



Appeal Decision

Site visit made on 10 October 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 21st November 2017

Appeal Ref: APP/Q5300/W/17/3179275

2 Avenue Road, Southgate, N14 4EJ

- 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 EDIT Residential (Southgate) Ltd against the decision of the Council of the London Borough of Enfield.
 - The application Ref 17/00219/FUL, dated 17 January 2017 was refused by notice dated 27 March 2017.
 - The development proposed is full application for 4 x dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Additional plans have been submitted since the determination of the application showing obscure windows in Unit 4. The terrace house type floor plans have also been revised to show that the houses would comprise 3 bedrooms and 1 study as opposed to four bedrooms in order to meet space standards. The revised plans do not fundamentally alter the nature of the proposal and I do not consider that the interests of the Council or parties would be prejudiced by accepting them and I have considered the appeal on this basis.

Preliminary Matters

3. The appellant has submitted additional information with the appeal which the Council confirms would satisfy its requirements in relation to SUDs and drainage, subject to the imposition of appropriate conditions and, therefore, no longer intends to contest reason for refusal 6. On the basis of everything which I have seen in submissions and on my site visit I have no reason to disagree.

Main Issues

4. The main issues in this case are:
 - The effect of the proposal on the trees protected by the Tree Preservation Order and the character and appearance of the area;
 - The effect of the proposal on the living conditions of future occupiers with specific reference to outdoor amenity space, light and outlook;
 - The effect of the proposal on the living conditions of existing occupiers at Gloucester Court and Orchard Road with specific reference to outlook, light and privacy; and
 - The effect of the proposal on highway safety with specific reference to the proposed access.

Reasons

Trees

5. The appeal site is situated on the south-eastern side of Avenue Road, to the rear of 2 Avenue Road and Ashleigh Court. The host property is a two-storey detached dwelling with a large garden to the rear. Along the western boundary of the appeal site is a large residential block (1-8 Gloucester Court) and to the north west of the site is Ashleigh Court. To the south east lie the rear gardens associated with properties on Orchard Road.
6. The site has mature trees and vegetation along its south east and north western boundaries which are protected by a Tree Preservation Order (TPO 390/2016). Schedule 1 identifies a group (G1) comprising of 22 Limes (pollards) on the north east and south east boundary of the land to the rear of 2 Avenue Road.
7. The lime trees on the north-east boundary are more regularly spaced and have been re-pollarded in the recent past. Those on the south-eastern boundary have been allowed to grow out and some reduction or re-pollarding would be required in the future. The tree survey identifies that the trees range from low quality (C2) to trees of moderate quality (B2). The vast majority of the trees are identified as having a lifespan of over 50 years.
8. On the basis of observations on my site visit, the trees contribute to the verdant character of the area, provide visual relief from the surrounding built development and provide an effective screen between developments which back onto the site. They are visible from surrounding properties and also from Avenue Road in gaps between the houses. Consequently, I find that they make a significant contribution to the character and appearance of the area.
9. It is proposed to erect 4 dwellings in the rear garden which would be accessed from Avenue Road. Units 1-3 would form a row of two storey terraced houses whilst unit 4 would be a three storey detached house.
10. British Standard BS 5837:2012 (BS 5837) Trees in relation to design, demolition and construction-Recommendations¹ states that the constraints imposed by trees, both above and below ground should inform the site layout design. It goes on to say that particular care is needed regarding the retention of large, mature, over-mature or veteran trees which become enclosed within the new development. Where such trees are retained, adequate space should be allowed for their long-term physical retention and future maintenance.
11. Paragraph 5.3.1 of BS 5837 states that the default position should be that structures are located outside the Root Protection Areas (RPAs) of trees to be retained. However, it goes on to say that where there is an overriding justification for construction within the Root Protection Area, technical solutions might be available that prevent damage to the trees(s).
12. The RPA of the Lime trees situated on the north western boundary (T12-18) would be within the garden areas of Units 1 and 3. However, the proposed built development would be outside the RPA of these trees and I, therefore, consider that the proposed tree protection measures such as protective fencing would safeguard these trees during the construction process.
13. However, Unit 3 would be situated in close proximity to a number of protected Lime trees on the south-eastern boundary of the site. Unit 4 would also be situated within the root protection area of trees. Although no details are before me in

