



Appeal Decision

Site visit made on 10 October 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/P1940/W/23/3315573

Land at Chilwell Gardens, South Oxhey, Hertfordshire WD19 6NA

- 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 Mrs R Agrawal against the decision of Three Rivers District Council.
 - The application Ref 22/1182/FUL, dated 24 June 2022, was refused by notice dated 12 September 2022.
 - The development proposed is Construction of two storey block with loft containing six flats (one three-bed, two two-bed and three one bed) and associated car parking and new vehicle crossover.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has provided revised plan to address a Highway Authority (HA) objection. It reduces the access width, changes its design, and shows internal amendments to paving routes, the position of some parking spaces, bin and cycle storage. The Procedural Guide: Planning Appeals – England (2023) states the appeal process should not be used to evolve a scheme, and what is considered by the Inspector should essentially be the same scheme that was considered by the Council and interested parties at the application stage.
3. In the context of the appeal scheme given the nature of the changes and noting interested party representations received at the application stage, the changes represent a fundamental change to the appeal scheme. Therefore, I have not taken the revised proposals into account in determining this appeal.
4. A Unilateral Undertaking (UU) is provided seeking to secure financial contributions to affordable housing, replacement trees and play equipment. The Council confirms that it no longer wishes to pursue reason for refusal number 3 in respect of affordable housing. I return to this matter below.
5. The effect upon open space provision and whether or not the proposal would provide satisfactory living conditions for the future occupiers were not specifically stated as reasons for refusal in the Council's decision notice. However, having regard to the submitted evidence, I have sought the views of the Council and the appellant upon these matters and taken them into account in determining this appeal. This is reflected in the main issues below.

Main Issues

6. The main issues are:

- the effect of the proposed development upon the character and appearance of the area, including upon protected and important trees;
- whether or not the proposed development could provide satisfactory living conditions for the future occupiers of the development with particular reference to daylight and outlook;
- whether or not the proposed development would provide a safe and suitable access; and,
- the effect of the proposed development upon open space provision.

Reasons

Character and appearance

7. The area comprises residential streets with dwellings of a variety of age and plot size around an area of public open space and a forested area. It is understood the open spaces and trees were specifically retained when surrounding dwellings were developed. These green areas provide a distinctive verdant and sylvan character and appearance to the area.
8. The appeal site comprises part of the forested area. That area includes a variety of valued important, and many protected trees subject to TPO 178. Having regard to the maturity, size and prominence of the trees, its verdant landscaped appearance, and its prominent position from Chilwell Gardens, the footway through the trees, and the discernibility from the public open space, Mary Way and Redwood Close, the appeal site makes a highly positive and important contribution to the character and appearance of area.
9. The size, scale and position of the proposed development would make a significant harmful urbanising incursion into a central part of the forested area. The number of trees to be removed would be numerically limited. However, the appeal proposal would directly result in the loss of two of the mature protected oak trees. Policy DM6 of the Development Management Policies Local Development Document (2013) (the DMP) expects protected trees are retained and protected, and permission will be refused for their loss.
10. At approximately 20m high T8 is a large mature (category A) specimen oak of good health, vigour, structure and high amenity value. T12 (category B) has a lean, a small amount of fire damage and a cavity near its base. Nevertheless, it appeared to bear little adverse effect and being of approximately 22m high, of good vigour, health and structure, it has a high amenity value. The crown appears to have grown since surveyed to overhang and be clearly visible at the highway boundary. T21 is a smaller (category C) specimen, but its approximately 14m height, form, vigour and frontage position makes it a highly prominent and positive street scene feature.
11. The loss of the trees would significantly diminish the appearance and qualities of the wooded area. They would be replaced by a large new distinctive building with further urbanisation from parking and circulation areas, enclosure of amenity areas, paraphernalia and associated comings and goings. Despite the remaining trees, it would have a significantly erosive and fragmenting effect

