



Appeal Decision

Hearing held on 25 April 2019

Site visit made on 25 April 2019

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2019

Appeal Ref: APP/P1940/W/18/3213370

9 Lapwing Way, Abbots Langley, Hertfordshire WD5 0GG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs A Waller against the decision of Three Rivers District Council.
 - The application Ref 17/2608/OUT, dated 15 December 2017, was refused by notice dated 16 April 2018.
 - The development proposed is construction of a new two-bedroom dwelling, with amenity space, access and associated parking. Demolition of existing garage and removal of a protected tree.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is in outline with all matters except for means of access reserved for subsequent approval. Other than the location plan, the existing site plan and the proposed site plan, insofar as the latter shows the access arrangements, the plans are an indication of how the site could be developed rather than forming part of the application itself.

Main Issues

3. The main issues are:
 - (1) whether the proposal should make provision for affordable housing;
 - (2) the effect on the character and appearance of the area, including on protected trees; and,
 - (3) the effect on the living conditions of the occupiers of No 8 Lapwing Way with particular reference to privacy and visual impact.

Reasons

Affordable Housing

4. Policy CP4 of the Three Rivers Core Strategy (CS) expects 45% of all new housing to be affordable. For small sites of between one and nine dwellings the use of commuted payments rather than provision on site is anticipated

by the policy. An exception to the requirement for 45% provision can be made where there is evidence that site circumstances and financial viability justify non-compliance with the requirements of the policy.

5. The appeal proposal does not make provision for a commuted payment for affordable housing. In considering whether provision should be made for affordable housing, there are two matters that need to be addressed. Firstly, whether in principle the provisions of Policy CP4 are outweighed by more recent Government policy. Secondly, if not, whether for reasons of financial viability a contribution is not required.

Policy Context

6. The CS was adopted in 2011 prior to the publication of the Government's Written Ministerial Statement (WMS) of November 2014. The WMS dealt with thresholds beneath which affordable housing contributions should not be sought. This approach was then incorporated into the revised National Planning Policy Framework (the Framework) of 2018¹, albeit that the threshold was then set to be consistent with the definition of major development at proposals for less than 10 dwellings.
7. The Council's case is that Policy CP4 should continue to apply to all housing developments, notwithstanding its lack of consistency with more recent national policy. In supporting this position reference is made to a number of factors.
8. Firstly, house prices in Three Rivers are high, latest figures showing the District to be the 6th most expensive local authority area in England and Wales (excluding the London Boroughs). Secondly, affordable housing need is acute, equating to a net need of over 600 dwellings per annum based on the most recent Strategic Housing Market Assessment. However, affordable housing provision has lagged behind the CS target of 45%, only about 22% of new homes built between 2011 and 2017 being affordable. Delivery of affordable housing from small sites is seen to be crucial as such windfall schemes make up the majority of proposals in a District constrained by the Metropolitan Green Belt. This is reflected in the proportion of housing proposals that have been on small sites in the last few years. There is no evidence before me that the application of Policy CP4 has put a brake on small windfall sites coming forward. Indeed, such sites have contributed over £2m to the affordable housing pot since 2011.
9. Decisions should be made in accordance with the development plan unless material considerations indicate otherwise. There are very important factors in support of the continued application of Policy CP4. These factors are not unique to Three Rivers. Government policy does not suggest that areas where affordability is a particular issue should be treated differently. Nonetheless, although a weighty matter, the national policy threshold is not a material consideration which outweighs the conflict with the development plan in this case. In making this policy judgment I have given considerable but not full weight to Policy CP4. I have also had regard to the other appeal decisions in the south-east referred to by the Council where Inspectors

¹ Since replaced by the Framework of February 2019

considered development plan policies seeking affordable housing against national policy. My approach is consistent with these decisions.

Viability

10. The Council has assessed the appellants' development appraisal. There are three main areas of dispute which taken together affect whether the development is able to support an affordable housing contribution. The difference of 0.25% in terms of finance interest rates is not material to the viability calculations.
11. In terms of sales values, a range of prices for marketed and sold properties were provided. However, many of these examples were for semi-detached and terraced houses whereas the appeal proposal is for a detached property. The location is one that would be attractive to the market despite the site's proximity to a public house and College Road. Based on the evidence it would seem to me that the completed dwelling would achieve a sales value close to that estimated by the Council of some £440,000 rather than the £400,000 suggested by the appellants, notwithstanding the recent downturn in the market in the south-east and the uncertainty caused by Brexit.
12. With regard to build costs the difference of about £44,000 can be largely attributed to whether mean or median BCIS figures are used. I consider that the Council's use of a median figure of about £2,000 per sq m for a 'one-off' new build of 3 units or less is justified, particularly as the figure has been rebased for Three Rivers. A median figure is less affected by outlying figures compared to a mean figure.
13. I was advised that professional fees can range from 6% to 18% of build costs. The use of the appellants' figure of 15% rather than the 10% suggested by the Council would be precautionary and more realistic for a bespoke single dwelling.
14. In arriving at these judgements, I have taken into account specific requirements that would apply to the development such as foundation design to cater for the nearby trees and the environmental standards set out in development plan policy. That said such requirements are not out of the ordinary.
15. Based on the above assessment, the scheme, although not realising the extent of the commuted sum envisaged by the Council, would still be viable with a surplus allowing a contribution towards affordable housing. Requiring an affordable housing payment would not impose a disproportionate burden on the development. Such a finding would chime with the evidence that this is a part of the country with high land values and house prices where an affordable housing contribution should generally be achievable.

