

Appeal Decision

Site visit made on 11 January 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 8 February 2017

Appeal Ref: APP/B5480/W/16/3157634

280 Main Road, Gidea Park, Romford, Essex, RM2 6LU

- 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 Mr J Toye against the decision of the Council of the London Borough of Havering.
 - The application Ref P0943.16, dated 17 May 2016, was refused by notice dated 15 July 2016.
 - The development proposed is 2 No detached four bedroom houses with detached garages – sub division of garden.
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Decision

1. The appeal is dismissed.

Main Issues

2. The Council's statement clarifies that there is an error on the decision notice. Reasons 1 and 2 have been combined and repeated. Its statement clarifies this and confirms the five separate reasons for refusal. Accordingly the main issues are:
 - The effect of the proposal on the character and appearance of the area, with particular regard to the protected trees;
 - The effect on the living conditions of the occupiers of existing dwellings, with particular regard to noise and disturbance, privacy and outlook;
 - Whether the proposal makes appropriate provision for infrastructure, with particular regard to school places.

Reasons

Character and appearance

3. The site would be formed from the garden area of No 280 Main Road. Main Road predominantly contains a mix of detached and semi detached dwellings which front the road. It is within the Gidea Park Special Character Area where Main Road is described as a main artery route to the town centre with its special qualities being the architectural quality, built and open spaces. The appeal site and Nos 282 and 284 are an exception to this forming a small group of larger properties set further back from the road with a shared access point. Generally plots are deep although there is some variation in plot width. The erection of two dwellings in this location would not have any physical or visual affinity with the frontage development, even taking into account the greater set back of the appeal premises and its neighbours.
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4. Along the road the pleasant setting of dwellings is enhanced by soft landscaping within gardens and on the street frontage. This includes the tress protected by Tree Preservation Orders TPO 2-03 and TPO 19-71. There is no dispute that there are protected trees within the area of the site that would accommodate the two dwellings, within the wider site and on the street frontage. The trees are visible within the street scene and contribute significantly to its overall character and appearance.
5. I understand that some of the trees are shown on the plans and it is clear that these are to be retained and the application form states 'trees retained shown on plans'. In addition the appellant has now clarified that no other trees would be removed. However, the information submitted with the application was not clear on this point.
6. The information provided on the plans does not clearly show the crown spread and root protection areas of the trees. Furthermore there is no information from a suitably qualified person regarding the condition of the trees. The built form of the houses and the new garage building would be close to some of the trees. Further the trees would be within the new garden areas and there may be construction impacts that require consideration. In the absence of this information I cannot conclude that the construction or the occupation of the dwellings would not harm trees which make a positive contribution to the character and appearance of the area.
7. I therefore conclude that the proposal would have a harmful effect on the character and appearance of the area, with particular regard to the protected trees. It would therefore be in conflict with policies DC61, DC69 and DC60 of the LDF Core Strategy and Development Control Policies Development Plan Document (DPD) and the Protection of Trees During Development Supplementary Planning Document in so far as they require new development to maintain, enhance or improve the character and appearance of the local area.

Living conditions

8. No 282 is a substantial detached dwelling. It has side facing windows and a garden area to the rear. At present the shared access runs up to a single storey garage for No 280. This would be removed as part of the scheme allowing the access to continue to the rear. The access to serve the two new dwellings would run along the common boundary with this property. It would introduce additional access and use for two further properties with associated visitors, deliveries and general daily movements. This would be distinct from the use of an existing residential garden and associated outbuildings.
9. The use of the new access would give rise to unacceptable levels of noise and disturbance to existing occupiers compared with the existing arrangement, even taking into account the removal of the garage from the common boundary. This could be particularly noticeable and intrusive during summer months when the garden areas are likely to be used more intensively and windows left open.
10. The dwellings would be detached and have space around them. They would be set away from the boundaries of the site. The nearby dwellings benefit from large plots. Overall the separation between the dwellings would be generous. As such I do not consider that the properties would appear unduly overbearing

when viewed from the home or gardens of nearby dwellings. In addition the orientation of the houses would not directly face either the front or rear elevations of the existing dwellings including No 282. I understand that some windows would face toward the garden area of No 282. Nevertheless taken together the orientation and separation between the existing and new properties would result in a scheme that would not lead to loss of privacy to the existing dwellings nearby.