- upon the land. It would be prominently visible from many vantage points through and between remaining trees on Chilwell Gardens, the footway between it and Redwood Close, and also from the public open space, Redwood Close and Mary Way, which would increase when trees are not in leaf.
12. The Council does not object to the design or scale in relation to surrounding buildings, and other aspects such as the proximity to the site boundaries. However, the aspects of policy compliance do not overcome or mitigate the harmful effects. There is potential for landscaping to be secured by planning conditions, however, it would do little to mitigate the harm.
 13. The UU secures £12,000 for the Council to spend on what are envisaged to be 12 trees of a 12 – 14cm girth. Though the Council has discretion over tree size and management, and I am offered little certainty as to where these would be planted, that early maintenance would occur, of any replacement in the event of failure, and long-term retention is secured. To make the same degree of positive contribution to the character and appearance of the area would take a considerable number of years. Therefore, noting the expectations of Policy DM6 f) and paragraph 131 of the National Planning Policy Framework (2023) (the Framework), there is no certainty mitigation could be satisfactorily achieved even in the very long-term.
 14. Remaining trees T6, T7, T9, T10 and T11 are large mature oaks of approximately 19 – 22m in height in close proximity to the building and parking areas. Though the Inspector's findings for Woodside Walk are noted¹, my consideration of this appeal proposal are on its own site-specific merits and effects, so that decision attracts limited weight. However, even if it had been demonstrated foundation design can mitigate the potential 'high' risk of subsidence and heave², I give weight to the Council's concerns about pressure for future works that may be detrimental to the trees health and contribution to the area. This is because many remaining the trees are large, will deposit leaves, branches, fruit and other detritus, appear imposing, and a give high degree of shading.
 15. Those moving in will be aware of the trees. However, there is no means before me by which the appellant is secured as the freeholder, or mechanism secured by any permission that would prevent future tree applications being made. Whether any future application for consent would be permitted is dependent upon its merits. Were it refused a right of appeal could be exercised, so a decision will not ultimately be in the hands of the Council. Though, I specifically go onto consider daylight and outlook below, based upon the evidence before me, it is highly likely there will be pressure for future detrimental works which would be harmful to the trees and exacerbate the harmful effects.
 16. The appellant's figures suggest incursions into Root Protection Areas (RPAs) of six retained trees, by between approximately 0.3 – 8.9%. The evidence suggests the incursions would be from hard surfacing and is towards the edge of the RPAs where tree roots are likely to be smaller. They are below the British Standard recommendation of 20%. Subject to the imposition planning conditions, such as in respect of tree and ground protection and positioning of

¹ Ref. APP/P1940/W/20/3263733.

² 3.1-3.2 of the TREE SURVEY, ARBORICULTURAL IMPACT ASSESSMENT AND ARBORICULTURAL METHOD STATEMENT by Dr Martin Dobson (31 May 2022).

utilities, the substantive evidence suggests it is unlikely the proposal would be detrimental to future tree health due to incursions into the RPAs alone. However, this does not mitigate the other concerns I have.

17. I am in little doubt there will be a need for further urbanising developments to meet housing requirements, but it does not necessarily follow that proposals in the Green Belt or other greenfield sites would be more harmful. This proposal would result in significant harm for the reasons set out.
18. For the reasons set out above the proposed development would be significantly harmful to the character and appearance of the area, including to protected and important trees. It would conflict with Policies CP1 and CP12 of the Local Development Framework Core Strategy (2011) (the CS) and Policies DM1 and DM6 and Appendix 2 of the DMP. In combination and amongst other things these require proposals respect local distinctiveness, protect and enhance the character, amenities and qualities of an area, preserves natural assets, seeks to retain trees and important landscape features, and permission will be refused for development that would result in the loss of protected trees unless conditions can be imposed to secure their protection.
19. Under this main issue I have not concluded against Policy DM11 of the DMP in respect of open space, as I have set out my findings below.

Daylight and outlook

20. The new building would provide what appear to be good-sized living spaces and window openings. However, most sides of these would be in close proximity to or below the collective canopy of several of the mature oaks. Based upon the substantive evidence before me and what I saw the closest trees are generally high-quality, healthy, vigorous trees with large crowns and a life expectancy put at 20 – 40 years.
21. When in leaf they would result in a significant degree of shading to and screen sunlight to several habitable rooms in most of the properties for a significant proportion of the year. When not in leaf there will also be some impedance to daylight and sunlight at the time of the year when daylight is less. There is no formal assessment submitted with the application to demonstrate the levels of daylight and sunlight that would be received, or that this would meet the expected minimum levels to provide satisfactory living conditions.
22. The trees would have significant influence on sunlight and overall daylight, resulting in darkened living spaces. The times of the year when dappled sunlight and the shading offers welcome protection from higher temperatures, is likely to be for a very limited time per year, and future occupiers would also expect sufficient natural light. Given the size, vigour and spread of the trees, I am not satisfied the proposed development could provide satisfactory living conditions to the future occupiers in respect of daylight.
23. The outdoor amenity areas are understood to be of an adequate size and there is also no objection to principle of the first and second floor dwellings being served by balconies. However, the outdoor spaces would be darkened spaces that would have very limited natural sunlight and daylight for much of the year. The proximity to the public open space would provide some mitigation, but it does not afford the same degree of utility and privacy as private outdoor space, so attracts limited weight. Based upon the evidence before me, I am not

satisfied the proposal could provide satisfactory living conditions to the future occupiers in respect of daylight to outdoor spaces.