Conclusions on affordable housing

16. For these reasons the proposal should make provision for affordable housing. The failure to do so counts significantly against the proposal and leads to conflict with Policy CP4 of the CS.

Character and appearance

17. The existing house at the appeal site and the terrace of dwellings to the east, both within a modern housing estate built on the site of a former hospital, are set back some distance from the north side of College Road. They lie beyond a high wall and a line of mature trees subject to a tree preservation order, marking the original perimeter of the hospital complex. The separation of the houses from the wall and trees give this section of College Road a relatively spacious and sylvan character.
18. Although layout and scale are reserved matters, the location of the existing house and preserved trees points to a two-storey dwelling being positioned as shown on the proposed site plan. As such it would be sited much closer to College Road than the existing houses either side. The building would appear incongruous positioned near to the road in the leafy gap between the wall and existing dwellings, detracting from the College Road street scene.
19. The existing double garage which is to be removed is closer to College Road than Nos 1 to 9 Lapwing Way. However, the proposal would be nearer still and would be much taller than the garage which has the character of a subsidiary outbuilding. Other houses close by, including an older terrace on the opposite side of College Road and modern estate properties to the west, are also near to the highway but they are not set behind the wall and trees and therefore have a different setting.
20. In order to ensure sufficient amenity space, most of the garden of the new house would need to run parallel with College Road to the south-west of the proposed dwelling. A significant proportion of the garden would be under the canopy of two preserved lime trees. A smaller part of the garden would be affected by a preserved cedar tree. The scheme does not propose to cut back or remove these trees. The appellants see the garden trees as an asset. Prospective purchasers of the new house would know what they would be letting themselves in for with the trees and may also be content with a garden dominated by trees.
21. However, longer-term, it is likely that occupants would become fed up with the dominating presence and significant shading provided by the trees. This would particularly be the case in the warmer months when the trees would be in leaf and the garden would be most in use. The trees would also be likely to become a nuisance in terms of falling leaves and debris, particularly during high winds. Lime trees are susceptible to producing sticky honeydew from aphid infestation which could fall onto the external fabric of the building and garden surfaces below. Over time there would be pressure to lop, top or even remove the trees which would reduce or destroy their valuable contribution to the landscape character of College Road. The fact that the trees are protected would not necessarily save them from works which would be needed for safety reasons, to prevent nuisance or where the living environment becomes unduly gloomy.
22. A preserved larch tree would need to be removed to make way for the house. However, the tree is in poor condition², does not make a significant

² Category C in accordance with BS5837:2012 – Trees in relation to design, demolition and construction

contribution to the street scene and could be replaced. The dwelling would be capable of construction without significant incursion into the roof protection areas of the other preserved trees. The proposal would not appear incongruous when viewed from the head of Lapwing Way as it would fit in with existing properties which are closely grouped around the cul-de-sac. There would be space for parking without it appearing cramped. However, the lack of adverse impacts in these respects does not override the harm that I have identified in terms of the effects on the street scene and landscape character of College Road.

23. For the above reasons the proposal would detract from the character and appearance of the area. There would be conflict with Policies CP1, CP3 and CP12 of the CS and Policy DM1 of the Development Management Policies Development Plan Document (DMP) which collectively seek to ensure that development protects and enhances the character of the District and has regard to local context. There would also be conflict with Policy DM6 of the DMP because the development would be likely to result in future requests for significant topping, lopping or felling.

Living Conditions

24. Although the new house would face towards the rear elevation of No 8 Lapwing Way, there would be about 24m between the properties. Moreover, the proposal would not be directly behind the existing house so that views from any first-floor windows would be oblique. In any event the layout of the property could be designed such that the nearest first floor room could be non-habitable, such as a bathroom. Any side windows above ground floor would be likely to be secondary.
25. The new dwelling would be clearly seen from the conservatory, other rear facing rooms and the back garden at No 8 but, due to the separation distances, the offset siting and the slight difference in levels, it would not appear overpowering.
26. Accordingly, the proposal would have an acceptable impact on the living conditions of the occupiers of No 8 Lapwing Way with particular reference to privacy and visual impact. The proposal would comply with Policies CP3 and CP12 of the CS and Policy DM1 of the DMP insofar as they relate to living conditions as residential amenities would be protected.

Other Matters

27. I have taken into account other matters raised, including the adequacy of the access and parking arrangements. However, based on the evidence and my visits to the site and surroundings, these issues would not be reasons to dismiss the appeal.

Conclusions

28. The proposal would realise some economic benefits through construction and local spend. There would be some social benefits through the provision of a new home. That said, even though the Council cannot demonstrate a five-year supply of deliverable housing sites, the benefits of a single dwelling are modest, particularly as there would be no contribution to affordable housing.

29. The effects on living conditions would be acceptable but this is a neutral factor in the planning balance.
30. The adverse impacts of granting planning permission - the failure to contribute to affordable housing, the effects on the character of the area and overall conflict with the development plan - would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.
31. For the above reasons the appeal should be dismissed.

Mark Dakeyne

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mike Taylor BSc (Hons) MSc MRTPI MIED CIHM	Chilmark Consulting
Simon Davis	Urban Delivery
Craig Chesson	Signature Estates
Andrew Waller MRICS	Appellant
Yvonne Waller	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Roy Pinnock	Dentons
David Coate	Adams Integra
Matthew Barnes	Three Rivers District Council
Clare Wilson	Three Rivers District Council
Julie Hughes	Three Rivers District Council

DOCUMENT SUBMITTED AT THE HEARING

1. Tree Preservation Order 1992 Plan and Schedule highlighting trees within appeal site closest to proposed development (submitted by the Council)