



Appeal Decisions

Inquiry held on 3 & 4 December 2008

Site visit made on 3 December 2008

by **Paul Crysell** BSc (Hons) MSc MRTPI

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

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Decision date:
12 January 2009

Appeal A: APP/P1940/A/08/2072846

Land at 63 and to rear of 61 and 65 Nightingale Road, Rickmansworth WD3 7BU

- 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 Henry Homes plc against the decision of Three Rivers District Council.
- The application Ref 07/1729/FUL, dated 20 August 2007, was refused by notice dated 1 November 2007.
- The development proposed is to demolish No. 63 Nightingale Road and erect 4 detached houses with access road.

Appeal B: APP/P1940/A/08/2082654

61, 63 & 65 Nightingale Road, Rickmansworth WD3 7BU

- 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 Henry Homes plc against the decision of Three Rivers District Council.
- The application Ref 08/1089/FUL, dated 23 May 2008, was refused by notice dated 18 July 2008.
- The development proposed is the demolition of 63 Nightingale Road and the erection of four houses with garages and associated access road.

Appeal C: APP/P1940/E/08/2072850

63 Nightingale Road, Rickmansworth WD3 7BU

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by Henry Homes plc against the decision of Three Rivers District Council.
- The application Ref 07/1788/CAC, dated 20 August 2007, was refused by notice dated 1 November 2007.
- The proposal is for the demolition of the existing dwelling.

Decision

1. I dismiss Appeal A, Appeal B and Appeal C.

Procedural Matters

2. The proposals are for the same area of land, the differences between Appeal A and Appeal B arising from the design and siting of the buildings. Appeal C is for Conservation Area Consent for the demolition of 63 Nightingale Road. Policy C6 of the Three Rivers Local Plan 1996 – 2011 (LP) says that consent for demolition will not be given unless there are detailed and acceptable plans for
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redevelopment, an approach endorsed in PPG15 *Planning and the Historic Environment*. At the Inquiry both parties agreed that if either housing proposal was found to be acceptable then Conservation Area Consent should be granted. I endorse this view and consequently restrict my comments to the residential schemes.

3. At the Inquiry, the appellant submitted signed and dated unilateral undertakings under s106 of the Town and Country Planning Act 1990 in respect of both schemes. The Council confirmed that, in its opinion, these would address the requirements of the County Council as Highway Authority. I also agreed to the submission of closing statements by both parties after the close of the Inquiry. I have had regard to these documents in reaching my decision.

Main issues

4. Having regard to the matters set out in paragraph 2 above, I consider the main issues in relation to appeals A and B are the effect of the proposed development on:
 - the character and appearance of the Upper Nightingale Road Conservation Area;
 - the living conditions of existing and future residents;
 - the landscape with particular reference to the trees on the appeal site.

Reasons

Character and appearance

5. The appeal site comprises the house and curtilage to 63 and part of the rear gardens of 61 and 65 Nightingale Road. It lies in the Upper Nightingale Road Conservation Area which is one of three conservation areas northwest of Rickmansworth Town Centre. A Conservation Area Appraisal (CAA)¹ identifies the contribution of Victorian and 'Arts and Crafts' properties to these conservation areas and, as I saw, examples of these building types are evident in the vicinity of the appeal site.
6. The Upper Nightingale Road Conservation Area is relatively small but has a number of detached and semi-detached properties. These are set back from the road and most have generous plots. The regular pattern of frontage development is a feature of the Conservation Area while spaces around the larger dwellings permit glimpses of the mature landscaping in rear gardens. The size of the plots engenders a sense of spaciousness which is reflected in the low development density. I appreciate that layout is not specifically mentioned in the CAA although it refers to the pattern of existing land uses, the attractive open spaces around detached houses and regular spacing between properties. To my mind these are significant elements which contribute to the character of the area.
7. Both schemes involve the replacement of No. 63 Nightingale Road and the introduction of three dwellings to the rear of Nos. 61 – 65. These would be