24. In-light of my conclusions I consider there would be likely to be pressure and the potential for successful applications to reduce and potentially prejudice the future health of the trees and their contribution to the area.
25. The retained trees would obscure outlook from within some dwellings when they are in leaf. From what I saw of the crown structures they would likely to appear imposing and result in some feeling of enclosure to some habitable rooms. However, there is likely to be some visibility between and through the trees at a sufficient distance to be able to provide a satisfactory degree of outlook for the future occupiers. However, this does not mitigate or outweigh my concerns in respect of daylight.
26. For the reasons set out above, based upon the evidence before me, the proposed development could not provide satisfactory living conditions for the future occupiers in respect of daylight. This would conflict with the aims of Policy CP12 of the CS, which aims to protect residential amenities.

Access

27. Paragraphs 110 and 112 of the Framework expect that safe and suitable access can be achieved for all users, and proposals address the needs of people with disabilities and reduced mobility in relation to all modes of transport. The proposed development is for what is described as a bell-mouth style access with a width of 9.2m with an oversized dropped kerb. The HA considers the proposed access would be in conflict with the development plan, policy guidance and advice documents.
28. Though the evidence suggests the design may not conflict with some of the design guidance referenced³, the access size, width and specification is such that it would cause unease to those using the footway and there is an increased potential for vehicles to enter the site at a higher speed. It would make the access harder to use or cross for those with mobility issues or people pushing prams. Though the appellant claims this to be an exaggeration, it does not substantively demonstrate this is the case. The development might introduce a relatively limited level of vehicle movements. However, it would appear inevitable given the width and specification of the access and the potential for increased vehicle speed, it would result in the access being harder and less safe to use. The dropped kerb would also be within the RPA of T20 contrary to highway guidance.
29. Though the HA is satisfied the amended access plan addresses their concerns, for reasons set out, my decision is based upon the scheme upon which the Council's decision was made and not upon the amended scheme. I am not satisfied all of the concerns could be addressed by planning conditions including one to enter into a planning obligation, within the scope of this appeal scheme.
30. Therefore, for the reasons set out above the proposed development would not provide a safe and suitable access. It would conflict with Policy CP10 of the CS which expects development to make adequate provision for all users, provide a

³ Roads in Hertfordshire: Highway Design Guide 3rd Edition Section 4 – Design Standards and Advice and Hertfordshire County Council Residential Dropped Kerbs Terms and Conditions.

safe network for pedestrians, particularly those with restricted mobility, and provide a safe and adequate means of access.

Open space

31. Though the appeal site is private land and is not the subject of a specific designation, it is Green Infrastructure, and is open space for the purposes of Policy DM11 of the DMP. Interested party representations suggest the appeal site is a valued open space, appreciated for recreational purposes, particularly from the footway linking Chilwell Gardens and Redwood Close.
32. Policy DM11 requires that development proposals that result in the loss of existing open space will only be permitted where one of its criteria are met. The relevant criteria are in respect of it either not creating or exacerbating a deficiency, alternative provision of equivalent or better-quality open space, or sport or recreation facilities being provided within the catchment or as part of the proposal that is sufficient to outweigh the loss. The appellant has proposed a financial contribution to improve local play areas and refers me to the remaining space, and neighbouring public open space and Oxhey Woods as sufficient existing publicly accessible provision.
33. Aside from the footway through it, it is not clear that access is permitted across much of the rest of the appeal site and from what I could see much of it is fenced off from adjoining land. Moreover, not all of the wooded space would be lost including that around the footway through the site, which is likely to cater for those who find mobility more difficult.
34. The public open space would also be unaffected. From what I saw Oxhey Woods is a relatively short walk away and appeared to provide a resource of a similar forested characteristic to the appeal site. While the Council has referred me to a policy conflict, it has not demonstrated or stated there is a deficiency created, within the catchment by the loss now or over the plan period, and no other substantive evidence demonstrating otherwise is before me.
35. Therefore, for the reasons set out, I cannot conclude the proposed development would harmfully affect open space provision or result in an overall deficiency. It would not conflict with Policy DM11a) of the DMP, the relevant provisions of which I have set out above.

Other Matters

36. I have considered the signed and dated UU with regard to the statutory requirements in Regulation 122 of the CIL Regulations and the policy tests in paragraph 57 of the Framework. The UU provides an index linked contribution of £82,565 towards affordable housing. Having regard to the Council's and appellant's submissions, Policy CP4 of the CS and the Affordable Housing Supplementary Planning Document (2011), the contribution is necessary to make the development acceptable in planning terms, directly related to it, and fairly and reasonably related in scale and kind to the development. Therefore, the obligation is justified and meets the CIL and Framework tests.
37. Though it falls somewhat short, the proposed contribution towards tree planting is aimed at making the development acceptable in planning terms, so I therefore consider it meets the test of necessity. It is directly related to the development, and fairly and reasonably related in scale and kind to the development. Therefore, it is justified and meets the CIL and Framework tests.

38. I have found there is no conflict with development plan policies in respect of open space, so the proposed Play Area Contribution is not necessary to make the development compliant with the development plan. Therefore, it is not necessary and does not meet the CIL and Framework test. There is a 'blue pencil' type clause stating the obligations cease to have effect in the event I do not find they meet CIL tests. Therefore, it does not form part of the proposal.

Planning Balance

39. The proposal would result in a moderate temporary economic benefit during design and construction, and once complete a limited on-going spend in the local economy. The Council is understood to be able to demonstrate only an approximately 1.9-year housing land supply (HLS) and Housing Delivery Test (HDT) results indicate a 46% delivery in the 3-year period stated. In accordance with paragraph 11d) of the Framework, the most important policies for determining the application are considered out of date, and the tilted balance applies.
40. I note the Inspector's findings for Ref. APP/G5180/W/18/3206947 in respect of the weight to be attributed to 9 dwellings at that time under a previous iteration of the Framework in a different Borough, although the full details of the proposal and evidence before that Inspector are not before me. That Council was expected to experience a considerable increase in its HLS figure meaning the Inspector viewed such housing could be given significant or substantial weight. As a proposal that preserved if not enhanced the character and appearance of a Conservation Area, preserved the significance of a Listed Building with only limited harm to its setting, and judged not inappropriate development in the Green Belt, it is not directly comparable to this proposal.
41. There is uncertainty over future changes to the Framework, how certain suggested changes would affect the Council's future provision figures, and the stance the Council would take over this matter in developing a new Local Plan. Therefore, these matters attract limited weight at this stage. However, in the context of the Council's low HLS and HDT results, 6 dwellings are a social benefit that should be attributed significant weight to meeting need. While the affordable housing contribution might make a limited contribution to addressing current deficiencies, the evidence suggests rather acute housing need. Therefore, this is a benefit that attracts significant weight in favour of the scheme.
42. The evidence suggests the effects upon species such as bats, stag beetles and nesting birds could be satisfactorily mitigated by planning conditions. This would be a neutral matter. Having regard to the measures suggested including securing on-site enhancements, an off-site biodiversity off-set, removal of invasive species, it appears likely the proposal could provide a biodiversity net gain, and improved drainage. However, there is no substantive evidence demonstrating that if and when these are secured, they would be anything other than moderate benefits in the longer-term, attracting moderate weight in favour of the scheme. The proposed tree planting attracts limited weight.
43. The evidence suggests the resource and energy efficient design and construction integrating renewable technology would off-set the effects of the proposal rather than provide for a net gain in renewable energy and overall efficiency. Therefore, this would be a neutral matter in the balance. Overall, the benefits of the proposal attract significant weight in favour of the scheme.

44. Though the proposal is not fully compliant with policies and standards for the dwelling mix and off-street car parking, the Council suggests no harm from these matters, which are neutral matters. Not resulting in a deficiency of open space is also a neutral matter. Were I to agree the proposal is compliant with or not harmful, having regard to policies in respect of matters such as the general location and accessibility, dwelling density and the living conditions of neighbouring occupiers, these would also be neutral matters in the balance.
45. Overall, the policy compliance and benefits of the development attract significant weight in favour of the scheme. However, the proposal would be significantly harmful to the character and appearance of the area including to protected trees, and it would not provide a safe and suitable access. It is not demonstrated the proposal could provide satisfactory living conditions for the future occupiers in respect of daylight. Overall, the level of policy conflicts and harm is such that these matters significantly and demonstrably outweigh the benefits of the development when assessed against the policies of the Framework taken as a whole. Therefore, the appeal should not succeed.

Conclusion

46. The proposed development conflicts with the development plan taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR