



Appeal Decision

Site visit made on 10 October 2023

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/C1570/W/23/3319270

Serena Chelmsford Road, Hatfield Heath, BISHOP'S STORTFORD CM22 7BD

- 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 Gabriella and Victoria Adams against the decision of Uttlesford District Council.
 - The application Ref UTT/22/2625/FUL, dated 22 September 2022, was refused by notice dated 29 November 2022.
 - The development proposed is the demolition of garage and erection of replacement garage. Erection of 2no. detached dwellings to the rear of 'Serena' and creation of new vehicular access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal on the living conditions of existing and future occupiers with respect to privacy and noise and disturbance, and
 - Whether a protected tree would be adversely affected by the proposal and, if so, the effect of this on the character and appearance of the area.

Reasons

Living conditions

3. The proposed access driveway would be between the existing dwellings of Serena and Friars Lea. This would be around 3.5m wide and would be screened from the front garden of Friars Lea by an existing boundary. The rear garden of Serena would be shortened and reduced in width to accommodate the development.
4. The adjacent dwelling of Friars Lea is adjacent to the proposed access driveway but separated by a boundary fence and low wall. Friars Lea has a front and rear garden that are private spaces, being enclosed by tall screening to all sides. The front garden includes a gazebo set adjacent to the shared side boundary, within planted areas to its sides and a wall and trellis behind. Its wide side passage includes a large shed and planted areas, but the main rear garden would be screened from the proposed driveway by rear extensions that nearly connect to the rear boundary of the site.
5. Hamilton House, behind Friars Lea, has a car port to its front that screens the proposed drive from occupiers of this dwelling. As a result, the greatest effect

- of noise and general disturbance by the use of the driveway would be to the occupiers of Friars Lea and Serena. However, the proposal would result in a limited number of vehicle movements, travelling at low speeds along the access drive. Occasional larger delivery vehicles may need to attend the site, but such activity would be limited and infrequent.
6. Accordingly, the modest scale of the proposal would be unlikely to result in significant noise or disturbance from attending vehicles to cause substantive disturbance to adjacent occupiers in terms of either noise, light spill or pollution. Furthermore, the access would be 3.5m for only a short length, enabling cars to readily pass on the infrequent occasions that motorists might meet in opposing directions. Moreover, mitigation in the form of an enhanced boundary design, perhaps including a wall and planting, could have been secured by condition (had I been minded to allow the appeal) to reduce the overall noise effects of the proposal further.
 7. The proposed dwellings would be located within the rear garden of an existing property. These would be in an alignment with Holly Barn and Hamilton House, following the second tier of development established by existing development. However, this positioning would place the front elevations close to the rear windows and garden of Serena with only a small separation distance of around 13m between principal elevations. The garden of Serena would be substantially reduced to create the proposed development plots. As such, the small area of rear garden retained would provide an important, but limited, private space for occupiers to enjoy.
 8. The limited distance between the proposed first floor windows of both proposed dwellings and the rear elevation and the reduced garden of Serena would create a cramped and constrained environment. Consequently, the intervisibility between these properties would be substantial with limited screening afforded by the retained oak tree. As a result, due to the short distance and absence of effective screening, the extent of overlooking between these properties would be significant resulting in a substantial absence of privacy. On my visit I note that the proposed separation distance is similar to that evident between Hamilton House and Friars Lea. However, Hamilton House has fewer first floor front facing windows and there are semi-mature trees on the rear boundary of Friars Lea, both measures maintain acceptable privacy.
 9. The Appellant states that any adverse impact on living conditions would be mitigated as the owner intends to continue living in Serena and the proposed dwellings would be for family members. However, it would be unreasonable to apply a condition requiring the Appellant's permanent occupation of the host dwelling and no legal mechanism has been submitted to substantiate that the proposed dwellings would be for family members only. In any event, such restrictions would not pass the tests of paragraph 56 of the Framework with respect to the correct application of conditions and such measures would not resolve what is essentially poor design.
 10. Consequently, the proposal would not demonstrably harm the living conditions of neighbouring occupiers with respect to noise and disturbance. Nonetheless, it would result in substantive overlooking, harming the privacy of occupiers of Serena and the future occupiers of the proposed dwellings. Accordingly, the proposal would conflict with policies H4 and GEN2 of the Uttlesford Local Plan [2005] (LP) and the Framework. These seek, among other matters, for

development to not have a material adverse effect on the enjoyment of a residential property because of privacy and to create a high standard of amenity for existing and future users. However, as the proposal would not cause demonstrable noise and disturbance to adjacent occupiers it would comply with LP policy GEN4, seeking to refuse development where noise would cause material disturbance to surrounding occupiers.

Character and appearance

11. Chelmsford Road consists of a ribbon development of detached housing. Plots are set within spacious grounds in a verdant and rural setting. The appeal site is a deep plot and includes several large mature trees. It therefore accords with, and makes a positive contribution towards, the character and appearance of the surrounding area. The oak tree, subject to a Tree Preservation Order and within the rear garden of Serena would be partially within the driveway of 'dwelling one'. LP policy ENV3 states that the loss of fine individual tree specimens, through development, will not be permitted unless the need for the development outweighs their amenity value.
12. The Appellant's Tree Protection Plan¹ and Tree Constraints Plan² identifies the tree as being of fair/good physical condition. This demonstrates that dwelling one would be beyond the Root Protection Area (RPA) of the tree, although scaffolding may require some small, localised pruning of branches for access. Part of its driveway would be within around 10-15% of the tree's RPA, which complies with the 20% maximum intrusion recommended by tree protection standards³. This area would be subject to a no-dig cellular confinement system. The Council are content that the tree would be suitably protected during construction and the cellular system would prevent the compaction of its roots. I see no reason to disagree with this assertion.
13. Nonetheless, the Council is concerned about future pressure to allow works to this protected tree due to its proximity to proposed windows. However, in terms of post construction impacts, the Planning Practice Guidance provides helpful guidance with respect to applications for works to a protected tree. It advises that authorities must consider a range of issues including the amenity value of the tree, whether the proposed work is justified, whether loss of damage would occur if consent was refused and any other material considerations.
14. The advice is clearly focussed on the amenity value of the tree rather than the aspirations of nearby occupiers. Therefore, whilst future occupiers may have concerns with respect to the proximity of the tree this would be unlikely to provide a compelling argument to undertake tree works unless supported by technical evidence. Accordingly, the Council would be entitled to refuse works to a TPO tree where it finds such works to be unjustified.
15. The tree would be close to the front windowed elevation of dwelling one. However, the nearest windows to its canopy would serve an ensuite and bathroom. These are non-habitable rooms and any light reduced due to proximity would be unlikely to form a strong reason to remove branches. The tree may cause some shading to the sitting room, to its south facing front

¹ Tree Protection Plan reference 220128/01A

² Tree Constraints Plan reference 210614/1A

³ Trees in Relation to Design, Demolition and Construction to Construction - Recommendations BS5837:2012

window. However, this room has a secondary window and as such daylight would not be fully reliant on access from the front only.

16. Due to the relationship of dwelling one to the tree, it is unlikely that the Council would have difficulty in refusing an application for tree works on the grounds of proximity or inconvenience. Moreover, it would be unlikely that any technical evidence would be capable of demonstrating that the proximity of the trees to the dwelling would cause structural issues or demonstrable overshadowing. Consequently, the proposal would be unlikely to pose a clear or direct threat to the longevity of the tree.
17. Accordingly, the evidence does not demonstrate that the proposal would affect the protected tree through its removal or by excessive pruning authorised by any future TPO applications. As such, the proposed development would have no adverse effect on the character and appearance of the area. Consequently, the proposal would accord with LP policy ENV3 which seeks to prevent the loss of fine individual trees.

Other Matters

18. The appeal site is largely within the settlement boundary of Hatfield Heath, within a village. The site is within a location that enables access to a range of goods and services. Its locational suitability weighs in favour of the proposal.
19. The proposal would accord with the character and appearance of the area and would not raise highway safety concerns. It would also satisfy wildlife and flood related matters. Nonetheless, an absence of harm in these respects can only be considered as neutral factors in the planning balance.
20. The proposed development is partly within the Metropolitan Green Belt. The Council considers that whilst the rearmost part of each dwelling is within the Green Belt, these would align with existing previously approved dwellings in similar backland locations. The Council finds that to maintain a consistency in decision making, previous decisions demonstrate that the development proposed would not cause harm to the openness of the Green Belt. I am cognisant of the concerns of adjacent residents and perhaps understand the neighbour's proposition that previous decisions should not be a reason for the Council to set aside Green Belt policy. However, the effect on the Green Belt is not a matter of dispute between main parties and this appeal decision would not result in any harm to the Green Belt as I am dismissing the appeal for other reasons. It has therefore not been necessary for me to pursue this matter further.

Planning Balance and Conclusion

21. The Council cannot demonstrate a 5-year Housing Land Supply (HLS), with a supply of 4.89 years, creating a modest shortfall in housing supply across the district. The Framework explains that where a Council cannot demonstrate a 5-year HLS the policies most important for determining the application are to be regarded as out of date. Paragraph 11(d) of the Framework states that where policies are out of date permission should be granted unless at ii) 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.

22. The Framework seeks to boost the housing supply and highlights the important contribution small sites can make, whilst supporting development which makes efficient use of previously developed land. The proposal would provide a minor contribution of two additional dwellings on a small site which would make better use of land in a sustainable location within Hatfield Heath and contribute towards Uttlesford's housing supply. However, two additional houses would make little difference to the overall supply of housing, and I attribute only modest weight to this benefit.
23. There would also be some economic benefits during the construction phase when the development would provide jobs and opportunities for local companies and once occupied when future residents would support services in Hatfield Heath. However, given the relatively small scale of the proposal, these benefits would be limited.
24. In contrast, the proposal would result in substantial harm to the living conditions of existing and future occupiers to which I apply significant weight. The Framework requires planning decisions to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. I have concluded that the proposal would conflict with development plan Policies H4 and GEN2 and the Framework in this respect. I give this conflict significant weight.
25. Consequently, even with paragraph 11(d) of the Framework engaged, the adverse impacts of the development on the living conditions of existing and future users would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development does not apply.
26. The proposed development would not accord with the development plan or national policy and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

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INSPECTOR