



Appeal Decision

Site visit made on 30 July 2024

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2024

Appeal Ref: APP/P1940/W/24/3337342

Mountwood, 6 The Drive, Rickmansworth WD3 4EB

- 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 Lightwood Planning Ltd against the decision of Three Rivers District Council.
 - The application Ref is 23/1336/FUL.
 - The development proposed is demolition of existing pool house and associated buildings; subdivision of plot and construction of two storey detached dwelling with associated extension to crossover, access, parking, binstore and landscaping works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal process a draft version of a new National Planning Policy Framework (the Framework) (2024) and the Secretary of State's written ministerial statement (WMS) entitled "Building the homes we need" were published. Both main parties were given the opportunity to comment on these documents.

Main Issues

3. The main issues are:
 - The effects of the proposed development on the character and appearance of the surrounding area;
 - The effects of the proposed development on the living conditions of the occupiers of Number's 108 and 110 Valley Road with particular reference to outlook and privacy;
 - The effects of the proposed development on protected trees; and
 - Whether appropriate provision is made for affordable housing.

Reasons

Character and appearance

4. This part of the Drive is characterised by large properties set within spacious grounds fronting onto the Drive. The proposed dwelling would be positioned to the rear of No 6 The Drive (No 6) with its access driveway running down the side of the host property. This relationship would contrast significantly with the prevailing pattern of housing in this part of The Drive. It would also be seen in private views from the neighbouring properties to varying degrees, and in the

- gap between Nos 2 and 6 The Drive. The subdivided nature of the site would also be evident in views at the entrance to the drive from the footway.
5. The resulting plot size would be similar to several other plots in the area, including along the Clump and along the north side of The Drive. However, the appeal property is located along the south side of The Drive, and it is these properties that the scheme would primarily be seen in relation to. In this regard, the proposal would not harmonise with the pattern of larger plots on this part of the street.
 6. Policy 3 of the Chorleywood Neighbourhood Plan (NP) (2020) sets down criteria by which a limited scale of backland development may be acceptable in exceptional cases. Criterion iii) of Policy 3 requires that development on backland sites must be more intimate in mass and scale and lower than frontage properties. In my view, the phrase more intimate goes further than simply being smaller in scale and massing than the frontage property. I am also mindful that it also refers to 'frontage properties' implying a contextual analysis of the street scene.
 7. The proposed dwelling would be seen, particularly in private views, as a strikingly large property, albeit smaller and lower than No 6. Nonetheless, its large size would be more akin to the scale and massing of the frontage properties along the Drive. Aligned directly in tandem with No 6, in this backland location it would depart significantly from the prevailing pattern of large houses fronting onto the Drive. As such, it would not accord with the objectives of criterion iii) of Policy 3 in this regard.
 8. I accept that criterion ii) refers to the length of the access drive in the context of living conditions. Nonetheless, I also share the Council's concerns with the design and length of the access drive. I do not have substantive details of the proposed changes in ground levels. However, its long length and straight alignment, set between a long close boarded fence on one side and the boundary to the neighbouring property to the east, adds to my concerns that the overall scheme would appear contrived. As such, even though I do not find conflict with criterion ii) of Policy 3 of the NP, taken together with the size and location of the proposed dwelling, the proposal would harm the character and appearance of the surrounding area.
 9. In reaching this conclusion I have had regard to the relationship to Redwood House, which I'm told was historically subdivided from the original plot of No 2 The Drive. However, Redwood House fronts onto The Clump and subsequently maintains the linear pattern of housing along The Clump.
 10. I have also had regard to Number's 108 and 110 Valley Road which are located behind front facing properties along Valley Road in more spacious plots than the proposed dwelling. These properties depart from the more established linear pattern of housing in Valley Road and their location is immediately to the rear of the appeal site. However, Number's 108 and 110 Valley Road sit on a significantly lower ground level to the Drive and are not part of the established pattern of linear housing in The Drive. As such, there would still be harm in this regard from the proposed scheme and it would still appear incongruous in its positioning. The absence of harm in relation to other aspects of the design or views from the wider area do not alter or outweigh my findings of harm in relation to this matter.

