
Appeal Decision

Site visit made on 27 March 2017

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/B5480/W/16/3165646

2 Arbour Way, Hornchurch, Essex RM12 5BS

- 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 Mrs S Muldoon against the decision of the Council of the London Borough of Havering.
 - The application Ref P1304.16, dated 4 August 2016, was refused by notice dated 3 November 2016.
 - The development proposed is sub division of existing property to form separate two bedroom house with rear first floor extension and raising roof to existing garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues for the appeal are:
 - Whether future occupiers of the proposed new dwelling would be likely to experience acceptable living conditions in terms of private amenity space provision;
 - The effect of the proposed development on the character and appearance of the area with particular reference to the street tree adjacent to the appeal property;
 - If necessary, whether the proposal makes appropriate provision for infrastructure, with particular regard to school places; and
 - The effect of the proposed parking arrangement on highway safety with particular regard to pedestrians.

Reasons

Living conditions

3. The proposed dwelling would be provided with several areas of private amenity space, one, a triangular shaped area to the side of the property of about 13.6 square metres as indicated on the submitted plans as a courtyard garden area and a second, of about 27.1 square metres situated to the rear. The rear amenity area would taper back from the proposed dwelling and would have an irregular shape.
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4. The proposed rear garden for the new dwelling would be substantially enclosed by the close boarded fence on the common boundary with the rear gardens of properties on Maylands Avenue and by the proposed dwelling, which would present single storey and two storey walls towards the garden. Due to the modest scale, depth and irregular shape of the garden areas, future occupiers would experience an undue sense of enclosure. At the time of my site visit, I observed that much of the rear garden of the property was receiving direct sunlight and I have had regard to the appellant's comments regarding the subjectivity of the Council's conclusions in this respect. However, due to the orientation and position of the proposed amenity space in relation to the proposed dwelling, I nevertheless consider that the proposed private amenity space is also likely to experience overshadowing for significant parts of the day.
5. I have had regard to the Council's Design for Living Residential Design Supplementary Planning Document 2010 (SPD) which includes guidance in respect of amenity space provision. Whilst the SPD does not prescribe fixed standards for private amenity space, it sets out that the fundamental design considerations for amenity space should be its quality and usability. In this case, I find the proposed private amenity space to be modest in scale, awkwardly shaped and it would experience significant overshadowing for part of the day and experience an undue sense of enclosure. In combination, these factors would have a significant effect upon the practical usability of the private amenity space. Consequently, the appeal scheme includes a design of amenity space which the SPD states should be avoided.
6. To conclude on this matter, I consider that future occupiers of the proposed new dwelling would not be likely to experience acceptable living conditions in terms of private amenity space provision. The proposal conflicts with London Borough of Havering Core Strategy and Development Control Policies Development Plan Document 2008 (DPD) Policy DC61 which amongst other things includes that development must meet the needs of all people of all ages. The proposal also conflicts with the SPD and with the National Planning Policy Framework (the Framework) which in paragraph 17 includes that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings.

Character and appearance

7. I saw at my site visit the large street tree in the footway to the front of the appeal property. Whilst I have had regard to the appellant's comments in this respect, my observations on site accord with the view of the Council Officer in that the tree would conflict with access to the proposed parking space to the front of the entrance to the existing dwelling. In the absence of it being demonstrated to the contrary, I consider that the provision of the proposed parking space would be likely in practicality, to require the removal of the street tree.
8. The street tree is one of a number of mature trees in the street which I consider to have significant amenity value. The loss of the tree would therefore have a harmful effect on the character and appearance of the area, contrary to DPD Policy DC60 which includes amongst other things that the amenity value of trees will be protected. The proposal also conflicts with the Council's Streetcare – Environmental Maintenance Tree Strategy 2009-2019 which includes that trees that are planted along the highways are an integral

and historic component of the urban landscape and its architecture, and contribute to the local character and define a sense of place.

