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# Appeal Decision

Site visit made on 29 May 2024

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 June 2024**

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**Appeal Ref: APP/N1160/W/23/3326489**

**Land Adjacent 89 Thirlmere Gardens, Plymouth PL6 5HG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr L Parkins against the decision of Plymouth City Council.
  - The application Ref is 22/01394/FUL.
  - The development proposed is erection of four 3 storey 4 bedroomed detached dwellings each with 2 parking spaces (8 parking spaces in total).
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Plans have been provided with the appeal showing various amendments to the proposal. These include a change to the location of plot 3, alterations to the site boundary detail, revised parking arrangements and additional landscaping. I understand that the Council did not seek to negotiate with the appellant while the application was being considered and that the appellant is aggrieved that they were not given opportunity to propose the amendments earlier.
3. However, as set out in the Planning Inspectorate's Procedural Guide: Planning Appeals – England, the appeal process should not be used to evolve a scheme. In the interests of fairness, it is important that what is considered at appeal is essentially the same scheme that was considered by the Council at the application stage.
4. While I may be able to accept some minor amendments, and it may be possible to impose planning conditions securing final details around matters such as landscaping and some boundary details, the amendments now suggested are substantial: The parking layout would have a different relationship to the existing highway, may have a different effect on local parking provisions, and would appear to require more substantial retaining structures. Plot 3 would have a different relationship to nearby existing dwellings. Even though the appellant deems the changes to be beneficial, I cannot be certain that all interested parties are aware of them and have considered whether to comment upon them. Therefore, injustice could be caused if I were to accept the amended plans, so I have determined the appeal on the basis of the plans submitted to and considered by the Council.

## **Main Issues**

5. The main issues in this appeal are:

- a. The effect of the development on the character and appearance of the area;
- b. The effect on highway safety and transport;
- c. The effect on the living conditions of the occupiers of Nos 21, 23 and 89 Thirlmere Gardens;
- d. The effect on flood risk; and
- e. The effect on biodiversity.

## **Reasons**

### *Character and appearance*

6. Thirlmere gardens is part of a wider suburban housing area set amongst very steeply sloping land. The topography is such that high buildings and large retaining structures are a significant part of the townscape. However, much of the steep valley sides are wooded, and trees, visible at various points behind and amongst dwellings, significantly soften the built form to create a green, landscaped backdrop.
7. I understand that the site was formerly part of a quarry and was previously barren land. It was not developed alongside the other dwellings on Thirlmere Gardens and in some ways, the proposal would continue that existing built form across the site. However, whatever the reasons for development having not previously occurred, the site, along with an adjoining woodland area, now forms a pocket of green space.
8. Despite, its historic uses, and that the trees have self-seeded, the site is now designated in the Plymouth & South West Devon Joint Local Plan 2019 (JLP) as Neighbourhood Green Space. I understand that the appellant has not been able to obtain clear reasons why the space was designated. Nevertheless, and whether or not the tests for designation of Local Green Space in the National Planning Policy Framework would be met, designation was clearly an outcome of the JLP making process that forms the policy context for decision making now. The site is not accessible to the public, but the appellant's evidence accepts that one of the functions of the space is as a visual amenity that gives Thirlmere Gardens its identity. This accords with my own observations.
9. The site is just part of the overall Neighbourhood Green Space designation. Other than potentially allowing the closest tree canopies to fill out, the remaining part (the 'retained woodland') would be unaffected by the development. The retained woodland contains larger, more mature trees than the appeal site. Those trees are more prominent in the wider landscape than the ones at the appeal site providing a woodland backdrop to the houses on the lower part of Thirlmere Gardens in close, and longer range views.
10. The site contains only a small number of trees and is, mainly, lower level scrub. Utility infrastructure and an associated easement cross the site, preventing planting across its entirety. Nevertheless, at close range from the lower part of Thirlmere Gardens, the site also provides a vegetated backdrop, and screens most of the dwellings on the uphill side of the higher part of Thirlmere Gardens

from views, softening the urban environment. There are also two larger trees, close to No 45 Thirlmere Gardens that are prominent and make a positive contribution to the townscape in their own right. While the other trees are not large, and potentially of limited quality, the whole site contributes positively to the appearance of the area.