11. I have also had regard, to the relationship with the housing developed at Glenwood, Chorleywood Road (Ref: 21/1745/FUL). However, from the evidence before me, the proposed houses, although set to the rear in a tandem relationship were designed to align with the position of houses along Lime Tree Walk. As such, whilst recognising the distance and similarities I do not consider that this scheme in Chorleywood Road justifies the harm that would ensue from the proposed scheme in The Drive.
12. To conclude on this main issue, the proposal would have a harmful effect on the character and appearance of the surrounding area. As such, I find conflict with the requirements of Policies CP1, CP3 and CP12 of the Council's Core Strategy (CS) (2011), Policy DM1 and Appendix 2 of the Development Management Policies LDD (DMP) (2013) and Policies 2 and 3 of the NP, when taken together and in so far as they relate to this main issue. These say, amongst other things, that development will only be supported where it can be demonstrated that the proposal will not result in layouts unable to maintain the particular character of the area in the vicinity of the site in terms of plot size, plot depth, building footprint, plot frontage width, frontage building line, height, gaps between buildings and streetscape features (e.g. hedges, walls, grass verges etc.).
13. Policy DM1 of the DMP, precludes tandem development in principle and in this regard does not fully align with the Framework (2023). Nonetheless, the objectives of the policy, amongst other things, are to ensure that development does not lead to a gradual deterioration in the quality of the built environment, which is broadly consistent with the Framework. In this regard, the proposal would thus conflicts with this Policy in any case.

Living conditions

14. The proposed dwelling would be located on a significantly higher ground level to Nos 108 and 110 Valley Road. The boundary consists of a dense mixture of shrubs and trees, including a mix of deciduous and evergreen species.
15. From No 110 Valley Road (No 110) the combination of the change in ground levels, the planting along the boundary, and the distance to the proposed dwelling would reduce the potential for significant direct overlooking from either the dwelling or the terrace. However, the presence of the proposed building on a significantly higher ground level would, in my view, still appear imposing from No 110 Valley Road, particularly in winter months when the extent of foliage cover would be reduced. I am also mindful that the extent of screening from the evergreen planting could change in the long term. Moreover, reference is given to the potential effects of a 1.8m close boarded fence along the boundary. However, that is not what is proposed in the scheme before me, with the proposal seeking to maintain the planting.
16. The appellant's evidence illustrates the effect of the change in ground level in respect of overlooking and I have no reason to dispute these illustrations. However, the perception of being looked down upon from a large building so much higher would still lead to a degree of intrusion, which adds to the harm I have identified.
17. From No 108 Valley Road, the orientation of that property, resulting angle and greater distance to the two-storey element of the proposed dwelling leads me

to conclude that the change in outlook, or the extent of overlooking, would not be unacceptable.

18. To conclude on this main issue, the proposal would have a harmful effect on the living conditions of the occupiers of No 110 with particular reference to outlook and perceived loss of privacy. As such, I find conflict with the requirements of Policy CP12 of the CS and Policy DM1 and Appendix 2 of the DMP, when taken together and in so far as they relate to this main issue. These say, amongst other things, that in seeking a high standard of design, the Council will expect all development proposals to protect residential amenities by taking into account the need for adequate levels and disposition of privacy, prospect, amenity and garden space. The Council has also referred to Policy CP1 of the CS. However, this is an overarching policy on sustainable development and has not been determinative in reaching my conclusion on this main issue.

