



Appeal Decision

Site visit made on 21 May 2019

by **Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2019

Appeal Ref: APP/A1910/W/19/3221620

Land R/O 76-78 Belswains Lane, Hemel Hempstead HP3 9PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Nigel Wingrove against the decision of Dacorum Borough Council.
 - The application Ref 4/02726/18/ROC, dated 14 September 2018, was refused by notice dated 23 January 2019.
 - The application sought planning permission for two three bed detached dwellings (amended scheme) without complying with a condition attached to planning permission Ref 4/00726/17/FUL, dated 24 August 2017.
 - The condition in dispute is No. 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans/documents: NB-247 Sheet 1, NB-247 Sheet 2, NB-247 Sheet 3, NB-247 Sheet 4 dated 22/05/17.
 - The reason given for the condition is: for the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for two three bed detached dwellings (amended scheme) at Land R/O 76-78 Belswains Lane, Hemel Hempstead HP3 9PP, in accordance with the application Ref 4/02726/18/ROC made on the 14 September 2018 without complying with condition No 2 set out in planning permission Ref 4/00726/17/FUL granted on 24 August 2017 by Dacorum Borough Council, but otherwise subject to the conditions set out in the schedule attached at the end of this decision.

Procedural Matter

2. The address and description of development used in the banner heading above are those which appear on the decision notice issued in relation to planning permission 4/00726/17/FUL (the approved scheme). Though the phrase 'amended scheme' is superfluous, as it is not an act of development, I have nonetheless included it in my decision above for sake of consistency.

Main Issues

3. The main issues are the effect of the development:
 - the living conditions of occupants of neighbouring dwellings with regard to privacy and outlook; and
 - the character and appearance of the area.

Reasons

Living Conditions

4. Part A3.6(iii) of saved Appendix 3 of the Dacorum Borough Local Plan 1991-2011 (2004) (the Local Plan) sets a minimum distance of 23 metres between the main rear wall of a dwelling and the main front/rear wall of another in order to ensure privacy. It nonetheless provides flexibility in its recommendation that spacing between dwellings should be provided at a distance which is consistent with the surrounding area, and with reference to the Supplementary Planning Guidance: Development in Residential Areas 2004 (the SPG). The SPG places the site in character area HCA18: Belswains, within which new infilling is expected to be compatible with adjacent dwellings in terms of height, general size and spacing.
5. Within character area HCA18 the spacing between dwellings varies. This is apparent in the tapering size of the gap between the rear elevations of dwellings fronting Belswains Lane and those facing Ebberns Road, which is at its widest on the appeal site. In this context the approved scheme has already established both the acceptability of development on the site, and consequent reduction in the current level of spacing between existing dwellings.
6. The footprint, external dimensions and overall mass of each of the proposed dwellings would be moderately increased relative to the approved scheme. Each dwelling would similarly provide accommodation over 2-storeys.
7. In common with the approved scheme, the dwelling on Plot 1 (hereafter 'Plot 1') would comply with the minimum 23 metres separation distance between it and opposing front/rear elevations of adjacent dwellings set out in the Local Plan, and reasonable gaps would also exist between it and the boundaries of neighbouring gardens.
8. Though interested parties draw additional attention to the distance between Plot 1 and both 209/211 Ebberns Road and 74 Belswains Lane, in neither case would the elevations directly face those of Plot 1. Given the relative positioning of the dwellings, views between would be oblique, and would be further disrupted by changing levels. These points would, in combination, minimise to an acceptable level any mutual reduction of privacy or of the quality of outlook which may arise.
9. The dwelling on Plot 2 (hereafter 'Plot 2') would not achieve separation distances of 23 metres. This is however similarly true of the approved scheme, which achieved separation distances 22 metres between the front elevation of Plot 2 and rear elevation of 78 Belswains Lane, and between the rear elevation of Plot 2 and the rear elevation of Nos 209/211.
10. The distance between Plot 2 and No 211 would remain the same as within the approved scheme, albeit the moderately increased ridge height and mass of Plot 2 would provide it with additional prominence. Any similarly modest potential for additional overlooking would be minimised by the presence of a belt of tall trees along the boundary. In leaf these trees are effective in screening the rear elevation of Nos 209/211, and it is reasonable to consider that they would thus also be effective in screening views between Nos 209/211 and Plot 2. Whilst the level screening would be diminished during autumn and winter, clear views between the Plot 2 and Nos 209/211 would nonetheless

remain obscured by the network of tree branches. As such no significant additional loss of privacy would be likely to arise.

11. Nos 209/211 lie at a lower level to Plot 2. Any additional effect of on the outlook from Nos 209/211 that would result from an increase in the size of Plot 2, viewed both alone, and in combination in Plot 1, would however be similarly minimised by the belt of trees.
12. Though a closing of the gap between the plots, and creation of a 'continuous mass' of development has been identified by the Council, the gap between the plots would in fact be little different to that in the approved scheme. As such no significant additional harm to the outlook of Nos 209/211 would be likely to arise.
13. The distance between Plot 2 and No 78 would be reduced to 20.5 metres. Notwithstanding the increase in the height of Plot 2, No 78 would however still stand at a higher level. As such the reduced separation distance would appear more likely to result in moderately increased overlooking of Plot 2 from No 78, than it would of No 78 from Plot 2. In this regard however I am satisfied that the positioning of windows serving habitable rooms within the front elevation of Plot 2, relative to those within the rear elevation of No 78 would act to minimise scope for any direct overlooking between the 2 dwellings. As such no significant additional loss of privacy for the occupants of No 78 would be likely to arise.
14. The separation distance set out in the Local Plan does not directly relate to side-front elevation relationships. In this context the distance between the side elevation of Plot 2 and 2 Belswains Cottages would be reduced from 13 metres within the approved scheme, to 11.5 metres within the appeal scheme. A dense row of tall leylandii-type trees however stand along the site boundary, immediately opposite No 2. These dominate the outlook, and significantly limit views into the site. Furthermore, they clearly perform this function all year round. As such and given that there would be no windows in the side elevation of Plot 2, no significant additional loss of privacy or outlook for occupants at No 2 would be likely to arise.
15. Notwithstanding the appellant's submitted 25° drawings, interested parties raise concern regarding the possible loss of light to Belswains Cottages. Even if slight obstruction occurred however, the existing row of trees, and the north-westerly orientation of the front elevation, would each limit the extent to which any additional effects on No 2 were perceived. 1 Belswains Cottages would not be directly affected. As such I am satisfied that no unacceptable loss of light would be likely to arise for the occupants of Belswains Cottages.
16. For the reasons outlined above I conclude that the proposed development would not give rise to any unacceptable harm to the living conditions of occupants of neighbouring dwellings. It would therefore comply with Policy CS12 of the Core Strategy 2006-2031 (2013) (the CS), which amongst other things states that development should avoid visual intrusion, loss of sunlight and daylight, and loss of privacy to surrounding properties; saved Appendix 3 of the Local Plan, considered with regard to context and in combination with the SPG; and relevant policy set out with paragraph 127(f) of the National Planning Policy Framework (the Framework).

Character and Appearance

17. As outlined above, the site lies between dwellings which front Belswains Lane and Ebberns Road. Though the Council appears to object to development that would be visible in this location, including from the adjacent footpath, the dwellings within the appeal scheme would be little more visible than those within the approved scheme.
18. Given that the dwellings would each stand well below the level of those along Belswains Road, and would each appear no greater in scale, no visual competition between proposed and existing dwellings would be likely to arise within the general streetscene.
19. Belswains Lane and Ebberns Road each feature street facing dwellings, a high proportion of which match one another. Along Belswains Lane dwellings are closely spaced, and along Ebberns Road, tightly spaced. The proposed close spacing of the dwellings, which is again little different to that in the approved scheme, would not therefore appear atypical in this context. The proposed arrangement of 2 matching dwellings 'in tandem' would itself be more consistent with the established pattern than the approved scheme, regardless of whether or not they were precisely aligned with one another. For both reasons, and given that the proposed dwellings would each fall well within the size range of those along Belswains Lane and Ebberns Road, they would not appear unduly 'bulky' in combination.
20. The proposed plot sizes would not be dissimilar to those of the larger, 3-storey dwellings along Ebberns Road. Viewed in context therefore, the proposed dwellings would not appear cramped within in their plots, or the site 'overdeveloped'. Indeed the site density would fall below the range quoted within the SPG for the character area. Consequently, and relative to the approved scheme, the increased size of the dwellings would little additional effect on the perceived 'spaciousness' of the area.
21. The Council has drawn attention to an appeal at 5 Tring Road. I do not have full details of the scheme in question though note that it was located within a different character area where site specific considerations are therefore likely to have differed. As such this appeal has not affected my assessment of the merits of the current appeal scheme.
22. For the reasons outlined above I conclude that the proposed development would not cause unacceptable harm to the character and appearance of the area. It would therefore comply with Policy CS11 of the CS, which amongst other things expects development to respect the general character of an area; supporting guidance in the SPG; and relevant design policy within the Framework.

Other Matters

23. Interested parties draw attention to the site history including past planning applications and appeals. Whilst I have been provided with very limited details, I have determined the appeal on its own planning merits, with reference, as necessary, to the approved scheme.
24. It has been suggested that restrictive covenants will prevent parts of the appeal scheme from being implemented. However, this is a matter that can be separately addressed by the appellant, if necessary.

25. Whilst interested parties raise concerns regarding the safety of the site access and the practicality of parking, these details appear largely similar to those within the approved scheme. Such concerns are not otherwise shared by the Council or Highways Authority, and I see no reason to disagree.
26. Further concerns have been raised regarding the potential for adverse impacts on trees within and adjacent to the site. I am however satisfied that in combination with the foundation details provided on the site layout plan, trees can be safeguarded through the imposition of appropriate conditions, as set out below.

Conditions

27. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all that I consider remain relevant, making modifications where required as set out below. In the event that any conditions have in fact already been cleared this will be matter that can be addressed between the parties.
28. Condition 1 sets out the time limit for commencement of the development, and Condition 2 identifies the approved plans for sake of certainty.
29. Condition 3 of the approved scheme required the obscure glazing of windows within the side elevations of the dwellings. As there are no side windows in the current scheme Condition 3 is not relevant, and therefore has not been re-imposed.
30. Condition 4 of the approved scheme, which dealt with trees and landscaping, is contradictory insofar as it allows occupation of the dwellings once details of landscaping works have been submitted, but then restrict occupation of the dwellings until such works have been completed. The condition would also be ineffective with regard to the protection of trees during works, as construction could be largely complete before the condition was discharged. I have therefore modified the condition by setting an earlier trigger point for the submission of details. I have removed reference to 'cultivation and other operations associated with plant and grass establishment' as there is no obvious need to agree such details. I have renumbered the condition 'Condition 5' in the schedule below.
31. I have incorporated the subject matter of Condition 8 of the approved scheme within Condition 5 in the schedule below, as it too deals with landscaping and trees. As originally worded, Condition 8 requires details of a no-dig construction method too late in the construction process to ensure that the root protection areas of trees would be safeguarded. Furthermore, root protection areas are not identified anywhere on the approved plans, and the condition lacks an implementation clause. Each mean that Condition 8 would be unenforceable. I have therefore addressed these points within the wording of Condition 5 in the schedule below. The parties have been consulted with regard to the proposed wording of Condition 5, which is required in order to ensure that trees within and adjacent to the site are safeguarded, ensuring that their screening function and contribution to the character of the area are sustained, and in order to ensure the provision of an attractive development.

32. Condition 5 of the approved scheme is reimposed as 'Condition 7' in the schedule below, with some minor amendment of the wording used. This condition ensures both the provision of a visibility splay and its subsequent maintenance, and is required in the interests of highways safety.
33. Conditions 6 and 7 of the approved scheme each deal with the investigation and remediation of contamination. I have limited details of these matters, though note that concern has been flagged with regard to a previous use of the land. The Conditions are reimposed as 'Condition 3' and 'Condition 4' in the schedule below, employing a revised standard wording for sake of clarity. The parties have been consulted on this change. The conditions are necessary in the interests of health and safety, and applicable at pre-commencement stage due to the possible risks which might exist during construction.
34. The Council has suggested 2 additional conditions which were not imposed on the approved scheme. These are in relation of external materials and the maintenance of landscaping over a 5 year period. Given that materials are not specified on the plans I agree that a materials condition is necessary and have imposed it as 'Condition 6' in the schedule below. The condition is not however a pre-commencement condition, as this is not demonstrably necessary. I have also not imposed a condition relating to maintenance of the landscaping scheme as this would be unnecessarily onerous with regard to wholly private domestic garden space.

Conclusion

35. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless modified by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Layout and Location Plan; NB-247 Sheet 4 Issue 4; 08/18/76BLHH-401 Rev A; 08/18/76BLHH-402 Rev A.
- 3) The development hereby permitted shall not commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:

- i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters; and
 - ecological systems.
- 4) The development hereby permitted shall not commence where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 5) Except in relation to the site access lane, no trenching, digging of foundations or other construction works shall be undertaken, and no equipment, machinery or materials shall be brought onto the site for the purposes of the development hereby permitted, until a landscaping scheme has been submitted to and approved in writing by the local planning authority. This landscaping scheme shall contain details which include:
- (i) the identification of trees to be retained on the site and their root protection areas;
 - (ii) the root protection areas of trees immediately adjacent to the site where these overlap the site boundary;
 - (iii) measures for the protection of trees and root protection areas identified in accordance with (i) and (ii) during construction works;
 - (iv) details outlining a no dig construction method for parking bays where these are located within root protection areas identified in accordance with (i) and (ii);
 - (v) hard surfacing materials;
 - (vi) the height and type of boundary treatments;
 - (vii) planting plans showing plant species, sizes and numbers;
 - (viii) finished site levels or contours.

The development shall then proceed in accordance with the approved landscaping scheme, and shall be completed prior the first occupation of the dwellings hereby permitted.

- 6) No construction above damp proof course level shall take place until details of the materials to be used in construction of the external surfaces of the dwellings hereby permitted have been submitted and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
- 7) The visibility splay shown on plan NB-247 Sheet 4 Issue 4 shall be provided prior to the first occupation of the dwellings hereby permitted. The visibility splay shall thereafter be maintained at all times free from any obstruction between 600mm and 2m above the level of the adjacent highway carriageway.