11. Whilst I have found that there would not be harm to living conditions of existing occupiers with regard to outlook and privacy this does not alter or outweigh my conclusion on noise and disturbance. I therefore conclude that the proposal would have a harmful effect on the living conditions of the occupiers of existing dwellings, with particular regard to noise and disturbance. It would be in conflict with DPD policy DC61 which seeks to resist new development that would have an unacceptable impact on existing properties and the National Planning Policy Framework (the Framework) which seeks to ensure a good standard of amenity for all existing occupiers of land and buildings.

Infrastructure

12. DPD Policy DC72 seeks to ensure that new development provides for sustainable development through securing contributions towards infrastructure that are necessary to mitigate the impact of the development. LP policy 8.2 requires developments to address strategic as well as local priorities in planning obligations. Policy DC29's overall objective is the provision of adequate primary and secondary education facilities, and the stated means of achieving this include seeking payments from residential developers for the capital infrastructure of schools required to meet the demands generated by the residential development.
13. The Council has supplied a number of recent appeal decisions¹ in which Inspectors have concluded that the approach of Policy DC29, combined with the Council's monitoring arrangements in relation to payments, would not engage the provision of Regulation 123 of the CIL regulations that a planning obligation cannot constitute a reason for granting permission where it would result in funding infrastructure development by means of pooled contributions, particularly following the recent changes to the Planning Practice Guidance. Although the scheme is for two dwellings they would be family sized and likely to generate material additional demand for school places. In that context, the financial contribution which would be provided does not seem to me be disproportionate.
14. Although these policies pre-date the Framework, they remain broadly consistent with paragraph 203, which outlines that planning obligations may still be sought in order to mitigate the impacts of new development. Paragraph 204 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (CIL) outline planning obligations must meet the three tests.
15. It is common ground that the Council's Planning Obligations Supplementary Planning Document is out of date. The Council still considers the evidence background contained in its technical appendices to be relevant. Based on this information the requirements for education relate to the evidence provided

¹ APP/B5480/W/16/3153011; APP/B5480/W/16/3152013; APP/B5480/W/16/3153735; APP/B5480/W/15/3140418

which confirms that there is a shortage of school places across the borough. In particular that there is a need for secondary and post 16 places as well as there being no capacity to accommodate demand for primary and early years places arising from the development.

16. The Council is seeking a contribution of £6000 per dwelling. It sets out that 3% of the total sought would be to monitor the obligations to ensure that no more than five contributions are pooled for individual projects. The appellant states within the grounds of appeal that he would be willing to enter into an agreement. However, I do not have a signed and dated agreement before me for consideration.
17. Whilst no specific project has been identified by the Council which is directly related to the development, it is clear from the evidence that the monies would be targeted at providing additional school places. Moreover, there is a clear shortage of primary and secondary school places in the area where the development would be located. It is the Council's intention to pool this contribution for a specific project to expand an existing school or provide a new school. With regard to Regulation 123 of CIL, the Council has confirmed that it will ensure, through its monitoring arrangements, that no more than five contributions are pooled. There is no evidence before me to suggest that the necessary provision would be made by CIL contributions.
18. I am therefore satisfied that the contribution would meet the three tests set out in paragraph 204 of the Framework and Regulation 122 of CIL which requires obligations to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
19. It would not be appropriate to seek to secure the obligation via condition and therefore in its absence, despite the appellant's willingness, on this issue the proposal would be unacceptable. I conclude that the proposal would fail to make adequate provision towards education in the area. Consequently, the proposal would conflict with Policies DC29 and DC72 of the Core Strategy and Policy 8.2 of the London Plan.

Other matters

20. The appellant has raised the issue of communication and interaction during the application process. However, my considerations relate solely to the planning merits of the case.

Conclusion

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

D J Board

INSPECTOR