Protected trees

19. The appeal site is bordered by several large trees which are protected by way of a Tree Preservation Order (TPO). An Arboricultural Impact Assessment (AIA) was submitted by the appellant to accompany the application. Three trees (T10, T11 and T12) are located immediately beyond the boundary where the proposed access drive would be located. T11 (a cherry) and T12 (an oak) are protected by a TPO.
20. The existing landform is terraced to make a flat lawned area for the existing dwelling. This includes a steep embankment that drops to the boundary toward these three trees. The AIA indicates the root protection area (RPA) for these trees but caveats that this is indicative, and the root growth would be restricted by the significant changes in the ground levels. However, there is no substantive information before me regarding the source of the large woody roots that are visible at various points on the surface within the embankment.
21. It is put to me that the surfacing for the access drive near the trees would be undertaken using a "no-dig" construction method and the use of a cellular confinement system, to ensure a porous surface within the RPAs. However, the embankment would need to be altered to facilitate the driveway and I have no substantive details of what this would involve. It may well be that these roots are not related to the trees protected by a TPO beyond the boundary. However, given that the roots would be directly impacted by any alterations to the embankment a precautionary approach is reasonable in the absence of any firm details.
22. The Arboricultural Association Guidance Note 12 and the recommendation in BS5837:2012 says that new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within an RPA. In this regard, I cannot be satisfied that there would not be harmful long-term effects on the health of these trees, without fully understanding the extent of any roots associated with them, or full details of the proposed changes in the ground levels, the extent of hard surfacing within the RPA, and subsequent implications, if any, for the trees.
23. The Council's Landscape Officer raised no objections due to the 'no dig' form of surfacing proposed. However, it is unclear whether the Landscape Officer's

comments were based on the AIA alone or supplemented with a site visit where roots can be seen in the embankment.

24. Full details are not before me of the extent of changes to the topography within the site to facilitate the dwelling and this would also likely involve earthworks. Nonetheless, there is no suggestion of any works within the RPA of the trees and the dwelling, terrace and parking area are located beyond the RPA. I am therefore satisfied that subject to conditions sufficient information is before me regarding this matter.
25. With respect of shading, the proposed dwelling would be positioned to the north of several trees along the rear boundary of the appeal site. These are all on the lower ground level. During my lunchtime site visit the trees did not cast a shadow where the proposed dwelling, or its external terrace, would be located. Moreover, in the winter months when the sun would be at its lowest, there would be fewer leaves on the trees allowing light to penetrate. There would be numerous trees near the proposed dwelling, including very tall trees along the side boundary to the west of the proposed dwelling. However, having regard to the extent of light that would be received in the dwelling and garden, the space to the front and rear of the dwelling, I am satisfied that this relationship would not give rise to significant pressure to fell or lop the remaining protected trees. This does not alter or outweigh my findings in relation to T11 and T12.
26. Drawing the above together, I am unable to conclude that the proposal would not have a harmful effect on protected trees. I therefore find that the proposal would conflict with the requirements of Policies CP1, CP9 and CP12 of the CS and Policy DM6 and Appendix 2 of the DMP, when taken together and in so far as they relate to this main issue. These say, amongst other things, that development proposals should demonstrate that existing trees, hedgerows, and woodlands will be safeguarded and managed during and after development in accordance with the relevant British Standards.

Affordable housing

27. There is no dispute between the main parties regarding the need for affordable housing within the area or that the proposal falls to be assessed against Policy CP4 of the CS. This policy relates to affordable housing and says, amongst other things, that in relation to small sites delivering between one and nine dwellings, they can consider the use of commuted payments towards provision off site. Such payments will be broadly equivalent in value to on-site provision but may vary depending on site circumstances and viability. The Council have calculated the commuted sum for the scheme to be £418,750.
28. However, the appellant has submitted a Financial Viability Appraisal¹, which concluded that it would not be financially viable to make a financial contribution towards affordable housing. In contrast, the Council's Viability Report² concludes that a contribution of £96,201 would be possible.
29. From the evidence before me, the matters in dispute are focussed on the Benchmark Land Value (BLV) used in the modelling. The Council's conclusions are based on a figure of £300,000 which is derived from subtracting the Post Development Value (PDV) of Mountwood (£2,250,000) from the Current Market

¹ Lightwood Financial Viability Appraisal

² Adams Integra Financial Viability Appraisal

Value (CMV) of the property (£2,500,000) to generate an Existing Use Value (EUV) for the development plot only. A 20% premium was then applied.