Infrastructure School Places

9. DPD Policy DC72 seeks to ensure that new development provides for sustainable development through securing contributions towards infrastructure where the appropriate tests are met. Policy 8.2 of the London Plan includes amongst other things that development proposals should address strategic as well as local priorities in planning obligations. DPD Policy DC29 is concerned with the provision of primary and secondary education facilities including by seeking payments from residential developers for the capital infrastructure of schools required to meet the demands generated by the development.
10. Whilst the DPD Policies predate the Framework, they remain broadly consistent with paragraph 203 which states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Paragraph 204 of the Framework states that where planning obligations are sought, they must meet all of the three tests. The three tests are also set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) require that planning obligations should be necessary to make the development acceptable in planning terms; directly relates to the development; and be fairly and reasonably related in scale and kind to the development.
11. The Council has stated that its Planning Obligations SPD 2013 (SPD) is out of date in terms of the pooling of contributions due to Regulation 123 of the CIL Regulations. However, the evidence as set out in the supporting technical reports to the SPD demonstrates a need for school places across the borough and I note that there is no spare capacity to accommodate demand for primary and early year's school places generated by new development. The Council is seeking a contribution of £6000 per net dwelling, a figure derived from the SPD which includes 3% of the total sought to be to monitor the obligations to ensure that no more than five contributions would be pooled for individual projects. 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, which are not allocated on a geographical or a catchment basis. The Council has cited several appeal decisions¹ to which I have had regard. I am satisfied that the contribution sought by the Council would meet the three tests set out in paragraph 204 of the Framework and Regulation 122 of CIL.
12. The parties do not dispute that the proposed development would give rise to a need for additional educational provision. I am satisfied that the contribution sought by the Council would meet the three tests set out in paragraph 204 of the Framework and Regulation 122 of CIL.
13. I have had regards to the comments of the appellant that she had not been able to enter into an agreement until a planning application is recommended for approval by the Council and that the appellant is happy for an agreement to be in place. However, no such planning obligation has been provided and it would not be appropriate to seek to secure the obligation via condition given

¹ APP/B5480/W/16/3157634; APP/B5480/W/16/3160652.

the guidance in the Planning Practice Guidance² 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 DPD and Policy 8.2 of the London Plan.

Highway safety

14. Both the donor property and proposed new dwelling would be provided with two off street parking spaces, perpendicular to the road. The Highways Authority has objected to the proposal on the basis that the retained and proposed spaces are less than the minimum requirement of 4.8 metres deep and therefore creates the potential for vehicles to overhang the highway.
15. Based upon the figures provided by the Council which have not been challenged, the parking spaces do not meet the depth required by the Highway Authority, although they are not substantially smaller. However, there is evidence before me that cars of a range of sizes are already parked on site without overhanging the footway. My observations on site accord with this. Therefore, whilst the size of the parking spaces may not meet the required standards of the Highway Authority and this may increase the potential for vehicles to overhang the footway, and vehicles may be parked close to the proposed dwellings, on the balance of evidence, I consider that no significant harm would arise to pedestrian safety or the quality of the environment from the appeal proposal in this regard.
16. To conclude on this matter, the appeal proposal would not have an unacceptable effect on highway safety and therefore does not conflict with DPD Policy DC33 which is concerned with car parking and DPD Policy DC34 which includes that in the design and location of access arrangements within development developers will be required to take account of the needs of pedestrians. My conclusions on this matter do not however outweigh my findings in respect of the other main issues.

Other matters

17. I have had regard to the comments concerning the need for additional small scale houses in the Borough, but this does not lead me to a different conclusion. The appellant's comments regarding the Council's handling of the application are matters for local government accountability.

Conclusion

18. For the above reasons and having considered all matters raised, I conclude that the appeal should be dismissed.

Philip Lewis

INSPECTOR

² PPG Paragraph: 010 Reference ID: 21a-010-20140306