



Appeal Decision

Site visit made on 7 November 2018

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2019

Appeal Ref: APP/R3325/W/18/3207109

24-37 Riverside, Horton, Ilminster TA19 9RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sean Reynolds of Riverside Horton Properties Ltd against South Somerset District Council.
 - The application Ref 18/00163/FUL, is dated 26 January 2018.
 - The development proposed is the development of ten single storey dwellings with associated parking, garages and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the revised Framework) was published on 24 July 2018, replacing the previous version. The appellant was notified of the publication and invited to make comments. I have had full regard to the revised Framework in determining this appeal.
3. The appellant submitted revised plans to the Local Planning Authority (LPA) prior to the appeal showing junction visibility splays and revised visitor parking arrangements on Riverside. The LPA and Highway Authority (HA) have had opportunity to comment in detail on the revisions. Accordingly, I do not consider any party is likely to be prejudiced by my consideration of them and I have therefore determined the appeal on the basis of the revised plans.

Main Issues

4. The appeal was made following the failure of the Local Planning Authority to determine the application within the requisite period. In its statement, the LPA set out a putative reason for refusal which, in summary, was that the proposal would result in a cramped form of development and lead to the loss of protected trees, thus causing harm to the character and appearance of the area. However, it is clear from its statement that the LPA also regards the proposal as being harmful to the living conditions of existing and future occupiers and to highway safety. The main issues in this case are, therefore, the effects of the development on (i) the character and appearance of the area including protected trees (ii) the living conditions of future occupiers and those of neighbouring occupiers with respect to the adequacy of outdoor space, privacy and outlook and (iii) highway safety.

Reasons

Character and Appearance

5. The appeal site is roughly rectangular in shape and has been cleared through the demolition of former buildings. It lies in the central part of a small cul-de-sac estate development to the west of Goose Lane. It is enclosed on its northern and western sides by the highway known as Riverside on the opposite side of which lie single storey terraces of housing. Two pairs of single storey semi-detached dwellings also immediately adjoin the site on its north eastern boundary which are accessed off a spur off Riverside. Two detached two-storey dwellings, known as Halfway House and Kings Holm, are also located to the south of the site and are accessed directly off Goose Lane to the east.
6. The existing estate dwellings are set back from the road behind a largely continuous swathe of front gardens laid to grass. There are also a number of areas of open space elsewhere within the site, giving the area a green and spacious character.
7. The dwellings would be single storey and relatively small with maximum floor spaces varying between 80 sq.m. for terraced properties and up to 127 sq.m. for the detached. This would be broadly comparable with the scale of existing single storey dwellings on the Riverside estate.
8. When viewed from Goose Lane and Riverside, proposed plots 9 and 10 and plots 1 – 5 would present some coherent green space towards the public realm, broadly mirroring the existing pattern of development albeit with the incorporation of adjoining car parking which is largely absent from the existing properties. However, on approaching the central part of the site (plots 6, 7 and 8), the design and layout of the scheme would be such that the street scene would be dominated by hard surfacing, car parking and buildings, offering little relief in terms of soft landscaping. Whilst it is appropriate to seek to make the best use of previously developed land in line with the revised Framework, the scheme's design and lack of provision of green space at this location would, in my judgement, give the impression of the scheme being cramped. As such, it would not accord with, and would be harmful to, the prevailing character and appearance of the wider area.
9. Turning to trees, whilst a number are referred to in the appellant's evidence, I saw on my site visit that all but 2 had been removed. These remaining trees are substantial London Planes and received formal protection under a Tree Preservation Order (TPO) in 2016. They respectively lie on the eastern and western fringes of the site and I saw that they make a significant and positive contribution to the character and appearance of the area, as recognised in their inclusion in the TPO.
10. The appellant's arboricultural report confirms these trees are in good physical condition and vitality with life expectancies in excess of 40 years. Nevertheless, in order to accommodate the development, the trees would be removed.
11. However, there is no objective evidence before me to show that London Plane is a species which poses any risk to human health or fails to support biodiversity to the extent that the removal of the protected trees would be justified. Furthermore, whilst the parties agree that in the long-term the

maintenance of the trees could be onerous, that is to be reasonably expected with certain types of tree with longevity. I do not find that to be a convincing argument for replacing healthy, formally protected specimens which make a positive contribution to their area. In this regard, I am not persuaded that London Planes are, in principle, an unsuitable species for this location or are particularly prone to disease. I have also seen no evidence to show why the responsibility for their maintenance should necessarily fall, individually, to the future residents rather than through an alternative means of management. I am not therefore persuaded that any harm to occupiers' living conditions would be so great as to justify the removal of the trees.