11. The development would result in the loss of all trees and vegetation on the site, except those close to the site boundary. While there are no individual Tree Preservation Orders and the appellant believes that an area Tree Preservation Order that covers the wider greenspace should not extend over the site, trees on the site are protected by it. The replacement of vegetation with built form would reduce the softening function that the space provides. While the retained woodland makes a larger contribution in that regard, there would nevertheless be resultant harm to the character and appearance of the area.
12. JLP Policy DEV27 sets out that existing open spaces, including Neighbourhood Green Spaces, should not be built on unless one of 3 criteria are met. They are, in summary, that the space is surplus to requirements, that the loss would be replaced by equivalent or better provision in a suitable location, or that the development is for alternative sports and recreation provision. The final criterion is not relevant as the existing site is not used for recreation and the development does not propose this.
13. While the policy indicates that in considering relevant issues, regard should be had to the accessibility of the space, the first two criteria of policy DEV27 are not dependent on that. Nor is accessibility relevant to this Neighbourhood Green Space's purpose of contributing to the character and appearance of the area. As the site plays a role in that contribution it is not surplus to requirements for the purposes of policy DEV27.
14. New tree planting is proposed as part of the development and additional planting, such as that shown on the plans provided with the appeal, could be secured by condition. However, while the appellant suggests that a large landscaped area between the new dwellings and parking area would effectively extend the retained woodland across the site, this area would be significantly below the road level when viewed from the higher part of Thirlmere Gardens and behind the new houses when viewed from the lower part.
15. It also appears that some of that land between the parking area and houses would need to be given over to infrastructure that allowed residents to negotiate the steep drop from the parking areas to the dwellings, none of which is described on the plans. As such, it is not clear whether extensive planting is achievable. Thus, this planting would do little to contribute to the character and appearance of the area.
16. A small number of trees and boundary hedging planted within the downhill gardens of the new dwellings would not have a substantial mitigating effect, nor make a similar contribution to the existing site as the new built form would remain the most prominent features. I, therefore, find that new planting around the development would not be equivalent or better replacement provision.
17. I understand that designated green space was given over to a larger development at nearby Tamerton Foliot Road, where JLP Policy DEV27 was also deemed relevant. However, while the comparable policy considerations have

been brought to my attention, I do not have full details of the reason why permission was given in that case. Moreover, it does not alter my conclusion that harm would arise in this case, or provide a reason to allow this appeal.

18. With regard to the above, I find that the proposal would cause harm to the character and appearance of the area and result in an unjustified loss of part of the Neighbourhood Green Space. It would, therefore, conflict with those aims of JLP Policies DEV20, DEV23, DEV27, DEV28 and JLP Strategic Objective SO11 that seek to ensure that development contributes positively to and protects the townscape and landscape, prevents the loss of protected trees and protects and supports a multifunctional network of green space.
19. JLP Policies SPT1 and SPT2 set out a range of criteria that seek to ensure the provision of sustainable linked neighbourhoods. While there is a focus on urban form, connectivity and accessible space, these policies also contain aims to protect and respect local distinctiveness, identity and protection of the environment. Thus, the harm I have identified, also results in conflict with the aims of these policies.

#### *Highways and transport*

20. The proposal would provide two off-street parking spaces for each dwelling. This is a shortfall of one space per dwelling, measured against the recommendation of the local highway authority. The appellant suggests that 3 spaces is excessive and not normally required for 4 bedroom dwellings. However, while the number of households in the locality having more than two cars is very small, this has not been compared to the number of 4 bedroom homes. The evidence, does not, therefore, indicate that a lower standard should be applied. I note that the appellant is prepared to consider building smaller properties with 3 bedrooms, but this proposal is for 4 bedroom houses.
21. The development would remove most parking opportunities from a layby that can currently accommodate between 6 and 7 vehicles. Together with the shortfall of spaces, this has the potential to put additional parking demand on the road network. While the road is wide enough to accommodate parking and there are a number of garages around Thirlmere Gardens, there appears to be a large amount of parking that takes place on the highway.
22. The appellant has conducted a one-off parking survey. It is said to have been done at a peak time, but no indication is provided as to when that was. By the appellant's own admission, the survey was of poor quality and ought be repeated. It would not be possible to require a resurvey by planning condition, because the outcome might dictate a different decision should be made on the appeal.
23. As it stands, I have no more than a single snapshot of time, and my own day-time observations to suggest that there may be sufficient capacity within the local road network to absorb the additional parking pressures of the development and existing displaced parking. The effect of additional parking demand could be indiscriminate parking in hazardous locations that either impede vehicle movements or visibility. Such would be detrimental to highway safety.
24. Bicycle storage could be provided within secure outbuildings in the rear gardens. It is possible to access this part of the site from the lower part of

Thirlmere road, but this relies upon land outside the appeal site. It is not clear whether such land is available in perpetuity and it would also require future occupiers to negotiate steps before reaching the highway. Therefore, it has not been shown that adequate facilities can be provided for cycle storage.