¹ Conservation Area Appraisal of Nightingale Road, Upper Nightingale Road and Cedars Avenue Conservation Areas (March 2007)

- served by an access road. The dwellings would be parallel to the road frontage rather than development in depth which I regard as more typical of tandem development. There was considerable debate about this at the Inquiry but, in my view, both schemes represent backland rather than tandem development.
8. Potentially, this is an important distinction because infilling and development on garden land is regulated through policy H14 of the LP. The purpose of this policy is to protect the character and amenity of existing residential areas, in part by resisting inappropriate layouts. The policy says that tandem development is inappropriate while the supporting text suggests that backland development is also unacceptable. However, I find the policy to be equivocal on the latter implying that some forms of backland development may be considered favourably. Nevertheless, it is evident that the conservation area status of the appeal site sets a more onerous test which is to determine whether the proposals would preserve or enhance the character or appearance of the Conservation Area.
 9. The proposed development would reduce the garden depths of the existing properties and increase development density. Consequently, it would make better use of the land although the improvement would be marginal because the density would remain well below the indicative minimum advocated in PPS3 *Housing*. However, a balance has to be struck between this objective and that of PPG15 which is to protect the historic environment. The latter does not preclude change but it requires that regard is had for the context and established character of an area. In this case I do not find that the change in plot sizes and the associated increase in density of either scheme would necessarily be detrimental to the Conservation Area.
 10. I am less sanguine about the form and layout of the development even though the appellant claims it would be similar to that in Nightingale Place and Raven Close. I do not accept this. The former is a spur from Nightingale Road and continues the pattern of frontage development; it has obvious associations with other parts of the Conservation Area. Raven Close is a more recent development but is not included in the Conservation Area.
 11. The proposals would result in a new road penetrating the strong linear pattern of frontage development in this part of Nightingale Road. In itself I do not regard this as unacceptable. Rather it is the nature of the access road which I consider would be damaging. Its narrow width and degree of enclosure would be an uncharacteristic feature of the Conservation Area. This, in my view, would be compounded by the absence of frontage development along the road. In this respect the development would not fit comfortably into the context of the wider Conservation Area because it would not reflect the existing street layout or pattern. I therefore disagree with the appellant on this point.
 12. I have few reservations about the loss of 63 Nightingale Road because neither this nor the neighbouring dwelling at 65 exhibits the architectural boldness or presence of the 'Arts and Craft' properties. I was told that 63 Nightingale Road probably originates from the early post-war years but it makes no more than a neutral contribution to the character or appearance of the Conservation Area. I consider the height, form and detailing of the replacement building in Appeal B as well as those to the rear would be more sympathetic to the qualities of the

Arts and Crafts properties. I am not convinced that the same benefits would arise from the proposals contained in Appeal A.

13. My view on the merits of the individual buildings in Appeal B does not extend to their grouping which would introduce closely spaced buildings into areas currently perceived as being well-treed and open. The dwellings would be partly visible from Nightingale Road and would undermine the sense of openness gained when looking between the existing properties. I consider both schemes would be intrusive and uncharacteristic additions to the Conservation Area.
14. Taking these various points into account I consider neither scheme would preserve or enhance the character or appearance of the Conservation Area which is a requirement of policy C1 of the LP and PPG15. In failing to reflect the form of development in the area I consider the layout would also be contrary to the provisions of policy H14(1)(vi).