¹ British Standards Institution 2012

relation to the specific percentage of the RPA of the trees which would be affected by built development, it is clear from the Tree Protection Plan that there would be significant overlap. Table 1 of Appendix B of the Arboricultural Assessment and Tree Protection Method Statement (AA) identifies the perceived threat and likely impact of the proposed development and management measures in order to address those threats.

14. The AA highlights the potential threats as compaction of soil, tearing of soil by machinery, the construction and installation of foundations, pruning to facilitate construction and erection of scaffolding the installation of vehicle hard-standing and the subsequent potential root severance and the degradation of the rooting environment with the potential severe set-back to tree health.
15. The appellant acknowledges that there is incursion into the root protection areas of several trees, but states that it does not intend to sever the roots as the intention is to build over them using piled foundations with a floor slab which does not intrude into the ground. General details of the 'Abbey Pynford System' are provided. The appellant considers that this would be in accordance with BS 5837.
16. The report states that the design of appropriate foundations is a matter for a structural engineer. However, in the absence of evidence as to the percentage of the root protection area which may be affected by the proposed works and in the absence of details regarding how the proposed construction of the special foundations would work in this specific case, I am unable to be certain that the roots of the trees would not be adversely affected and that the trees could withstand any potential damage or remain viable in the long term. For example, the proposed foundations may result in less water filtration to the soil and roots and affect the health of the trees in the longer term.
17. Furthermore, paragraph 7.1.1 of BS 5837 states that construction within the RPA should accord to the principle that the tree and soil structure should take priority, and the most reliable way to ensure this is to preserve the RPA completely undisturbed. Soil structure should be preserved at a suitable bulk density for root growth and function, exiting rootable soil retained and roots themselves protected.
18. In my view, due to the very close proximity of the trees to units 3 and 4 and the significant overlap of the proposed built development with root protection areas, notwithstanding the proposed measures, it is highly likely that some damage would occur to the roots or changes to the rooting environment which could result in a significant deterioration in the health of the trees or potential loss of the trees.
19. In light of this serious threat, I do not consider that it is appropriate to leave the acceptability of this matter to conditions. Furthermore, there is no specific evidence before me that there is an overriding justification for construction within the Root Protection Area of a number of trees protected by the Tree Preservation Order. The proposal would not, therefore, accord with the principles of BS 5837.
20. There is significant overlap of the existing crowns of the trees and proposed units 3 and 4 and thus there is potential to damage the crown of the trees, including the requirement of access pruning to facilitate construction and erection of scaffolding. It is suggested that the threat can be managed through carefully specified and supervised tree surgery.
21. I also note that the AA refers to the requirement to pollard the trees as part of regular maintenance and if this takes place in advance of construction it may mitigate the potential for conflict between the building and scaffolding and the canopy, although no details are before me with regards to the extent of the spread of any branches post pollarding. However, whilst the Tree Protection Plan shows

protective tree fencing along the south eastern boundary this would be right up to the boundary of the proposed unit 3, leaving no room for scaffolding around the unit. Furthermore, even pollarded trees would be in very close proximity to the proposed building. I am not, therefore, persuaded on the evidence before me that the construction of the buildings could be undertaken without harm to the canopy of the protected trees on the south east boundary.

22. BS 5837 states that root systems, stems and canopies, with allowance for future growth, need to be taken into account in all projects. Unit 3 is situated in very close proximity to the trees and the site layout plan indicates that the crowns of trees overlapping with the rear elevation of this unit with the potential to restrict access to light. Whilst the Lime trees may be pollarded they would, nevertheless, grow in between and there is potential for the regrown stems and leaves to become a potential nuisance. As the Council point out a Lime tree can grow extension growth up to 2m in length. Consequently, there is potential for branches to interfere with Unit 3 and for shading and loss of light to the garden area.
23. For the reasons set out at paragraphs 30-36 below, I am satisfied that the windows serving the proposed units would receive sufficient light; however, I consider that as the amenity areas of Units 3 and 4 would be dominated by trees this would limit the enjoyment of the space for future occupiers.
24. Due to the potential nuisance and inconvenience caused by building and tree maintenance, branch encroachment and shading it is likely that the trees would require regular pollarding/pruning which would be both onerous and expensive to future occupiers.
25. Consequently, even if the construction methods proposed would avoid immediate harm to the trees, I consider that the proposal would give rise to applications to restrict, reduce or remove the trees to the detriment of the character and appearance of the area. Although the subject of a TPO, I consider that it would be difficult for the Council to reasonably resist works to the trees where matters of safety, damage to buildings or the curtailment of light are involved.
26. The appellant considers that measures for surfacing along the access road would improve the rooting environment for trees 81-84. However, this benefit would not outweigh the significant harm to the trees along the south eastern boundary of the site.
27. For the reasons stated, I conclude that the proposal would have a materially harmful effect on trees protected by a TPO and would have a harmful effect on the character and appearance of the area. It would, therefore, be contrary to Policy DMD7 of the Council's Development Management Document (DMD) (2014) which states that, amongst other things, development on garden land will only be permitted if, amongst other things, it does not harm the character and appearance of the area. Conflict also arises with Policy DMD 80 of the DMD which states that development that involves the loss of or harm to trees covered by a Tree Preservation Order will be refused.

Living conditions-Future Occupiers

28. In response to the concerns raised by the Council, a Daylight/Sunlight assessment has been undertaken which shows that all of the rooms assessed would achieve ADF values comfortably above the BRE guidelines, even with obscure glazing and I have no reason to disagree.

29. The Assessment also quotes Littlefair² which contains no clear guidelines for the assessment of outdoor amenity spaces serving the proposed development; however, section 3.3 provides some general guidance. It states that normally, trees and shrubs do not need to be included in the shading calculations partly due to their shape unpredictability and partly because the dappled shade of a tree is more pleasant than the deep shadow of a building. It suggests that at least 50% of any garden or open spaces should receive no less than 2 hours of direct sun on the spring equinox (March 21st).
30. An analysis of the amenity space of unit 4 has been undertaken as this was considered to be the unit which is likely to be worst performing. The Assessment shows that the courtyard amenity space for Unit 4 would receive good levels of sunlight, comfortably within BRE Guidelines. It also concludes that the amenity space for unit 3 would perform at least as well.
31. Unit 4 has three separate amenity spaces including a courtyard, upper floor terrace and a garden of around 55m² to the south east of the proposed dwelling. The plans show that the garden would be significantly overshadowed by a mature sycamore which has an extensive crown spread. The garden would also be over-shadowed by smaller trees.
32. The proposed garden depths of units 1-3 are around 15m and the trees are to be retained within the appeal site to the rear of the gardens. The mature trees would also be retained on the south eastern boundary. Consequently, the amenity space serving Unit 3 would be surrounded on two sides by mature trees. Whilst I acknowledge that the Limes would be pollarded the foliage would, nevertheless, recover in between pruning. Notwithstanding the results of the assessment, given the location of the trees to the south and east, I consider that the trees would almost certainly reduce the sunlight available to the gardens of Unit 3 and Unit 4.
33. Although the assessment concludes that the amenity spaces would meet the minimum requirement for sunlight, it is recognised that it is difficult to make such assessments due to the nature of trees. Furthermore, I consider that future occupiers would have their own expectations with regards to the amount of sunlight that they would expect their gardens to receive. Moreover, future occupiers would wish to cultivate their gardens and may perceive the overshadowing caused by the trees to be inhibitive.
34. Taking these factors in combination, I conclude that the amenity areas of Units 3 and 4 in particular would be dominated by the trees which would offer shade but would limit the enjoyment of these areas by future occupiers. The proposal would, therefore, fail to provide high quality, usable amenity spaces which would receive good amounts of sunlight to the detriment of future occupiers.
35. With regards to Unit 4, the kitchen/dining space would benefit from a window to the front, a sky light and bi-fold doors onto the courtyard area and as such I consider the outlook to this room would be acceptable. The lounge would only have bi-fold doors onto the courtyard which would be enclosed by a high wall and would not, therefore, have an acceptable outlook. The Study/playroom would not have windows and whilst the plans are not entirely clear, it does appear to have a glazed door which would provide some outlook.
36. The master bedroom on the second floor would have direct access via bi-fold doors onto a large enclosed terrace. The two bedrooms on the first floor would look directly onto the rear garden. Amended plans have been received showing those windows obscured to 1.6m above finished floor level in order to address overlooking

