
Appeal Decision

Hearing held on 19 August 2014

Site visit made on 19 August 2014

by Christa Masters MA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 October 2014

Appeal Ref: APP/X1925/A/14/2217598

L/A Claypit Cottages, Luton Road, Offley, Hitchin SG5 3DN

- 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 J J Kelly and Sons Ltd against the decision of North Hertfordshire District Council.
 - The application Ref 13/02910/1, dated 2 December 2013, was refused by notice dated 26 March 2014.
 - The development proposed is described as retention of three detached dwellings together with detached garages and associated parking as variation of planning approval ref 12/00256/1 granted on 29 May 2012.
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Decision

1. The appeal is dismissed.

Application for costs

2. Prior to the Hearing an application for costs was made by JJ Kelly and Sons Ltd against North Hertfordshire District Council. This application is the subject of a separate decision.

Procedural matters

3. Planning permission was granted on 29 May 2012 (application reference 12/00256/1) for three detached dwellings, detached garages and an access driveway. This appeal relates to a subsequent application made to regularise the overall development and to obtain planning permission for a number of amendments to the original permission. A split decision was issued by North Hertfordshire District Council on 26 March 2014. The decision allowed the retention of plots A and C, however refused planning permission for plot B. It is the amendment to plot B which is now the subject of this appeal.
4. It was confirmed by the Council at the Hearing that the plans against which the appeal should be considered were numbers 386-01, 386-200, 386-201, 386-220, 386-221, 386-222. It was also confirmed that these plans were an accurate reflection of what has been built on site. Additional plans 386-301 and 386-206 were submitted by the appellant as part of the appeal submission. These covered the layout of the proposed scheme compared to the consented scheme and also a further layout plan. Taking into account the judgement given in *Bernard Wheatcroft Ltd v Secretary of State for the Environment and*

Harborough District Council (1980), I do not consider that third parties would be prejudiced through my consideration of these plans and the appeal has therefore been determined on this basis.

5. At the Hearing, concerns were raised by an interested party in connection with the discharge of a number of conditions relating to the original planning permission. These are not the subject of this appeal and as such I will not comment any further on these matters.

Main Issues

6. There are two main issues. Firstly the effect of plot B on the character and appearance of the area, with particular reference to the setting of 3-4 Claypit Cottages. Secondly, the effect of the proposal on the living conditions of existing and future occupiers of 3-4 Claypit Cottages.

Reasons

7. The appeal site is a triangular site which accommodates 3 detached houses with detached garages. The site is set back from the main Luton Road. To the west of the site are Claypit Cottages, a two storey terrace of residential dwellings. 3-4 Claypit Cottages are also known as Redway Cottage however I have used only 3-4 Claypit Cottages throughout my decision.

The effect of the proposal on the character and appearance of the area, and in particular 3-4 Claypit Cottages

8. Helpfully, all parties agreed at the Hearing that the separation distances as set out in table 4.5 of the appellant's appeal statement were correct and an accurate reflection of what had been built on site.
9. The Council's representative explained that the concerns related to the scale and height of the dwelling and its position within the site rather than the separation distances between the dwelling and 3-4 Claypit Cottages. Views were expressed by all parties in connection with the alleged increase in the ground level of the site. However, the matter before me is the height and scale of plot B as currently built. I will not comment any further on any changes to the ground level of the site which may or may not have taken place.
10. The agent for the interested party expressed specific concerns regarding the historical significance of 3-4 Claypit Cottages as a non designated heritage asset. I have considered this issue in the context of the advice contained within paragraph 135 of the NPPF 'the Framework'. 3-4 Claypit Cottages are not listed and neither do they fall within a conservation area. Other than the increased height of the dwelling, I have not been presented with any substantive arguments to justify why the position of plot B causes material harm to the character and appearance of the area or 3-4 Claypit Cottages. Whilst the dwelling on plot B is indeed taller than Claypit Cottages, this fact alone does not mean it is harmful to the character and appearance of the area.
11. The fallback position would mean that there would be a building on the site albeit in a different location. In this context, I do not consider that the effect of the proposal on the existing character and appearance of the area is substantially different from the consented scheme.

12. I therefore conclude on the first main issue that the plot B does not cause any significant harm the character or appearance of the area or 3-4 Claypit Cottages. Accordingly, I do not find any conflict with policy 57 of the District Local Plan No.2 with Alterations (LP) 2007.

The effect of the proposal on the living conditions of existing and future occupiers of 3-4 Claypit Cottages

13. The occupiers of 3-4 Claypit Cottages have also raised concerns regarding loss of privacy as a result of the location of plot B. The current occupier of Plot B spoke at the Hearing and advised that 3-4 Claypit Cottages were not visible from the appeal site. There are no windows at first floor level overlooking 3-4 Claypit Cottages from plot B and so privacy is assured. Although there is activity on the appeal site close to the boundary, the activity is no more than one might reasonably expect in a residential area and so any disturbance would be within reasonable bounds.
14. The interested party explained at the Hearing that since plot B had been constructed, the rear of his property had received very little natural light. The view was also expressed that a significant proportion of the rear garden was now in shadow and the dwelling at Plot B has a an adverse effect on 3-4 Claypit Cottages as a result.
15. A Daylight and Sunlight report was prepared and submitted by BRE on behalf of the appellant. Whilst concerns were expressed by the interested party regarding the methodology used and the fact that a measured survey was not undertaken of 3-4 Claypit Cottages, I am not convinced that this would have materially altered the main findings of the report. On the basis of this report, I find the Daylight and Sunlight to 3-4 Claypit Cottages is not appreciably compromised as a result of the development.
16. Turning to consider the issue of dominance, overbearing impact and sense of enclosure, it was clear from the site visit that the outdoor amenity space at 3-4 Claypit Cottages is actively used. Indeed there is a garden room close to the shared common boundary and the kitchen window faces the garden. There are limited opportunities for the use of other amenity space at the property.
17. I observed that the proposal is built in an elevated position and as a consequence, the height at 9.3m to the ridge combined with the scale and orientation of the two storey structure has a dominant and overbearing impact that is detrimental to the occupiers' living conditions. The flank elevation of plot B is close to and extends for a significant part of the length of the common boundary. The lack of visual permeability caused by the large and dominant side elevation means that the effect of plot B is oppressive and overbearing to the occupiers of 3-4 Claypit Cottages. Such is the degree of this harm I am dismissing the appeal in relation to this issue alone.
18. Whilst I appreciate that there is still an extant planning permission for a dwelling at Plot B in a different location, this fallback location would have a much lesser impact on the living conditions of 3-4 Claypit Cottages when considered against the proposal now before me.
19. I therefore conclude on the second main issue the proposal causes material harm to the living conditions of the existing occupiers of 3-4 Claypit Cottages, contrary to policy 57 of the LP. It would also have the same effect on any

future occupiers of the property. Policy 57 is a detailed 12 part policy concerning, amongst other things, design and layout and privacy. It states that site characteristics and topography are all factors which can effect layouts. Furthermore, it goes onto state that as each housing site is unique, each new development must relate to the site's physical shape and existing features. The proposal also conflicts with a similar objective in the National Planning Policy Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

20. Councillor Faye Frost represented Offley Parish Council at the Hearing. The concerns expressed related to the differences between the consented scheme and the current position of Plot B. It was also stated that the new layout of the site was not considered acceptable and was detrimental the local community as a result. I have addressed this matter in the conclusions I have reached above.
21. I accept the proposal would assist in the delivery of a wider choice of homes. However, this fact alone does not outweigh the harm I have identified above in relation to the living conditions of the neighbouring property.

Conclusion

22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Christa Masters

Inspector

APPERANCES

FOR THE APPELLANT:

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| Mr D Lane BSc (Hons) DipTP, MRTPI FRSA | DLA Town Planning Ltd |
| Mr P Brigwell | BL Architecture |
| Mr P Littlefair | BRE |
| Ms S King | BRE |

FOR THE LOCAL PLANNING AUTHORITY:

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|----------------|--------------------------------------|
| Ms M Caldwell | North Hertfordshire District Council |
| Cllr M Weeks | North Hertfordshire District Council |
| Cllr I Mantle | North Hertfordshire District Council |
| Cllr D Barnard | North Hertfordshire District Council |
| Cllr M Muir | North Hertfordshire District Council |

INTERESTED PARTIES:

Mr A Evans

Mr A Jones

Ms L Hwazi

Ms F Frost

CgMs

Redway Cottage, Luton Road

15 Luton Road

Lodge Cottages, Lilley Bottom