

## Appeal Decisions

Hearing held on 12 April 2016

Site visit made on 12 April 2016

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 23 June 2016**

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### **Appeal A: APP/G3110/W/15/3139468** **20 Blenheim Drive, Oxford OX2 8DG**

- 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 Bouvard Group against the decision of Oxford City Council.
  - The application Ref 15/00991/FUL, dated 27 March 2015, was refused by notice dated 28 May 2015.
  - The development proposed is the construction of 2 new detached houses at Blenheim Drive, Oxford.
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### **Appeal B: APP/G3110/W/15/3139945** **20 Blenheim Drive, Oxford OX2 8DG**

- 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 Bouvard Group against the decision of Oxford City Council.
  - The application Ref 15/01826/FUL, dated 21 May 2015, was refused by notice dated 11 August 2015.
  - The development proposed is the demolition of existing house and construction of 3 new detached houses at Blenheim Drive, Oxford.
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### **Decision**

1. The appeals are dismissed.

### **Application for costs**

2. At the Hearing an application for costs was made by Oxford City Council against the Bouvard Group. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. Appeals A & B relate to the same site. Appeal A proposes the construction of 2 new houses within the garden of No 20 Blenheim Drive, whilst Appeal B proposes the demolition of No 20 and the construction of 3 new properties. Except where otherwise indicated I have dealt with the appeals together.
4. A substantial amount of information was submitted by the appellant on 6 April 2016. At the Hearing it transpired that this contained additional information concerning bin storage, visibility splays, effect on daylight and sunlight for Appeal A and two draft unilateral undertakings. On Monday 11 April, the day before the Hearing, further information was submitted by the appellant in the form of viability appraisals.

5. Following discussions at the Hearing, I accepted the majority of the 6 April information, as I considered it to be helpful to discussions. The viability appraisals and unilateral undertakings containing figures deriving from these appraisals were dealt with in writing following the closure of the Hearing. Further consultation subsequently took place with the parties following the decision in the Court of Appeal concerning the case of Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council<sup>1</sup>, 13 May 2016.

### **Main Issues**

6. Based on all that I have read, seen and the discussions at the Hearing, the main issues in these cases are as follows:
- The effect of the proposals on the character and appearance of the surrounding area including whether the proposals represent an efficient use of the site.
  - Whether provision for affordable housing would be necessary to make the developments acceptable in planning terms, and if so, the effect on viability.
  - Whether the proposals would provide acceptable living conditions for future residents, with particular regard to bin storage and, in relation to Appeal A only, with regard to outlook and daylight.

### **Reasons**

#### *Character and appearance*

7. Blenheim Drive lies on the northern side of Oxford and is a cul-de-sac accessed off Woodstock Road. Wyndham Way also connects the street to this latter road. The majority of development along both Blenheim Drive and Wyndham Way is frontage residential development; that is it consists of houses facing onto the street. Front gardens and parking areas are defined fairly tightly, with the properties having longer back gardens. The southern section of Blenheim Drive, Woodstock Road and Wyndham Way together form a rectangular shape. Within the inner part of this rectangle lies a small number of houses set in larger plots, accessed by long drives from the surrounding streets. The appeal site is one such plot and consists of a single detached dwelling set within its large garden. Mature landscaping effectively surrounds the plot and helps to screen the land from the housing on all sides.
8. Whilst many of the houses have been extended, in some cases substantially, Blenheim Drive and Wyndham Way still retain the character of a residential area comprised of generously proportioned family detached dwellings. This is in direct contrast to Woodstock Way which is characterised by very large houses fronting this arterial route. The houses on Blenheim Drive and Wyndham Way are also characterised by plot boundaries reasonably close to the footprints of the houses.
9. It was confirmed at the hearing that Plots 1 & 3 – that is the proposed houses on either side of the existing house, or the new proposed central house, are exactly the same in both appeals in terms of their design, footprint and siting.

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<sup>1</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

