

Appeal Decision

Site visit made on 16 May 2017

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 06 June 2017

Appeal Ref: APP/B5480/W/17/3168250
101 Birch Crescent, Hornchurch RM11 2NQ

- 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 Ronak Patel against the decision of the Council of the London Borough of Havering.
 - The application Ref P1570.16, dated 1 April 2016, was refused by notice dated 22 November 2016.
 - The development proposed is a new build dwelling on the land to the rear of 101 Birch Crescent.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues of the appeal are the effect of the proposal on:
 - (i) the character and appearance of the surrounding area;
 - (ii) the living conditions of the existing occupiers of 95, 97, 99 and 101 Birch Crescent, with particular regard to outlook and privacy; and
 - (iii) whether the proposal makes appropriate provision for infrastructure, with particular regard to school places.

Reasons

Character and appearance

3. The appeal site is part of the rear garden of 101 Birch Crescent, which is an end of terrace, two-storey dwelling on a relatively prominent corner plot. At the time of the site visit the appeal site had been sub-divided from the host dwelling and rear garden area by an approximately 1.8 metre high wooden fence. The appeal site consists of a single storey garage, accessed from Macdonald Avenue, and two sheds located close to the boundary of 99 Birch Crescent. The remainder of the plot is mainly of uneven concrete and appeared largely unused.
 4. The surrounding area is predominately residential, with the majority of dwellings being two-storey terraces. The rear gardens of most dwellings are of a significant size and provide for an open and spacious character.
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5. I am mindful of the planning history in relation to the site. In particular, the previously refused scheme for a new build dwelling in a similar location to the appeal scheme before me, which was refused in June 2016.¹
6. The proposed dwelling would have a similar front building line and overall ridge height to that of 1 Macdonald Avenue. Furthermore, given the minimal separation distance between No 1 and the proposed dwelling, from views along Macdonald Avenue, the proposal would appear as an end of terrace dwelling.
7. Nevertheless, the substantially smaller plot size is atypical to the area. Accordingly, it is considered that the limited plot size would result in a form of development that would appear cramped and compressed in an area of otherwise well-proportioned plots. The proposal would therefore be clearly at odds with the established character and appearance of the surrounding area.
8. Consequently, the proposal fails to accord with Policy DC61 of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document 2008 (the DPD) which, amongst other things, requires development to maintain, enhance or improve the character and appearance of the local area.

Living conditions

9. The proposed dwelling would be directly adjacent to 1 Macdonald Avenue; however the only window likely to be affected by the proposal would be that of a bathroom. As such, it is not considered that the proposal would significantly harm the living conditions of the occupiers of No 1.
10. It is noted that the distance from the boundary with 99 Birch Crescent has increased from the initial scheme, to a distance of approximately 3.25 metres. Despite the increase of approximately 0.45 metres, the dwelling would still remain closely situated to the rear garden boundary of No 99. From the evidence before me, and from observations made during the site visit, I am of the view that this relationship would lead to the rear gardens of Nos 95, 97, 99 and 101 being directly overlooked from the upper floor bedroom windows of the proposed dwelling at close range. This would result in an unacceptable loss of privacy for those occupiers.
11. In addition, given the scale and location of the proposal, the dwelling would appear as a dominant and overbearing feature to the rear first floor windows and rear gardens of Nos 95, 97, 99 and 101.
12. Accordingly, the proposal would materially harm the living conditions of the occupiers of 95, 97, 99 and 101 Birch Crescent, due to loss of privacy and a sense of an overbearing presence that would lead to oppressive living conditions for existing residents. The proposal therefore fails to comply with Policy DC61 of the DPD which, amongst other things, seeks to ensure that new development does not have an unacceptable impact on the living conditions of existing occupiers.

Infrastructure – school places

13. Paragraph 204 of the National Planning Policy Framework (the Framework) and Regulations 122 and 123 of the Community Infrastructure Levy (Amendment)

¹ Council reference P0573.16

Regulations 2015 (the CIL Regs) states that obligations should only be sought where they are 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.

14. Policy DC72 of the DPD seeks to ensure that new development provides for sustainable development through securing contributions towards infrastructure, where the appropriate tests are met. Policy DC29 of the DPD is concerned with the provision of primary and secondary education facilities including seeking payments from residential developers for the capital infrastructure of schools required to meet the demands generated by the development. In addition, Policy 8.2 of TLP states, amongst other things, that proposals should address strategic as well as local priorities in relation to planning obligations.
15. Within the evidence submitted by the Council, it is acknowledged that as a result of the changes made to the CIL Regs, with regard to pooling of contributions, the Planning Obligations Supplementary Planning Document 2013 (the SPD) is out of date. Nonetheless, the evidence contained within the technical appendices to the SPD is still considered relevant. The appendices clearly demonstrate a need for school places across the Borough. Furthermore, submitted evidence demonstrates that no spare capacity exists within the Borough for the demand for primary and early year's school places generated by new development.
16. Paragraphs 17 and 72 of the Framework confirm that planning should take account of and support local strategies to deliver sufficient community and cultural facilities and services to meet local needs. Furthermore, the Government attaches importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities.
17. As such, the Council is seeking a contribution of £6000 per net dwelling, a figure which is derived from the SPD and includes 3% of the total sought to monitor the obligations in order to ensure that no more than five contributions would be pooled for individual projects. The Council has confirmed that the contribution would be used on a particular school expansion or new school project.
18. From the evidence before me, a contribution towards education provision is justified and would meet the three tests. In the absence of such an obligation, the question arises is whether the matter could be dealt with by condition. However, Planning Practice Guidance advises that a positively worded condition should not be used to require payment of money or other contributions. It also advises that a negatively worded condition limiting the development that can take place until an obligation has been agreed is unlikely to be appropriate other than in exceptional circumstances. Such circumstances include more complex and strategically important development, where there is clear evidence that the delivery of the development would be put at risk². These circumstances do not exist in this case.
19. In the absence of an obligation the proposal therefore fails to make provision for infrastructure and is contrary to Policies DC29 and DC72 of the DPD and Policy 8.2 of TLP.

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

Conclusion

20. Harm in relation to the living conditions of the occupiers of 1 Macdonald Avenue has not been found. However, the harm in relation to the character and appearance of the area and to the living conditions in relation to the occupiers of 95, 97, 99 and 101 Birch Crescent is decisive. In addition, a planning obligation has not been provided.
21. As such, for the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Helen Cassini

INSPECTOR