Living conditions

15. The Council accepts that there is no material difference between the two schemes. It acknowledges that the appellant's noise survey for Appeal B shows that residents would not be adversely affected by noise or disturbance in either their properties or gardens. It also confirmed that this was no longer a reason for objecting to Appeal A. Nevertheless, the Council sought to suggest that day to day disturbance would be a factor contributing to a loss of privacy. I find this difficult to accept in view of the site's urban location, the scale of the proposed development and the existing sources of road noise.
16. Similarly, I see little reason to conclude that the degree of overlooking between new and existing properties would cause a serious loss of privacy. The proposals would deliver reasonably sized plots with sufficient spacing between dwellings to meet the indicative targets identified in Appendix 2 of the LP.
17. I do not doubt that the new dwellings would be subject to the shading effect of nearby trees although the orientation of the houses would help offset this as confirmed by the appellant's 'shading diagrams'. The Council accepts that the development would provide sufficient amenity space, a reasonable amount of which would be clear of the tree canopies at the rear of plots 1 – 3. However, the rear garden of the replacement dwelling (plot 4) would be dominated by a large deodar cedar. The tree would not cast shade on the house and, as I saw, its canopy is well above ground level. However, its proximity to the property would, in my opinion, influence the use which could be made of the garden.
18. I have some reservations about the affect of the trees on the living conditions of future residents but I do not consider these would be so serious to warrant dismissing the appeals. I therefore find that neither of the appeal proposals would be contrary to policies H14(1)(v) or Appendix 2 of the LP which are designed to ensure privacy and protect residential amenity.

Landscape and trees

19. An arboricultural survey by the appellant was not challenged by the Council. Instead it accepts some trees are in relatively poor condition and could be

- removed for arboricultural reasons. From what I was shown during my site visit I have no reason to disagree.
20. The proposals would involve the removal of a number of trees including about six which are covered by Tree Preservation Orders (TPO)^{2 3}. Most of the trees to be removed are in the rear gardens although a red horse chestnut at the front of the site would be in the way of the access road. The tree is in poor condition but in the short term the removal of this and others on the road frontage would have an obvious affect on the street scene. The appellant seeks to address this by providing replacement planting of sufficient size to have an immediate impact.
 21. The gardens to the rear of the appeal site cannot be fully appreciated from the public realm but, as I have already noted, it is possible to gain an impression of the extent of the tree cover and the depths of gardens from the gaps between houses. Neighbouring residents would be more aware of the tree loss but it would be difficult to appreciate from the cemetery next to the site because the majority of trees on the north-eastern boundary would be retained.
 22. The existing tree cover is an important feature of the Conservation Area but I am not persuaded that the loss of trees to accommodate either development would be detrimental to the character or appearance of the area. The bulk of the peripheral planting would remain as an important screen while the containment of the site means that the degree of tree loss would not be particularly apparent from Nightingale Road. The tops of the largest trees would still be visible behind the frontage development although the substantial boundary trees would be masked by the proposed housing. Replacement planting would help to offset the loss of some trees although the scope for this would be limited.
 23. An additional concern for the Council is the pressure to remove trees which would come from residents of the development. It would be unrealistic to discount the need for appropriate tree maintenance but I do regard this is a significant threat to tree coverage. It would be evident to potential purchasers that this was a well-wooded area where trees were a significant feature in each garden. Property conveyance would also indicate that trees were protected by TPOs and the inclusion of the properties within a conservation area. In my view the Council has sufficient power to prevent the loss of important trees although I consider it would be more difficult to resist pressure to allow the reduction of some trees. However this was not a reason advanced by the Council in refusing permission.
 24. I find the impact of the proposed development on the trees and other vegetation would be consistent with the objectives of policy C1 and N15 of the LP. These require that development within conservation areas respects existing landscape features and characteristic boundary treatments and the retention of as many trees and hedgerows as possible.