- Plot 1 lies at the south east end of the site. This would be a large 6 bedroom property, with a very generous kitchen area/living space downstairs. Plot 3, at the opposite end of the site would be of similar proportions. Plot 2 in Appeal B would be an amply sized 5 bedroom dwelling. Site sections show that the heights of the proposed dwellings would be similar to adjoining development.
10. Despite the reduction in overall size from previous proposals, the plans indicate that to achieve such roof heights with such large footprints, the natural apex of the roofs of Plots 1 & 3 would be effectively lopped off, leaving a flat roof central area on both properties. Whilst the site is well screened from public areas, from views within the site, from the upper rear windows of adjoining properties, and from the retained house in Appeal A, this roof form would appear awkward and contrived. I note that the appellant states that the houses have been designed to Lifetime Home Standards (LHS) and that this in part has helped contribute to the size of the ground floor accommodation. However, the houses proposed are very spacious and more so than purely necessary simply to meet the LHS. The design of the proposed dwellings in Appeal A would also I consider jar with the design and form of the retained house. No 20 is set at an angle which would face towards the front access area of Plot 1 and the roof styles of the proposed new properties would not sit comfortably with the hipped roof form of the retained house
  11. A calculations document shows that the plot ratio of the proposed units in both appeals would be similar to selected comparators. However, this does not include comparisons with other properties within Blenheim Drive and Wyndham Way (other than those in the inner rectangle). Whilst I note that it is reasonable to compare the proposals with existing houses in the rectangle, the other areas selected for comparison have different characters. The plots in the inner rectangle at present are anomalies in the street scene but appear roughly similar; large properties within very large plots. The proposals, by constructing 2 or 3 houses within one such plot would not be compatible with the surrounding grain of development of either the inner rectangle, or the immediate surrounding streets. An Area Study Plan shows that some of the properties on these streets have similar plot ratios but these have primarily arisen from substantial extensions to such properties, and the houses maintain their frontage style with long back gardens. The proposals would not follow such character and would appear overly large and out of place within the character and appearance of the surrounding area.
  12. Policy HP10 of the Sites and Housing Plan, 2013 (the SHP)<sup>2</sup> states that permission will be granted for new dwellings on residential gardens provided that the proposal responds to the character and appearance of the area, taking into account the views from streets, footpaths and the wider residential and public environment, the size of the plot is of an appropriate size and shape to accommodate the proposal and any loss of biodiversity is mitigated. This is supported by policy CS18 of the Core Strategy<sup>3</sup> and Local Plan<sup>4</sup> policies CP1 and CP8 which, together, encourage high quality urban design which responds appropriately to the site and its surroundings. The proposal would not respond to the character and appearance of the local area and would thus be contrary to such Policy HP10. In failing to respond appropriately to the site and its

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<sup>2</sup> Oxford City Council Sites and Housing Plan 2011-2026, February 2013

<sup>3</sup> Oxford Core Strategy 2026, Adopted March 2011

<sup>4</sup> Adopted Oxford Local Plan 2001-2016, November 2005

surroundings, it would also conflict with Core Strategy policy CS18 and Local Plan policies CP1 and CP8.

13. The Council contend that the proposals do not represent an efficient use of land. In the Hearing they considered that the overall site *could* accommodate 7 units if desirable. The appellant considers that the site constraints, including access, prevent a scheme of more than 3 dwellings being built. Site constraints clearly have to be taken into account in any consideration of the most efficient use of land; in this case the fairly narrow access and the mature trees and their root protection zones on the site, as well as issues of the living conditions of neighbouring residents, and the retained dwelling in Appeal A are all relevant and point to the site not being suitable for its nominal maximum capacity. However, there is no indication that the access could not serve a greater number of dwellings. The size of the plot and the footprint of the proposed houses all point to there being a potential for the site to accommodate a greater number of units than proposed in these schemes.
14. Policy HP9 of the SHP states that the form, layout and density of residential development should make efficient use of land whilst respecting the site context. Local Plan Policy CP6 has similar aims. These policies accord with paragraph 58 of the National Planning Policy Framework (the Framework), which states that developments should optimise the potential of a site and respond to local character, reflecting the identity of local surroundings. I consider that it has not been demonstrated that either of these schemes make efficient use of land, so that the proposals also fail to satisfy SHP policies HP9 and CP6.
15. For the reasons given above I therefore conclude that the proposals would have an adverse effect on the character and appearance of the surrounding area and would not represent an efficient use of the site.

#### *Affordable Housing*

16. Policies HP3 of the SHP and CS24 of the Core Strategy concern affordable housing. Policy HP3 notes that developers may not circumvent this policy by artificially subdividing sites. At the time of the Hearing, there was significant dispute between the parties over whether Appeal A would fall to be considered under policy HP3, as well as a further dispute as to viability.
17. However, further to the Court of Appeal judgement, Planning Practice Guidance (PPG) has been revised. It now states that there are specific circumstances where contributions for affordable housing should not be sought from small scale development, including from developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1000m<sup>2</sup>. The appellant has demonstrated that both proposals lie underneath the stated thresholds.
18. The Council considers that Policy HP3 relates to large housing sites to provide on-site affordable housing contributions; only with the working through of the cascade system can an off site payment be made if robustly justified. They note that the PPG refers to affordable housing *contributions* in this respect. I am not convinced by this line of argument; it seems to me that affordable housing contributions could refer to financial payments or to the provision of bricks and mortar. In any event, the PPG is clear that contributions should not