30. The applicant advises that this equates to a land value of 14.3% of the Gross Development Value (£2,100,000) but argues that the industry standard is between 25% - 40%. The appellant does not dispute the Council's figures but considers the formulae to be incorrect. It is put to me that the Council's approach does not take into account the need to purchase Mountwood to secure the development opportunity. This it is put to me is so as to encourage a property owner to sell for redevelopment, the premium needs to cover the costs of purchasing an alternative/similar property, provide compensation for being contracted into an option agreement to sell their home to the developer in one or two years time once a suitable planning application has been approved. Moreover, there is the risk that if planning permission is not granted, then there will not be a sale.
31. Evidence has been provided by the appellant of the Council's acceptance of this approach in the past. Moreover, the Council has provided no substantive evidence as to why its approach differs or in response to the appellant's evidence on this matter in the appeal. In my view, based on the evidence before me the 20% premium to generate a £300,000 BLV would not be sufficient to incentivise a landowner. Accordingly, I am persuaded that the appellant's methodology set down in correspondence with the Council on 10 October 2023 is a reasonable approach to take. This would be based on the $(CMV + 20\% \text{ Premium}) - PDV = BLV$, generating a BLV of £750,000 and a land value of 35.7% of the GDV (£2,100,000) and a deficit of £407,019. It follows that the proposal would not be able to support a financial contribution towards affordable housing.
32. I therefore find on this main issue that appropriate provision is made for affordable housing. As such, I find no conflict with the requirements of Policy CP4 of the CS, the Affordable Housing Supplementary Planning Document (2011), or the Framework, when taken together and in so far as they relate to this main issue. These say, amongst other things, that in assessing affordable housing requirements including the amount, type and tenure mix, the Council will treat each case on its merits, taking into account site circumstances and financial viability.

Other Matters

33. My attention had been drawn to an earlier scheme for a dwelling in the appeal site which was refused and dismissed at appeal (Ref: 3135712). However, the access drive, positioning of the dwelling and size of the plot have all altered in the appeal proposal before me. Accordingly, I have reached my own conclusions on the appeal scheme. Concerns regarding the processing of the application are not matters for my consideration as part of this appeal and do not alter the merits of the appeal.

Planning Balance

34. The Council is not currently able to demonstrate a five-year supply of deliverable housing sites with its Housing Supply Update (2022) identifying that the Council had a supply of 1.9 years, and a Housing Delivery Test figure (2022) of 46%. The plan-led system is embedded in planning law, with the Framework placing great emphasis on the engagement of communities in

shaping development plans. This is intended to provide certainty. However, it also means that to meet community requirements for homes, jobs and other facilities, development plans must be up to date.

35. In situations such as this, where future housing needs are not being met, the Framework sets out that the policies, which are most important for determining the application, in this case Policies CP1, CP3, CP9 and CP12 of the CS and Policies DM1 and DM6 and Appendix 2 of the DMP and Policies 2 and 3 of the NP, are out of date. Specifically, this means that the presumption in favour of sustainable development set out in paragraph 11d) of the Framework is engaged.
36. The government places considerable importance on making effective use of land to boost the supply of housing. This is underlined in the WMS and draft Framework, albeit the draft Framework could be subject to change. In this regard, the proposal would contribute to providing an additional dwelling against the Council's shortfall, on a windfall site and in a location with good access to services and facilities. Moreover, there would be some limited economic and social benefits from future occupiers of the house and the construction works. I also recognise that small sites such as this can also be developed quickly.
37. I have found that the proposal would harm the character and appearance of the surrounding area and would have a harmful effect on the living conditions of the occupiers of No 110 with particular reference to outlook and perceived overlooking. Moreover, I am unable to conclude that the proposal would not have a harmful effect on the long-term health of protected trees. Together these amount to significant harmful effects, bringing conflict with paragraphs 135, 136 and 180 of the Framework in so far as they relate to these matters.
38. The absence of harm in relation to other considerations including, in relation to the living conditions of the occupiers of No 108 or in relation to providing no affordable housing contribution, are neutral matters.
39. Although a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. In this instance, cumulatively the adverse impacts of granting permission in respect of the character and appearance of the area, living conditions and trees, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole.

Conclusion

40. For the reasons given above, the proposal would conflict with the development plan and there are no material considerations that outweigh this conflict. Therefore, the appeal is dismissed.

Mr R Walker

INSPECTOR