² Site Layout Planning for Daylight and Sunlight (SLPDS) (Littlefair, BRE 2011)

issues. However, the obscure glazing would reduce the outlook from those windows. Overall, I consider that the outlook from Unit 4 would be poor.

37. For the reasons stated above, I conclude that the proposal would harm the living conditions of future occupiers as it would fail to provide high quality, usable amenity spaces which would receive good amounts of sunlight and as Unit 4 would have a poor outlook. It would, therefore, be contrary to Policies CP30 of the CS, Policies DMD6, DMD 8, DMD 9, DMD 37 of the DMD and the London Housing SPG (SPG) (2016) which collectively seek to ensure that new residential development is of a high quality of design, preserves amenity and provides good quality private amenity space.

Living conditions of Existing Occupiers

38. Unit four would be situated on the western boundary of the site, beyond which lies a new development known as 1-8 Gloucester Court which has roof lights, windows and balconies facing towards the application site. Most of the overlap would be single storey; however, the 3 storey element of Unit 4 would be immediately adjacent to the neighbouring building where its pitched roof contains roof lights which are likely to serve habitable rooms.
39. An update to the Daylight/Sunlight assessment has been undertaken which concludes that the two roof lights in Gloucester Court would comfortably meet the BRE requirements and receive sufficient sunlight/daylight. The Study does not address outlook, however, the appellant considers that the roof lights are angled skywards and would, therefore, provide unobstructed outlook in spite of the proposed development. However, to the contrary, the roof lights are angled towards the site and occupiers currently have an outlook towards the site and the sky. The three-storey element of the building would be in close proximity and would, therefore, reduce outlook and appear overbearing to existing occupiers. The skylights serve two bedrooms one of which has another window, however, the other bedroom does not appear to have a principal window and is, therefore, reliant on the skylight for outlook.
40. Concerns are also raised regarding the potential for overlooking from the south facing windows of Unit 4 to the neighbouring properties at Orchard Road. The appellant has submitted revised plans showing those windows on the south elevation obscured 1.6m from finished floor level. This would reduce the degree of overlooking to properties on Orchard Road; however, it would also reduce the outlook available from the bedrooms of Unit 4. Nevertheless, with the suggested obscure glazing, I consider that the proposal would not have a harmful effect on the living conditions of occupiers at Orchard Road.
41. For the reasons stated, the proposal would have a harmful effect on the existing occupiers of the properties affected at Gloucester Court with specific reference to outlook. The proposal would, therefore be contrary to Policies DMD6, DMD7, DMD8, DMD10 and DMD37 of the DMD which collectively seek to secure high quality development which maintains sufficient separation distance between properties and preserves residential amenity.

Highway Safety

42. The access to the development from Avenue Road would be situated between the host property and the adjacent property. The proposed development would generate around 10 total vehicle movements and 11 pedestrian movements (in or out) over a whole day which may peak at around 2 vehicle movements an hour. There is no evidence before me to suggest that the slight increase in vehicle

movements would restrict the free flow of traffic on Avenue Road or result in harm to highway safety.

