
Appeal Decisions

Site visit made on 11 January 2018

by A A Phillips BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2018

Appeal A Ref: APP/R5510/W/17/3177014 38 - 40 Ducks Hill Road, Northwood HA6 2SB

- 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 Vijen Shah of Newstone Developments Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 71798/APP/2016/2997, dated 3 August 2016, was refused by notice dated 5 January 2017.
 - The development proposed is the erection of a three storey building to create 9 x 3-bed self-contained flats with car parking within basement, with associated parking and landscaping, installation of a vehicular crossover to front and detached summerhouse to rear, involving the demolition of the existing houses.
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Appeal B Ref: APP/R5510/W/17/3179908 38 - 40 Ducks Hill Road, Northwood HA6 2SB

- 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 Vijen Shah of Newstone Developments Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 71798/APP/2017/803, dated 3 March 2017, was refused by notice dated 22 June 2017.
 - The development proposed is the erection of a three storey building to create 9 x 3-bed self-contained flats with car parking within basement, with associated parking and landscaping, installation of a vehicular crossover to front and detached summerhouse to rear, involving the demolition of the existing houses.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for Costs

3. With respect to Appeal B an application for costs was made by Mr Vijen Shah against the Council of the London Borough of Hillingdon. This application is the subject of a separate decision.

Procedural Matters

4. With respect to both appeals I have used the above addresses rather than the address set out on the application forms as they better describe the site the subject of the appeals.

5. I have also used the local planning authority's descriptions of development rather than the ones used on the application forms as they better describe the proposals before me.
6. I have noted that with respect to Appeal A one of the reasons for refusal refers to Policy DMHD3 of the emerging London Borough of Hillingdon Local Plan Part 2 – Development Management Policies Revised Proposed Submission Version: October 2015. The evidence before me indicates that this does not yet form part of the development plan and as such has limited weight in the determination of the current appeal.
7. The Council's decision notice refers to policies within the Hillingdon Local Plan: Part Two – Unitary Development Plan Saved Policies (November 2012) (the UDP). However, it has since been clarified that the correct date for these policies having been saved is September 2007.

Main Issues

8. The main issue with respect to both appeals is the effect on the living conditions of the occupants of neighbouring residential properties with particular reference to visual intrusion and overbearance.
9. With reference to Appeal A, the following are additional main issues:
 - i. The effect on the character and appearance of the area;
 - ii. The effect on the living conditions of the occupants of neighbouring residential properties with particular reference to light and privacy;
 - iii. Whether the proposal would result in acceptable living conditions for future occupants with particular reference to outlook and light;
 - iv. Whether the proposal would increase the risk of flooding in the locality; and
 - v. Whether the proposal represents the effective use of land.
10. With reference to Appeal B, there is an additional main issue in relation to the effects of a coalescence of flatted development in the area with particular reference to character, the effect on the highway network and local infrastructure.

Reasons

Living conditions

11. Policy BE21 of the UDP states that planning permission will not be granted for new buildings which would result in a significant loss of residential amenity. In addition Policy 7.6 of the London Plan (March 2016) states that buildings should not cause unacceptable harm to the amenity of surrounding land and buildings.
12. The appellant contends that outlook is not a planning consideration; however, it is clear to me that securing high quality and inclusive design goes beyond solely aesthetic considerations. Planning decisions should address the connections between people and places and the integration of new development into the built environment, according to the National Planning Policy Framework (the Framework). Therefore, new development should

respond appropriately to the existing layout of buildings and ensure that adjacent buildings relate to each other. The layout of developments should be considered in relation to adjoining buildings and designs should ensure that new and existing buildings relate to one another. Furthermore, the size of buildings and their elements should be carefully considered as their design will affect the amenity of others. Consequently, I consider that the effect of the proposal in terms of visual intrusion and overbearance are material considerations which are encompassed in the development plan and guidance.

