and outlook.

Planning Balance

12. The proposal would conflict with the development plan, as it would be contrary to Policies of the LP 2018, the FNP and the LP 2002, insofar as they seek to ensure that development proposals are well designed to safeguard the daylight and outlook of adjoining residents.
13. The Council advises that it is unable to demonstrate a five year supply of deliverable housing sites (5YHLS). The level of under supply is reported to be modest and this is not disputed by the appellant. As such the 'tilted balance' set out in paragraph 11 d) of the Framework is engaged. As a result, where the policies are out of date, which would be the case where a Council cannot demonstrate a 5YHLS, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
14. Paragraph 14 of the Framework establishes that in such situations the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, providing certain criteria apply.
15. With reference to paragraph 14 a) the FNP was made on 3 April 2020 and is therefore within two years of the date of this appeal decision. With reference to paragraph 14 b) I am satisfied that the FNP sets out its identified housing requirement and the policies and allocations to meet that requirement. The shortfall in 5YHLS is modest and well above 3 years supply of deliverable housing sites. Therefore, criteria c) of paragraph 14 of the Framework is also satisfied. The results of the Housing Delivery Test 2021 shows that the Council's housing delivery was well over 45% of that required over the previous three years. Accordingly, criteria d) of the Framework paragraph is also satisfied.
16. As such, paragraph 14 is engaged. The proposal would make a small contribution to housing supply. It would deliver a dwelling that is within easy walking distance of a range of local services and facilities that would be sensitively designed to respect its historic context. However, the adverse impact of allowing the proposal, taking into account the conflict with the FNP, significantly and demonstrably outweighs these benefits. Accordingly, the appeal should fail.

Other Matters

17. The appeal site is within 5km of the Thames Basin Heathland Special Protection Area and within 5km of the Wealden Heaths Special Protection Area. The addition of a residential dwelling within this area would be likely to have a significant effect on the internationally important interests and features of these sites. The appellant has submitted a Unilateral Undertaking to secure financial contributions towards mitigation measures. However, as I am dismissing the appeal for other reasons, the likely significant effect will not occur in any event, and this matter does not therefore need to be considered further.

18. No. 37-38 Downing Street is a Grade II listed building. The appeal site is within the Farnham Conservation Area (FCA). Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The Council, including its specialist advisors, is satisfied that the proposal would not harm the setting of the listed building or character and appearance of the FCA. Based on my assessment of the character and appearance of the FCA and the setting of the listed building, including my observations on site, I can see no reason to take a contrary view.

Conclusion

19. In conclusion, the proposal would conflict with the development plan and there are no other considerations that outweigh this conflict. Therefore, the appeal should be dismissed.

A Tucker

INSPECTOR