43. The width of the cross over onto Avenue Road would be 3m which would allow one vehicle to access the site at a time. The visibility splays onto Avenue Road would be 2.4m by 43m, as shown on drawing 16090-01-103 in accordance with the Manual for Streets (MfS) (2007). This would provide sufficient visibility for vehicles exiting the site. The width within the site would be around 5m which would allow two vehicles to pass.
44. The proposed access gates would be around 3.6m and the Council is concerned that this would lead to vehicles mounting the kerb; however, the appellant has indicated that they would be willing to increase the width of the cross over if so required. The appellant has also indicated that they would be willing to set the proposed automatic gates 5m back from the edge of the carriageway if so required. These details could have been required by condition, had I decided to allow the appeal.
45. The Council consider that footway visibility from the access in both directions has not been improved and is restricted by the fence of the adjacent property which is 3rd party land. However, the appellant has confirmed that the fences are within their control and that the fences and associated hedge could be amended to provide for any visibility splays which could have been required by condition had I decided to allow the appeal. Consequently, I am satisfied that footway visibility would be satisfactory subject to condition.
46. The proposed access road would be around 4.5 to 5m in width for most of its length which, as illustrated in figure 7.1 of MfS would allow two cars to pass and for a car to pass a cyclist or pedestrian. There would be a section of around 7.5m where the drive would reduce to 3m in width. The information accompanying the application shows a shared surface pedestrian route. On the basis of the submitted drawings and observations on my site visit there would be clear forward visibility along the access drive. The shared surface would be subject to a low level of traffic and I agree that the narrowing of the section of the access between dwellings would act as a natural traffic calming measure.
47. MfS shows that shared surface arrangements, where there is no demarcation between vehicles and pedestrians, works best in relatively traffic calmed environments. There would be sufficient space for two cars to pass along the access road. Traffic would be moving slowly and the risk of vehicular/pedestrian collision would be low. The detailed design of the shared surface could have been conditioned had I decided to allow the appeal.
48. In terms of the proposed delivery and service arrangements the appellant considers that they are acceptable when assessed against two similar back land residential schemes at Slade Hill³ and Waverley Court⁴ which have both been approved by the Council. The proposed development would adopt an on-street delivery strategy with a temporary bin collection being within 10m from the refuse vehicle. The Manual for Streets states that residents should not normally be required to carry waste more than 30m to the storage point and waste collection vehicles should be able to get within 25m of the storage point. The proposal meets with these standards. The number of bins to be provided could be agreed by way of a condition. Furthermore a width of 4.1m is sufficient to allow vehicles to pass one another at the bin storage area. Further details regarding refuse arrangements could have been required by condition had I decided to allow the appeal.