13. It also seems to be argued by the appellant that the Council's 45 degree principle as set out in the Hillingdon Design and Accessibility Statement New Residential Layouts Supplementary Planning Document (HDAS Residential Layouts) provides an indication of overdominance, overshadowing and loss of light. However, the HDAS states that the principle is designed to ensure that adequate daylight and sunlight is enjoyed in new and existing dwellings. Although the HDAS indicates that the protection of daylight and sunlight and careful overshadowing design can help to minimise the negative impact of overbearing and overshadowing this is an insinuation rather than an objective interpretation of guidance. To my mind visual intrusion and overbearance are more subjective matters and therefore it is entirely possible for a proposal to be considered appropriate in terms of light and overshadowing but otherwise harmful with respect to visual intrusion and overbearance.
14. Both proposed schemes would be significantly larger than the existing buildings on site with respect to footprint and overall bulk, scale, height and massing. There are three connected blocks, the northern one would be situated close to the boundary with No 36 Ducks Hill Road and the southern block is close to the boundary of No 42. With respect to the proposal the subject of Appeal A I consider that the massing of development and its overall bulk, scale and height in such close proximity to No 36 would be a visually dominant and highly prominent form which would be highly visually intrusive. Furthermore, given the relationship with habitable room windows, including a main living room, kitchen / dining room and study the proposal would be oppressive, creating an undue and harmful overbearing built form which would be unacceptable in this context.
15. Although I recognise that the proposal under Appeal B has been amended and part of the side elevation of the development would be set back from the boundary with No 36 I do not consider that the amendment would be significant in terms of mitigating the harm I have found with respect to the proposal being overbearing in relation to No 36. Therefore with regard to Appeal B I also consider that the proposal would result in an undue overbearing effect on No 36 Ducks Hill Road.
16. In addition the southern block with respect to Appeal A is only approximately 2.2 metres from the shared boundary with No 42 and has an overall height of approximately 10 metres. The development would project forward of the front elevation of No 42. However, although the existing and proposed situations would breach the 45 degree guidance, when considering the existing relationship between the existing property on the appeal site No 40 I do not consider that the effect would be significant. Consequently, with respect to No 42 I do not consider the proposal would be harmful with respect to visual intrusion and overbearance.

17. Policy BE20 of the Saved UDP states that buildings should be laid out to ensure that adequate daylight and sunlight can penetrate into and between them and should safeguard the amenities of existing houses. Policy BE21 goes on to state that new buildings will not be granted if their siting, bulk and proximity would result in significant loss of amenity. The Council's guidance set out in the HDAS Residential Layouts suggests that there should normally be a minimum of 15 metres between habitable room windows and elevations of two or more storeys taken from a splay of 45 degrees from the centre of habitable room windows. To safeguard privacy the separation distance between habitable room windows should be no less than 21 metres. A new development should not breach the 45 degree guideline when taken from the rear elevation of the neighbouring dwelling. This guidance is particularly relevant to the effect of the development on the living conditions of the occupants of Nos 36 and 42 Ducks Hill Road which lie adjacent to the proposed development.
18. With respect to the proposal under Appeal A I note from the appellant's evidence that the 45 degree line is already broken by the existing dwelling on the appeal site. Furthermore, the appellant's Qualitative Daylight / Sunlight Appraisal also confirms that the proposal would have an impact on No 36. The proposal is of significantly greater bulk, scale and massing in comparison to the existing buildings on site and, although the appellant's evidence suggests that the effect of the proposal on No 36 would be minimal I dispute this, taking into account the fact that the 45 degree rule is guidance only. The significantly increased bulk and massing of building would compromise the 45 degree rule and in my opinion would result in an unacceptable loss of daylight and sunlight, exacerbating the existing situation where the existing property on the appeal site breaches Council guidelines.
19. With respect to the first floor dormer bedroom window at No 36 the proposal would clearly not breach the 25 degree vertical angle and as such would be not be harmed with reference to daylight and sunlight.
20. Policy BE24 of the Saved UDP states that the design of new buildings should protect the privacy of the occupants and their neighbours. As a guide, the HDAS Residential Layouts suggests that the minimum distance should not be less than 21 metres between facing habitable rooms windows.
21. With regard to Appeal A the rear residential block proposed habitable room windows on the side and rear elevations. The windows facing No 42 Ducks Hill Road are either secondary windows or serve non-habitable rooms and do not cause significant overlooking or loss of privacy whereas the side facing windows facing No 36 serve bedrooms. These windows would result in considerable overlooking of the rear garden of No 36 and also the rears of properties on Cygnet Close. The evidence before me indicates that Bedroom 3 and the Master bedroom of Units 3, 6 and 9 are less than 21 metres away from the conservatory of No 6 Cygnet Close. Of further concern is the rear windows and particularly the balcony serving the main living rooms of the proposed rear units which would face directly towards the rear gardens of properties along Cygnet Close.
22. Given the separation distances, the reduction of the separation by up to 2 metres to account for the depth of the balconies and the overall purpose of a balcony which is for outdoor residential use and observation of the

surroundings it is clear to me that the proposal would result in loss of privacy to the occupants of properties on Cygnet Close. I accept that obscure glazing to some windows may mitigate some loss of privacy this would not be the case with the balconies. I also understand that there is no specific reference to balconies in the HDAS Residential Layouts; however, I consider that the overall purpose of Policy BE24 is breached by the scheme to which Appeal A relates.