25. With regard to the above, I find that the proposal would cause harm to highway safety and would not provide adequate facilities to encourage accessing the site by non-car means. Such would result in conflict with those aims of JLP Policy DEV29 that seek to ensure that development provides sufficient parking and high quality, safe and convenient facilities for walking and cycling.

#### *Living conditions*

26. Plot 3 would be sited directly behind Nos 21 and 23 Thirlmere Gardens. It would be closer than recommended in the Plymouth and South West Devon Supplementary Planning Document 2020 for scenarios where there is a change of levels for opposing dwellings. However, the level change here is significant and, as such, the main outlook from the first floor rear windows of Plot 3 would likely be over the roof of Nos 21 and 23 rather than directly into their rear windows. Therefore, I find the separation in this scenario to be adequate.
27. A boundary structure, whether a fence or a hedge, to the rear of plots 3 and 4 would result in a visual barrier raised well up from the existing ground levels. However, Nos 21 and 23 already have high fences demarking their rear boundaries. Seen beyond this, the new boundary would appear as more of a tiered boundary than a solid structure and as such would not be unreasonably dominant or imposing on the outlook of these neighbouring dwellings.
28. Plot 1 would be close to the rear of No 89. A high fence surrounds the ground floor and a raised external area of No 89. This should prevent views between the top floor of plot 1 and ground floor of No 89, which would be at a similar level. There is not a direct alignment of plot 1 and No 89 and the horizontal and vertical angles between the closest upper floor windows of the dwellings would prevent any harmful loss of privacy to this existing neighbour.
29. I, therefore, find that there would be no harm to the living conditions of the occupiers of the dwellings identified in the Council's reasons for refusal and no resulting conflict with those aims of JLP Policy DEV1 which seek to ensure that development provides for satisfactory outlook and privacy to existing residents.

#### *Flood Risk*

30. There is a history of previous applications at this site. Evidence has been provided with the appeal that a drainage engineer was previously engaged to carry out percolation tests that confirmed the land was suitable for soakaways. The Council has not disputed this. I, therefore, have no reason to find that it would not be possible to provide suitable surface water drainage facilities for the site so as to avoid any increase in off-site flood risk.
31. A final scheme could be secured by condition and there would be no resultant conflict with JLP Policy DEV35 that seeks to ensure that flood risk is avoided and surface water is appropriately managed within developments.

### *Biodiversity*

32. An Ecological Impact Assessment (EcIA) explains that the existing scrub on the site has some value for nesting birds, but that this can be adequately mitigated. It sets out that protected species would not be harmed by the development. The site is not identified as part of the Plymouth Biodiversity Network and, while the Council believes it is a stepping stone between other significant habitats, the EcIA indicates that the ecological features are only of site-wide interest and not part of a wider network. There is no substantive evidence to refute this.
33. JLP Policy DEV26 only requires net gains in Biodiversity on major developments. Even if some were required as part of this development, given the relatively low ecological baseline, there is no reason to believe that it could not be secured through planning conditions requiring an appropriate planting mix within the site and other features about the dwellings. I, therefore, find that there would be no conflict with those aims of JLP Policy DEV26 that seeks to ensure that biodiversity is not harmed, and is improved where possible.

### **Other Matters**

34. I understand that the appellant is frustrated with the process taken by the Council both in the past and during consideration of this proposal. In particular, a perceived unwillingness to negotiate and a decision to refuse the application under delegated authority having previously indicated that it would be considered at a planning committee meeting. However, this has little to do with the planning merits of the case and does not weigh in favour of granting permission.

### **Conclusion**

35. While there would be no increase in flood risk, harm to biodiversity, or harm to the living conditions of those residents listed in the Council's reasons for refusal, these are neutral matters in the planning balance. Any net gains in biodiversity that may be achievable would be small and no more than the minimum required to meet the Council's expectations. They would, therefore, be of limited weight. The harm that I have found to the character and appearance of the area, in respect of highways and transport, and to living conditions, therefore, bring the proposal into conflict with the development plan read as a whole.
36. There are no material considerations of sufficient weight to indicate that a decision should be taken otherwise than in accordance with the development plan. Therefore, the appeal is dismissed.

*M Bale*

INSPECTOR