12. Moreover, whilst the appellant asserts that the scheme would not be viable if the trees were to be retained with necessary root protection measures, I have been provided with no costed evidence to demonstrate that is the case. Similarly, I have seen no clear evidence to demonstrate that the ongoing need for suitable accommodation for older people will not be met unless this specific scheme is delivered in full at this particular site.
13. As regards the proposed replacement planting scheme, I note the LPA's Tree Officer is critical in terms of its suitability for the location. However, that is a matter that could be controlled through the imposition of a suitable condition requiring details to be submitted to, and approved by the LPA. Nevertheless, whilst it might be possible to propose a landscaping scheme which would enhance the character and appearance of the area in the long-term, this would take some time to develop. In the meantime, the loss of the protected trees would have an immediate harmful effect on the character and appearance of the area for a considerable period of time.
14. Overall, drawing this main issue together, I find that the design of the proposed development would lead to unacceptable harm to the character and appearance of the area by virtue of the proposed design and layout of the central part of the site. Furthermore, the felling of the 2 protected trees would give rise to significant harm to the character and appearance of the area. Accordingly, the proposed development would conflict with the adopted South Somerset Local Plan (March 2015) (the Local Plan) Policy EQ2 and Policy EQ5 which require the achievement of high quality developments which promote local distinctiveness and preserve or enhance the character and appearance of the district. The LPA has also cited Local Plan Policy EQ4 which sets out priorities for protecting biodiversity. However, replacement planting would take place and my attention has not been drawn to any evidence to show that the development would lead to ecological harm.

Living Conditions

Adequacy of garden space

15. Whilst the LPA raises concerns that the garden areas to the proposed plots are inadequate, I am not aware of any local standards having been adopted which would assist in this matter. The rear gardens to all the plots are undoubtedly small, but with one exception I describe below, space is nonetheless proposed to accommodate a modest paved and grassed amenity area for each property. Whilst occupation of the development would not be restricted to older people or those who would prefer smaller outdoor spaces, I am nonetheless satisfied that, in the main, the proposed provision would not be so unacceptable as to require permission to be withheld. An exception however, is that the revised

proposal for visitor parking adjoining Plot 4 would mean the splitting of that property's useable garden area to the west of the dwelling. Consequently, the occupiers of that dwelling would effectively rely on the small rear paved area for enjoyment of private amenity space. In my judgement, this would be inadequate to serve the dwelling and, in this regard, the proposed development would be unacceptable.

Outlook and Privacy

16. Given the relatively high density of the development proposed, together with the nature of the plot constrained between existing roads and buildings, the configuration of the plots is such that, in some case, the proposed building lines would be located very close to the property boundaries.
17. Specifically, the submitted plans show that plots 6, 7, 8, 9 and 10 would each have a bedroom which would have a sole aspect onto property boundaries which are very close to the window. Given these boundaries would be likely to require, for reasons of privacy, boundary fencing or landscaping, this would lead in my view to an unacceptably gloomy and oppressive outlook for occupants of those rooms.
18. The proposed Plot 9 would be located very close to the boundary with two of the existing semi-detached properties immediately beyond the north east corner of the site. There is a marked change in levels at this location with the appeal site being set above them. I saw that there are habitable windows in the southern elevations of both those properties and they are also separated by 'back-to-back' rear garden areas. Given there would be bedroom and lounge/diner windows in the northern elevation of Plot 9, some form of boundary treatment would be necessary in order to safeguard the privacy of both future occupants of Plot 9 and those of the existing properties. Based on what I saw and the submitted plans, I cannot be certain that this could be achieved without unduly affecting the outlook for occupiers of the existing properties or those of plot 9.
19. Concern has also been raised that overlooking from a first floor window at Halfway House to the southern boundary of the appeal site would result on the garden of proposed plots 8 and 10. However, any such views would be partially screened by the roof structure of the dwelling at Plot 10 and ensure no unacceptable overlooking would occur. Furthermore, the oblique angle between Halfway House and the proposed garden to Plot 8 are such that no unacceptable loss of privacy would occur for those future occupants. I am therefore satisfied that no significant loss of privacy to future occupiers of either Plot 8 or 10 would result.
20. In conclusion on this main issue, I find that whilst the proposed gardens would not in the main be unacceptably small, an exception would be at Plot 4 as a result of the revised layout. Moreover, the proximity of bedrooms in several plots to their property boundaries would lead to a limited and unacceptable level of outlook for occupiers of those properties. There would not be significant overlooking of private rear space from first floor windows from existing neighbouring properties. However, the juxtaposition of proposed Plot 9 with existing adjoining dwellings would be likely to give rise to an unacceptable loss of outlook – or alternatively privacy - for those properties. The proposed development would therefore conflict with Local Plan Policy EQ2 which requires development proposals to provide adequate amenity space and to protect the

residential amenity of neighbouring properties. Whilst the policy does not specifically refer to effects on future occupiers, the proposed development would conflict with Policy EQ2 in that respect to the extent that it requires the creation of quality places through new development. Moreover, the revised Framework requires the creation of places with a high standard of amenity for existing and future users.

Highway Safety

21. The LPA and other parties have raised highway safety concerns in respect of the achievement of adequate visibility sight lines at various points throughout the development and the lack of provision for a footway. I turn to these matters below.
22. Regarding visibility, the HA draws attention to the need to ensure the maintenance of sight lines on the sharp bend on Riverside on the north west boundary of the site. Further information has been submitted by the appellant in this regard and, additionally, the revised plans show the re-configuration of the 2 proposed visitor parking spaces to the west of Plot 4 to enable increased forward visibility. Whilst the HA appears to have ongoing concerns in relation to this matter, the required sightlines nonetheless appear to have been demonstrated to be achievable. The HA has also raised concerns that the proposed 'tandem' parking of visitor spaces is not an acceptable layout as it would lead to vehicles being blocked in. However, whilst this would not be a particularly convenient arrangement, I have been provided with no information as to the likely harm that would arise from it. It may well be that the HA feels this would dissuade use of a space which would lead to greater pressure for on-street car parking. However, I have no information before me to demonstrate that and therefore see no good reason to find the re-configured parking arrangement harmful in highway terms.
23. The appellant's revised plans demonstrate that vehicle/pedestrian inter-visibility for plots 1-5 would be achieved. However, although traffic would be likely to be travelling at low speeds on this part of Riverside, it would be important to secure adequate vehicle-to-vehicle sight lines for cars emerging from those properties given the geometry of the road at this point. On the basis of the submitted plans, no such visibility distances appropriate to the design speed of the road appear to have been provided. In the absence of such evidence, I therefore find the proposed development unacceptable in this regard.
24. In relation to the proposed junction at Goose Lane which would serve Plots 9 and 10, the road is relatively straight in the vicinity of the appeal site, but curves away a short distance to the south. Consequently, it is likely that vehicles will be accelerating when emerging from the south and I observed that whilst the road was not heavily trafficked when I visited, vehicles appeared to be travelling at or around the speed limit of 30mph. In the absence of evidence to the contrary therefore, I consider that the HA's requirement for achievement of 43m sight lines would be reasonable. The revised plans show sight lines of 33m. The LPA also contends that increased visibility would be likely to be intercepted by a protected tree. However, the submitted plans clearly show that this tree would be removed as part of the development and would not, therefore, present an obstacle in the event that the appeal were allowed. Nevertheless, I do not have a plan before me demonstrating that the required

visibility distances can be achieved. Whilst the appellant submits that such matters can be dealt with by condition, I cannot be certain that safe accesses can be achieved and I find that in this respect the proposed development is unacceptable.

25. I appreciate the appellant has expressed frustration over the LPA's timeliness in the handling of the application and the fact that such matters could have been discussed and resolved through further discussion. However, that is not a matter for me to consider in this appeal which I have determined on the basis of the submitted plans and evidence before me.
26. Turning to the need for provision of a new a footway, the boundaries to Plots 1–5 would front directly onto Riverside with an existing pavement on the opposite side of the road. The LPA and HA consider the construction of a footway along the front of these properties would be necessary in order to avoid residents needing to cross the road. However, Riverside is a cul-de-sac and appears to carry low levels of traffic. Whilst not necessarily representative, the little traffic I did see on my site visit was travelling at low speeds. Consequently, even taking into account the potential for occupants to have reduced mobility, I do not consider the need to cross the highway at this point would give rise to unacceptable risk to the safety of pedestrians.
27. I therefore conclude in relation to this main issue that it would not be necessary to provide a footway and adequate forward highway visibility has been demonstrated on Riverside itself. However, it has not been demonstrated that the proposed development would not give rise to unacceptable risks to highway safety in terms of driveway visibility on Riverside and at the proposed junction onto Goose Lane. These are not matters which could be addressed by condition after the grant of planning permission. Accordingly, the proposed development would conflict with Local Plan Policy TA5 which seeks to ensure that new development secures inclusive, safe and convenient access.

Planning Balance

28. Taking into account the above, I find that the scheme would be harmful to the character and appearance of the area through its design and through the loss of important trees. It would also, by virtue of the proposed layout, be harmful to the living conditions of future and existing occupiers in terms of garden space for plot 4 and inadequate outlook from other plots. I have also found that insufficient details have been provided to demonstrate the scheme would not be unacceptable in terms of highway safety.
29. The proposed development would have several benefits in line with the Local Plan and the revised Framework. It would make effective re-use of a previously developed site and development could take place without delay in a location which is well served by day-to-day services and public transport. Whilst the occupation of the dwellings would not be restricted, the scheme would provide accommodation suitable for older people in particular for which there is an on-going identified need. It could also have the additional advantage of attracting the "younger old" generation seeking to vacate larger homes which would, in turn, become available for growing families. In providing new planting and landscaping there would also be the opportunity for some enhancement to the character, appearance and biodiversity in the area.

30. Nonetheless, the harm I have found is significant and would not be outweighed by the benefits. Overall, therefore, I therefore find that the development would conflict with the development plan and the revised Framework as a whole.
31. The appellant submits that the LPA is currently unable to demonstrate a 5 year housing land supply and that, accordingly, the so called "tilted balance" should be engaged. I have been provided with no further evidence in relation to this matter, however, and therefore unable to determine whether any shortfall exists and the extent of any such shortfall. Nevertheless, even if I had concluded there was a moderate shortfall in housing land supply, the harm caused by the proposal would significantly and demonstrably outweigh the benefits.

Conclusions

32. For the reasons given, the appeal should be dismissed.

Ian Bowen

INSPECTOR