23. I have noted with respect to Appeal B the scheme has been revised to overcome previous concerns and as such the Council no longer objects to the proposal for reasons relating to privacy.
24. With reference to the living conditions of future occupants the Council has expressed concern that some of the living rooms in the two forward blocks would be in close proximity to side walls of adjacent blocks which would consequently fail to provide satisfactory living conditions for future residents with particular reference to outlook, light and creating an oppressive living environment. Similar concerns are expressed in relation to some bedroom windows. In determining the suitability of the relationship between habitable room windows and adjacent walls the Council has applied the 45 degree line of sight as set out in the HDAS Residential Layouts.
25. Although I can understand why the Council has applied this rule to ensure satisfactory living conditions for future residents I do not consider it reasonable to have done so as it seems clear to me that it is intended to relate to the relationship of a new development with existing development rather than the internal relationships within a new development. Such an approach would preclude many L-shaped or similarly shaped new buildings, some of which I understand have been approved locally by the local planning authority.
26. Furthermore, owing to the orientation of the rear of the proposed building the levels of natural light serving many of the rooms in question would be satisfactory. Given the overall good standard of residential accommodation that would be developed, including the spaciousness of the individual units I do not consider that the concern relating to internal relationships within the development is sufficient to warrant withholding permission in this particular case.
27. Therefore, on this matter I conclude that with respect to both appeals the proposals would have a harmful effect on the living conditions of the occupants of a neighbouring residential property with particular reference to visual intrusion and overbearance. As such there would be conflict with Policy BE21 of the UDP and Policy 7.6 of the London Plan.
28. With reference to Appeal A I conclude that the proposal would be harmful to the living conditions of the occupants of neighbouring residential properties with particular reference to light and privacy. Therefore the proposal would conflict with Policies BE20, BE21 and BE24 of the UDP, Policy 7.6 of the London Plan and the HDAS.

Character and appearance

29. The appeal site is currently occupied by two detached two storey residential properties and is situated in a predominantly residential part of Northwood. There is a variety of properties in the area, including larger detached houses, including a new residential development adjacent to the site, terraced houses,

semi-detached houses and relatively dense modern residential development. There is also a large development of flats nearby and a sheltered housing scheme, both of which successfully integrate into the verdant and attractive residential surroundings. In determining the current appeal it is therefore important to assess the proposal in the light of its wider residential context rather than merely comparing its size, scale and bulk to the existing detached dwellings which are on the site at present.

30. Policy BE1: Built Environment of the Hillingdon Local Plan: Part 1 – Strategic policies (Adopted November 2012) (LP Part 1) requires all new development to improve and maintain the quality of the built environment. In order to achieve this objective all new developments should be designed to make a positive contribution to the area in terms of scale, among other objectives. Policy BE13 of the UDP states that development will not be permitted if it fails to harmonise with the existing street scene. Furthermore Policy BE19 indicates that new development within residential areas should complement or improve the amenity and character of the area. Policy 3.5 of the London Plan seeks to ensure that housing developments are of the highest quality externally and in relation to their context and Policy 7.4 of the London Plan states that buildings should provide a high quality design response which has regard to the pattern of development locally in terms of scale, proportion and mass.
31. The proposed development would be a relatively substantial building comprised of three blocks which would be linked with a flat roof glazed corridor. The overall depth of the building would be more than 30 metres and almost 25 metres in width with a maximum ridge height of approximately 11 metres. The building has been sunk into the ground by between approximately 0.5 metres and one metre in an attempt to reduce its overall height and massing in relation to the surrounding street scene. The top of the ridge appears to me to be higher than other buildings in the locality, but not significantly so. I also noted at my site visit that the site is particularly wide in relation to many others in the vicinity where there is great variance in plot widths and sizes.
32. I observed on site that the gable end of the existing property No 40 is prominent, particularly when approaching from the south along Ducks Hill Road. This prominence is augmented by the position of the existing property forward of the frontage of No 42 Ducks Hill Road.
33. The proposed building would be positioned forward from the front elevation of the existing property at a greater height than the existing buildings. However, there are other large flatted developments nearby of similar scale, bulk and massing which do successfully integrate into the attractive residential surroundings. Although the proposal would represent a large built form across a significant proportion of the overall plot there would be a significant area of landscaped open space between the building and the highway which would provide an attractive setting for the building. Furthermore, the highest part of the proposed buildings at approximately 11 metres relates to the height of the three gables, with the height of most of the remaining building being significantly less at approximately 9.63 metres which is comparable to the existing two residential properties currently on the site and others in the immediate vicinity.
34. There are other developments in the locality which appear to have similar overall plot coverage and width coverage to the current proposal and as such I

do not consider that the development is excessive in terms of the overall quantity of development within the site nor in terms of its size, scale, bulk and height. In addition the proposal would be clearly visible within the varied street scene but I do not consider it would be over dominant or discordant with its varied surroundings. Subject to the use of suitable materials, landscaping and boundary treatment it is my view that the proposal could successfully integrate within its attractive high quality residential surroundings and make a positive contribution to the local environment. The overall size of the site and the proposed location of the built form within the context of the size and its immediate surroundings would mean that the development would be appropriate.