² Rickmansworth (Chorleywood Road) Tree Preservation Order 1972 (TPO 063)

³ Three Rivers (Nightingale Road No. 3) Tree Preservation Order 1987 (TPO 244)

Other matters

25. I was provided with a number of appeal decisions including one relating to a previous proposal for the site⁴. In this the Inspector concluded that the impact of the development on the character of the area was insufficient to refuse permission although it reinforced his concerns regarding the effect of development on living conditions. While I have had regard to this and the other appeal decisions it is apparent the circumstances have changed since the earlier appeal because of the designation of the Conservation Area. I have therefore reached my conclusions having regard to the information before me and the evidence I heard during the course of the Inquiry.
26. Local residents have a number of concerns many of which I have previously addressed. Representations were also made in relation to highway and parking difficulties although the Highway Authority has no objection to the development. Flooding and infrastructure problems are mentioned but there is no information to demonstrate the scale of the problem and no suggestion by the statutory undertakers that these are matters which warrant dismissing the appeals. Some residents believe the development would lead to a loss of views but it is not the role of the planning system to protect private interests.
27. In view of my findings it is not necessary to comment specifically on the submitted legal agreements. However, I agree with both parties that financial contributions should be directed solely to meet sustainable transport measures and not to additional unidentified transport needs.

Conclusion

28. My overall conclusion is that the proposals would introduce development into a conservation area which would neither be in keeping with the locality nor preserve or enhance the character or appearance of the Conservation Area. I accept that individually the dwellings in Appeal B would reflect features of earlier building styles but the form and layout would in my view undermine their potential contribution. I do not consider either scheme would adversely affect the living conditions of existing or future residents although I have some reservations about the impact of the retained tree cover and the pressure on the Council by residents to reduce it. The Council has powers to resist this and I do not consider this issue would be sufficient to dismiss the appeal.
29. For the reasons given above and having regard to all other matters, I dismiss the three appeals.

P R Crysell

INSPECTOR

⁴ T/APP/P1940/A/98/292870/P5 & T/APP/P1940/A/98/1014778/P5 - 19 March 1999

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Jameson LLB, Solicitor	Instructed by Three Rivers District Council, Three Rivers House, Northway, Rickmansworth WD3 1RL
He called	
Mr L Moore BA (Hons) Dip TP MRTPI	Area Team Leader, Three Rivers District Council,
Mr S Farrell BA (Hons) MRTPI	Senior Planning & Conservation Officer, Three Rivers District Council
Mr J Percy-Lancaster	Tree Officer, Three Rivers District Council

FOR THE APPELLANT:

Mr M Beard of Counsel	Instructed by PHD Chartered Town Planners, PO Box 700, St Albans, Hertfordshire AL2 3WB
He called	
Mr P Hughes BA (Hons) MRTPI PCMS Dip Man, MCMi	Principal, PHD Chartered Town Planners
Mr C Higenbottam BA BArch DipBCCons(AA) IHBC RIBA	Managing Director, Tempietto Architects, 3 Churchgates, The Wilderness, Berkhamsted HP4 2UB
Mr P Stileman BSc (Hons) MICFor Dip Arb (RFS) M.Arbor.A	Arboricultural Consultant, 9 Chestnut Drive, Berkhamsted, Hertfordshire HP4 2JL

INTERESTED PERSONS:

Sister Rosemary Ashworth (Representing the Convent and residents at 55 & 59 Nightingale Road)	Blakenhall Convent, 55 Nightingale Road, Rickmansworth WD3 7BU
Mr A Smith (Representing local residents)	67 Nightingale Road, Rickmansworth WD3 7BU

DOCUMENTS

- 1 Copy of the Council's letters of notification of the Inquiry
- 2 Suggested conditions for Appeal A: APP/P1940/A/08/2072846
- 3 Suggested conditions for Appeal B: APP/P1940/A/08/2082654
- 4 Suggested conditions for Appeal C: APP/P1940/E/08/2072850
- 5 Unilateral undertaking for Appeal A
- 6 Unilateral undertaking for Appeal B
- 7 Glossary to Appendix 4 of the Three Rivers Local Plan

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- 8 Closing submission on behalf of the Council
- 9 Closing submission on behalf of the Appellant

PLANS

- A A3 drawing showing trees to be retained or those to be removed (LPA)
- B A3 drawing showing revised canopies to three trees (LPA)