³ LPA Ref: TP/11/1270

⁴ LPA ref: 17/00493/FUL

49. Refuse collection vehicles and other larger delivery vehicles would be required to park temporarily on Avenue Road for a short period of time. There is no parking restrictions on the road at present, other than to prevent the blocking of existing driveways. Furthermore, the road is sufficiently wide to accommodate parked vehicles on both sides of the road without disruption to the free flow of traffic. The TRICS data submitted with the planning application showed that there would be a maximum of 1-2 weekly delivery vehicles arising from the development. Consequently, there is no cogent evidence before me that the parking of service vehicles temporarily on the street would disrupt the free-flow of traffic.
50. The Council consider that due to the considerable distance between the street and the new dwellings, delivery vehicles would be encouraged to enter the site instead of stopping at the kerbside. However, the appellant proposes that the delivery process would be managed by way of an intercom and will be advised to deliver from the street. A 'no hGV access' sign would support this in a similar arrangement to that proposed on a similar development (Waverley Court). Details of the arrangements for these cases are not before me.
51. In terms of smaller delivery vehicles, a swept path analysis has been submitted which the appellant considers demonstrates that a compact van measuring 1.5m length or a small van 1.7m in length along with deliveries being undertaken by car could easily access the parking area without any issues. However, there would not be a dedicated turning area and vehicles would be dependent upon the parking spaces associated with the units in order to turn. Particularly in relation to Unit 3 turning space would be tight resulting in a vehicle making multiple manoeuvres.
52. Furthermore, if the parking spaces for the units were fully occupied there would be nowhere for vehicles to turn. This could result in vehicles having to reverse a long distance along the driveway and through the narrow stretch between the buildings. Given the shared nature of the surface this could result in potential vehicular and pedestrian conflict. In my view, delivery vehicles would need to be prevented from entering the site which may be achieved by the gate and intercom system; however, details of such a system are not before me. I am concerned that there may be the potential for the gate being left open or residents allowing such vehicles into the site.
53. Given the potential for vehicular and pedestrian conflict, I am not prepared to leave such an arrangement to a condition. This is a matter which I would have gone back to parties on had I decided to allow the appeal. As it stands, there is insufficient evidence before me on this particular matter to conclude that the proposal would not result in harm to highway and pedestrian safety.
54. An outline Fire Strategy and letter of confirmation from the London Fire Brigade has been submitted which confirms that a fire engine would not be able to access the site but that compensatory measures including the installation of a domestic sprinkler system to each dwelling, an enhanced fire alarm and detection system. The Fire Strategy also confirms the location of the closest fire hydrants in the case of an emergency. A letter from the London Fire Brigade confirms that it is satisfied with the arrangements subject to the above mitigation measures and the Council now confirm that the arrangements are acceptable.
55. The appellant has confirmed that they would implement a sustainable drainage surface and that they intend to provide cycle parking in accordance with London Plan 2016 standards. I agree that these details could have been secured by condition, had I decided to allow the appeal.

56. The Council refer to an appeal decision (AP/Q5300/W/16/3150823) at Bycullah Road. However, in this case there appeared to be significant levels of on-street parking and the road is significantly narrower and thus the parking of vehicles on-street would have caused traffic problems. The case is not, therefore, directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.
57. I have concluded that the proposal would not affect the free flow of traffic on Avenue Road and that the geometry of the access to Avenue Road would be acceptable subject to conditions. Forward visibility and the shared surface arrangement would be acceptable subject to conditions. However, I have concerns regarding the turning of delivery vehicles within the site and there is insufficient evidence before me to conclude that the proposed gate and intercom system would prevent access of delivery vehicles and thus avoid potential vehicular and pedestrian conflict.
58. For the reasons stated, there is insufficient evidence before me to conclude that the proposal would not cause harm to highway or pedestrian safety. Conflict would, therefore, arise with Policies DMD 45 and DMD 47 of the Council's Development Management Document (DMD) (2014) which together, amongst other things, seek to ensure that development makes provision for attractive, safe, clearly defined and convenient routes for pedestrian and cyclists and provide sufficient parking. New development will only be permitted if the access and road junction is appropriately sited, and is of an appropriate scale and configuration and that there is no adverse impact on highway safety and the free flow of traffic. Safe and functional provision should also be made for refuse collection and other service vehicles and emergency service vehicles.

Other matters

59. The proposal would make a contribution, albeit limited to housing land supply. It would also have some economic benefits in the short term during the construction phase and in the longer term as occupiers would support local businesses. These factors weigh in favour of the proposal.
60. On the other hand, I have concluded that the proposal would harm the trees which are subject to the TPO and consequently harm the character and appearance of the area. Furthermore, I have concluded that the proposal would harm the living conditions of existing and future occupiers. I am also unable to conclude that the proposal would not have a harmful effect on highway safety. Consequently, I conclude that the totality of harm I have identified would outweigh the benefits of the proposal. The proposal would not, therefore, represent sustainable development.

Conclusion

61. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector