



Appeal Decision

Site visit made on 4 September 2023

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/P1940/W/23/3314469

35 Lower Rd, Chorleywood, Hertfordshire WD3 5LQ

- 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 Ben Sadka on behalf of NDR BATIM LTD against the decision of Three Rivers District Council.
 - The application Ref 22/1624/FUL, dated 25 August 2022, was refused by notice dated 20 October 2022.
 - The development proposed is described as "side and rear extension and associated alterations to the existing building (including rear dormer extension and insertion of rooflights and photovoltaic panels) and associated amenity spaces to provide improved layouts and an additional residential unit".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has indicated that it is not defending its reason for refusal relating to the effect of the proposal upon highway safety as a result of increased pressure on on-street parking. This is because a unilateral undertaking relating to restricting access to car parking permits has been submitted during the appeal process. Although this is a matter of concern for interested parties, as I am dismissing the appeal for other reasons, it has not been necessary for me to consider this matter further.
3. In reaching this decision, I have had regard to the revised version of the National Planning Policy Framework ('the Framework'), that was published on 20 December 2023 and I have sought the parties' comments upon it. Accordingly, no party has been prejudiced by me doing so.

Main Issues

4. The main issues are in this case are as follows:
 - whether the proposal makes appropriate provision for affordable housing, with reference to viability;
 - the effect of the proposal upon protected species;
 - the effect of the proposal upon the living conditions of the occupiers of nearby properties with regard to outlook and privacy, and;
 - the effect of the proposal upon the character and appearance of the area.

Reasons

Affordable housing

5. The Council's Affordable Housing Supplementary Planning Document ('the SPD') identifies that average house prices within the district are some of the highest in the country outside of London. It identifies that the lack of suitable and affordable housing within the area impacts on the ability of the district to attract and retain workers. Although the SPD was published in 2011, more recent evidence¹ from 2020 indicates that an affordability issue persists within the district; at that time, it had the fourth worst affordability ratio for local authority areas in England and Wales.
6. Accordingly, Three Rivers Local Development Framework Core Strategy ('CS') Policy CP4 requires the provision of affordable housing of 45% for all new housing development. The policy identifies that whilst in most cases, affordable housing provision should be made on site, on smaller sites of up to 9 dwellings, that a commuted payment ('AHP') towards off-site provision would be acceptable in lieu of delivery on-site.
7. Both the supporting text to CS Policy CP4 and the SPD acknowledge that affordable housing provision can have viability implications for development proposals, with the SPD stating that it will consider reductions to AHPs where informed by viability. The SPD also sets out that the onus is on a developer to demonstrate that viability would be jeopardised, by means of a robust financial appraisal.
8. The need for the proposal to deliver an AHP in order to accord with CS Policy CP4 is not a matter of dispute. However, there is dispute with regard to the amount of the AHP, and subsequently, whether the provision of a commuted sum would render the proposal unviable.
9. The SPD sets out a formula for the calculation of the AHP. The Council have advised that the AHP figure calculated on the basis of the SPD would be £51,875 and this base figure is not a matter of dispute. Where the parties differ is with regard to the indexation of this sum.
10. The SPD makes no specific reference to the indexation of the formula, and only explicitly references indexation in relation to the delivery of large, multi-phase developments. However, it is also clear that "*commuted payments will be broadly equivalent in value to on-site provision*". As the cost of delivering on-site affordable housing will have increased since the publication of the SPD in 2011, in order to retain broad equivalence with such costs, it is both fair and reasonable to apply indexation to the AHP also.
11. Taking indexation into account, the appellant's most recent figures indicate that the proposal would result in a deficit of -£6,185 even without an AHP being made, whereas the Council consider that the proposal would deliver a surplus of £92,140 and could therefore accommodate an AHP. The main areas of disagreement relate to the expected profit, base build costs and commercial costs related to the proposal.
12. With regard to expected profit, Planning Practice Guidance ('PPG') provides no advice with regard to assumptions in relation to development proposals.

¹ Appendix A to Delegated Report

However, it does advise that for the purposes of plan-making, that an assumption of 15-20% of gross development value should be considered a suitable return. Having regard to Paragraph 58 of the National Planning Policy Framework ('the Framework'), which states that viability assessments should reflect the recommended approach in national planning guidance, I consider that this is a reasonable starting position.

13. The appellant has taken forward a figure of 20%, and I accept that smaller developments are potentially more exposed to higher levels of risk, that smaller developers may be less able to achieve the most competitive rates of finance, and that some lenders may require a higher level of return to be achieved in order to facilitate finance. However, the evidence also indicates that whilst there may be a trend of falling house prices, values in the area are high and that there is a shortfall in housing delivery. These are factors which would, to an extent, mitigate any risk.
14. I understand that the Council has generally applied a rate of 17.5% and that this rate has been accepted by previous Inspectors. Whilst I acknowledge that the circumstances and nature of each scheme means that it would be unwise to apply a blanket figure, the evidence before me does not indicate that the particular circumstances of this particular scheme, having regard to its nature, scale and location, would justify an expectation of a higher level of return. I therefore consider that a rate of 17.5% would be acceptable in this instance.
15. With regard to build costs, the Council originally utilised the BCIS² mean rate for vertical extensions of £2,281/sqm (as at July 2022). It has since moved from this metric to the BCIS median rate for new-build flats (£1,824/sqm), with a consequent reduction in build costs. The appellant contends that the originally adopted mean rate for vertical extensions remains applicable.
16. The Council's hesitancy over adopting the vertical extensions rate is understandable. It does not wholly reflect the nature of the proposal which involves both horizontal and vertical elements. Furthermore, the 2022 vertical extension figure was based upon a sample of only 2, and the updated 2023 figure (£2,172/sqm) is based on only a single sample. Larger sample sizes would provide more confidence with regard to these figures.
17. The sample size for the BCIS mean rate for new-build flats is unclear, so I am unable to determine whether this figure is derived from a larger sample size. Nevertheless, I consider that it better reflects the nature of the works proposed, and I note that the appellant had previously also used the BCIS median cost for new-build 3-5 storey flat blocks in its viability assumptions. Whilst I acknowledge that the current economic climate means that build costs are likely to be rising overall, this will apply across all of the BCIS rates as they are updated over time. I therefore consider that the Council's most recent position in relation to build costs is a reasonable one.
18. The Council has taken account of the loss of floorspace that would result from the development and has adjusted its benchmark land value ('BLV') accordingly. This figure (£62,700) is not in dispute.
19. However, the appellant contends that the carrying out of the development would have additional costs beyond loss of floorspace, as the existing flats

² Building Costs Information Service

would need to be vacated for a period of time in order to facilitate the proposal which would lead to a loss of rental income. I agree that this is an additional cost, which has not been factored into the Council's consideration of BLV and it would not, therefore, amount to double counting. The appellant has accommodated this additional cost as a commercial cost amounting to £38,500 on the basis of existing rent levels and a 14-month vacancy. These assumptions are reasonable, and I agree that any assessment of viability should take account of this.

20. On the basis of this reasoning, in reaching my conclusion, I have taken the Council's surplus figure adjusted for the additional commercial cost of £38,500. This indicates that the proposal would return a surplus, albeit this would be unlikely to be sufficient to allow the full payment of an indexed AHP. However, it is possible that an AHP of some form could be secured.
21. I therefore conclude that as the proposal would be likely to deliver a surplus, that an AHP, albeit reduced from the full indexed AHP figure, would be applicable in this instance.
22. On this basis, the proposal would fail to make adequate provision for affordable housing. It would be contrary to CS Policy CP4, the content of which I have set out above. It would also fail to accord with advice within the SPD.

Protected species

23. The planning application included a Preliminary Ecological Assessment³ ('PEA') which concluded that, although the existing site was unlikely to be providing habitat for most protected species, given the moderate suitability of the property to provide roosts for bats, two further bat emergence surveys should be carried out.
24. It is not a matter of dispute between the parties that the required additional surveys could not be secured by condition. However, rather than provide the recommended survey information, the appellant has provided a mitigation scheme on the basis of a 'worst-case assumption'.
25. The proposed mitigation would provide a roost for void-dwelling bats within a roofspace, as well as bat tubes to provide roosts for crevice-dwelling bats. Whilst it is possible that these measures could mitigate the effects of the proposal upon the protected species, the provided mitigation scheme is insufficiently detailed as it fails to specify how many bat tubes would be provided. Furthermore, given that the level of usage of the existing building for roosting purposes has not been established, it is unclear whether the proposed mitigation measures would provide sufficient alternative roosting opportunities.
26. Overall, I cannot be certain that the measures proposed on a "worst-case scenario" basis would be sufficient to allow me to conclude that the development would not adversely affect protected or priority species.
27. Therefore, the proposal would be contrary to CS Policies CP1, CP9 and CP12, as well as Three Rivers Local Plan Development Management Policies Local Development Document ('DMP') Policy DM6 which together, and amongst other factors, require that development must conserve, enhance and where

³ Preliminary Ecological Assessment – 35 Lower Road, Chorleywood, Rickmansworth, Hertfordshire ED3 5LQ, NDR Batim Ltd; Arbtech Consultants

appropriate, restore biodiversity and state that development that would affect protect species will not be permitted where there is an adverse impact, unless it can be demonstrated that adverse effects can be satisfactorily minimised through mitigation. It would also be contrary to Part 15 of the Framework which states that biodiversity should be protected and enhanced.

Living conditions

28. The proposed two-storey side extension would project beyond the rear of the building, reduce to a single-storey in height in doing so, and would wrap around part of the rear elevation. It would also incorporate a roof terrace.
29. This would result in the building being located closer to the boundary with the neighbouring property, No 4 Mayston Cottages ('No 4') than at present. However, a degree of separation would remain, as an access pathway currently separates the rear gardens of the appeal site and No 4.
30. The elements of the proposal closest to the boundary with No 4 would predominantly be single storey, and flat-roofed in nature. The two-storey element of the proposal would not project sufficiently beyond the rear elevation of No 4 such that it would lead to an unacceptable loss of outlook from windows in the rear of No 4.
31. These factors, along with the current degree of separation between the rear gardens means that despite the level of projection to the rear, that the proposal would not appear as unacceptably large or overbearing.
32. The roof terrace would be set away from the shared boundary, and a roof-top planter would provide separation and a degree of screening from No 4. These arrangements would mean the usable area of roof terrace would be restricted to that furthest from the neighbouring property and would reduce the possibility of overlooking towards the garden of No 4 when users of the roof terrace would be seated.
33. Despite the level of separation, I accept that it is possible that some overlooking could still occur should users of the roof terrace be standing. However, this could be prevented by the provision of an obscure screen of sufficient height. This mitigation could be secured through the use of an appropriately worded planning condition.
34. The proposal would not harm the living conditions of the occupiers of nearby existing properties with regard to outlook and privacy. The proposal would therefore accord with CS Policies CP1 and CP12, DMP Policy DM1, and Appendix 2. Together, and amongst other factors, these policies state that development should protect residential amenities by taking into account the need for adequate levels and disposition of privacy and prospect.

Character and appearance

35. The existing building is a double gable fronted detached former shop, since converted in order to provide two flats. It is set back from the building line established by other buildings in the street. Lower Road is a street of mixed-uses and with buildings of a variety of ages, scale and architectural styles. This affords the street variation and animation.

36. The proposal would introduce a two-storey side extension in the existing gap between the building and the boundary with No 4. This extension would be set down from the ridge of the property and set in from the front elevation. This articulation would not be significant, but nevertheless would provide this element of the proposal with a degree of subservience when read alongside the existing building, and the degree of separation from neighbouring buildings would prevent the proposal from appearing unacceptably cramped. Furthermore, the simple approach to the fenestration would also provide a reinforcement of subservience.
37. The proposed roof form would generally reflect that of the host building, and whilst the array of solar panels within the front roof slope would be large, they would not appear incongruent within the mixed streetscene, where roofline interventions such as dormer windows are a common feature.
38. There would be a contrast between the more contemporary design approach of the proposal to the more traditional detailing of the existing building. However, this would not be harmful and would allow the two phases of the building to be read separately. In addition, the set-back location of the appeal property means that the proposal would not occupy a prominent position within the streetscene.
39. The proposal would not harm the character and appearance of the area. It would therefore accord with CS Policies CP1 and CP12, DLP Policy DM1 and Appendix 2, as well as Chorleywood Neighbourhood Plan Policy 2. Together, and amongst other matters, these policies state that new development should be of a high standard of design and have regard to the local context, conserving or enhancing the character, amenities and quality of an area.

Planning Balance

40. The Council cannot demonstrate an adequate supply of deliverable housing sites. In these circumstances, Paragraph 11 (d) (ii) of the Framework states planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
41. The delivery of a single additional dwelling in a sustainable location is a benefit arising from the proposal, and would represent a positive, albeit modest, contribution to the local housing supply. I afford this moderate weight as a consideration. Limited economic benefits would also be likely to arise from employment during construction works, and thereafter through the additional expenditure by future occupiers, but the scale of the proposal means that these benefits would be modest in nature.
42. However, for the reasons given above, the appeal scheme would fail to make appropriate provision for affordable housing in an area with a significant need for such, and I cannot be certain that it would not harm protected species.
43. Consequently, the adverse effects of granting planning permission would, in this case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

44. The proposal would conflict with the development plan when taken as a whole and there are no material considerations, including the Framework, which would indicate a decision should be taken other than in accordance with the development plan.
45. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

C Harding

INSPECTOR