- be sought from proposals such as these. Whether such sites may be termed as small or large depending on differing definitions is immaterial in this respect.
19. Extensive evidence is also submitted by the Council concerning the affordability or otherwise of housing in the City. This details various reports and sources over the levels of affordability in Oxford, with average house prices being more than 16 times the annual average wage. This clearly presents a problem for the City, its residents and its businesses. Notwithstanding this however, national planning policy, which postdates the publication of the Core Strategy and the SHP, defines the specific circumstances where contributions for affordable housing should not be sought.
  20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The changed advice in PPG is a material consideration and I accord it significant weight; such that in this specific case I find that it outweighs the requirements of policies HP3 and CS24.
  21. I therefore conclude that a contribution towards the provision of affordable housing would not be necessary to make the developments acceptable in planning terms. Due to this conclusion there is no need to consider whether any such contribution would affect viability.

#### *Living Conditions*

22. Policy HP13 of the SHP states that planning permission will not be granted for residential dwellings unless adequate provision is made for the safe, discrete and conveniently accessible storage of refuse and recycling. The Technical Advice Note<sup>5</sup>, states that residents should not be required to carry waste more than 30m to the storage point, and that refuse vehicles should be able to get to within 25m of the storage point. Plans considered at the application stage showed a bin collection and storage point in excess of the 30m guideline and concerns were also raised over fire engine access to the proposed houses when the bins were out.
23. The information submitted prior to the Hearing indicated a new storage point located close to the site entrance, and included confirmation from the Fire Service that bins at such a location, provided that they are in place for a short period of time (i.e. on the bin collection day) could be moved out of the way fairly quickly to allow fire engine access should the need arise. Whilst the bin storage area would require a longer walk for future residents than the recommended advice of 30m, I do not consider that this would cause significant difficulties for the number of additional residents that the proposals would create. The confirmation of bin storage and design requirements could reasonably be refined by the use of a condition.
24. Due to the angles of the footprints involved, the distances between the closest edge of No 20 in Appeal A and Plot 1 is in the order of 3.5m. The plans show a 1.8m close boarded fence to be constructed between the properties to delineate boundaries. There are existing ground floor windows in the façade of No 20 in the closest corner to Plot 1 which plans show is used as a utility room. The room is thus not a 'habitable' room; however, the Council are of the view

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<sup>5</sup> The Oxford City Council Planning Technical Advice Note: Waste bin storage and access requirements for new and change of use developments, 2014

that earlier plans showed the room being used as a study. I have some sympathy with this view as the room appears large to be considered as a utility room. Nevertheless, on the evidence provided to me and my viewing on site it appears that the room was being used for such purposes.

25. Such a room would only be inhabited for short periods of time, and whilst I note that the distances from these windows to Plot 1, and particularly the fence line between the two properties would not be ideal, I do not consider that given the use of the room that the proposal would cause undue harm to the outlook from this property.
26. The dining room of No 20 also has 2 windows. Plans indicate that when applying standards for sunlight and daylight contained in Appendix 7 of the SHP, the '45 degree' line would be breached by the construction of Plot 1, when also considering the '25 degree' upwards line from the eastern most window cill level. However, the second window would not breach such a standard. Given that both windows supply light to the room I do not consider that this would significantly affect light to this room and that unacceptable harm would not be caused to living conditions in this respect.
27. I therefore conclude that the proposals would provide acceptable living conditions for future residents, with particular regard to bin storage and, in relation to Appeal A only, with regard to outlook and daylight. The bin storage would be safe, discrete and relatively conveniently accessible and as such would comply with Policy HP13 of the SHP. The proposal for Appeal A would comply with Policy CP10 of the Local Plan and with Policy HP14 of the SHP which together state that windows in existing development will be regarded when considering new development. The proposal in this respect would also comply with the Framework which states that planning should always seek a good standard of amenity for all existing occupants of buildings.

### **Conclusion**

28. I have concluded that the proposals would have an adverse effect on the character and appearance of the surrounding area and would not constitute the most efficient use of land. My views on the matters of affordable housing and living conditions do not outweigh my conclusions on this matter.
29. For the reasons given above, and having regard to all other matters raised, I conclude that the appeals should fail.

*Jon Hockley*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT:**

Glen D'Ungar	Appellant
Neil Cameron QC	Landmark Chambers
Corin Rae RIBA	Riach Architects

**FOR THE LOCAL PLANNING AUTHORITY**

Andrew Murdoch BA(Hons) DipTp MRTPI	Oxford City Council
Matt Bates	Oxford City Council
Michael Morgan	Oxford City Council
Chris Wilmshurst	Kemp and Kemp LLP

**INTERESTED PARTIES:**

Bernard White	Local resident
Mrs Margaret Jagger	Local resident

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Opening Statement on behalf of the Appellants

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