35. Therefore, on this issue I conclude that the proposal would not have a harmful effect on the character and appearance of the area and as such I find there to be no conflict with Policies BE1 of the LP Part One, Policies BE13 and BE19 of the Saved UDP, Policies 3.5 and 7.4 of the London Plan and Hillingdon Design and Accessibility Statement (HDAS) Supplementary Planning Document Residential Layouts. I find there to be no conflict with Policy BE15 of the Saved UDP which relates to alterations and extensions to existing buildings.

Flood Risk

36. Policy 5.12 of the London Plan relates to Flood Risk Management and states that development proposals must comply with the flood risk assessment and management requirements in the Framework and associated technical guidance. Policy EM6: Flood Risk Management of the LP Part 1 states that new development will be directed away from flood zones 2 and 3. Furthermore, the Council will require all development to use sustainable urban drainage systems (SuDS) unless it is demonstrated that it is not viable.
37. The proposed development is considered to be a 'more vulnerable' class of development in terms of flood risk and the site is situated in Flood Risk Zone 1 where there is a less than 1 in 1,000 year annual probability of flooding. The site is within an area with a very low risk of surface water flooding and there is no evidence that the site is at risk from groundwater flooding.
38. The application documents show an engineered pumping system for the basement car parking area and it is demonstrated that this would work from a technical point of view. However, it is evident that this is not the Council's preferred method which would be a gravity based system. However, it is my understanding that for a gravity based system to work the overall height of the development would need to be increased which would be in conflict with other concerns the Council has expressed.
39. In these particular circumstances it has been demonstrated that although a more sustainable solution could be achieved for the development it would not be viable due to the site constraints and the relationship between the proposal and existing neighbouring residential properties. As such I find there to be no conflict with Policy 5.12 of the London Plan, Policy EM6 of the LP Part 1, the Framework and Planning Practice Guidance.

Effective use of land

40. Among the core planning principles set out in Paragraph 17 of the National Planning Policy Framework (the Framework) is to encourage the efficient use of

land that has previously been developed. With respect to Appeal A I have noted that Drawing Number 100 C shows the full extent of the site which includes a section of land to the rear of No 40 Ducks Hill Road which does not form part of the current proposal. The Delegated Decision Report states quite clearly that although not a material consideration in the assessment of the current proposal access to that parcel of land is restricted as a row of trees and electricity sub-station would prevent access. The report goes on to state that the potentially restrictive access would land-lock the rear part of the site and constitute under-use of the land. The Council's concerns comprise a reason for refusal relating to the proposal failing to make efficient use of the site.

41. The current proposal for nine apartments would significantly improve the efficiency of the use of the site by increasing the total number of residential units by a total of seven. Furthermore, although at my site visit I observed that there may be some obstacles to providing vehicular and other access to the land in question it does have a frontage onto Cygnet Close. The proposal does not include any access onto Cygnet Close and as part of the appeal scheme there is no evidence that indicates that access could not be achieved, although in planning terms there may be development plan and other material considerations to overcome. Furthermore, there are potentially alternative uses of the land which may not require access, such as garden extensions for adjacent residential properties or increased amenity space to serve a new development on the appeal site in the event of permission being granted.
42. In any case the plot in question is of sufficient size to accommodate alternative uses or development and it is not for the local planning authority to dictate how a land owner should use their land or force them to include a particular parcel of land in their proposed development. Therefore, whilst I understand that the Council may have some concerns regarding the effective use of all the site, in this particular case, I do not consider it reasonable to use it as a reason for withholding permission.
43. On this issue I conclude that the current proposal does represent the effective use of land in accordance with the core planning principles of the Framework.

Coalescence of flatted development

44. In refusing permission for the Appeal B proposal on grounds relating to the coalescence of flatted development in the area and the over concentration of flats along this part of Ducks Hill Road the Council appears to be partly reliant on the advice within the Council's HDAS Residential Layouts. The appellant contends that the HDAS is a non-statutory document and a judgement should be made as to how much weight should be given to the advice contained within it. It seems to me from the HDAS that it was originally prepared by the Council in 2006 as an interim document in anticipation of more specific policies which would be set out in the LDF Core Strategy. Since the 10 per cent rule was not subsequently included in the subsequently adopted development plan and in the light of the conclusions of my colleague Inspectors in dealing with residential schemes in Hillingdon I conclude that the 10 per cent guideline is guidance only and it does not represent adopted policy.
45. Furthermore, I cannot find evidence of clear justification for the 10 per cent figure which seems to be to be arbitrary rather than based on clearly evidenced analysis. Neither do I have evidence that the figure has been the subject of independent examination. Consequently, I agree that the 10 per cent should

be a material consideration but one which should not be used on its own as a means of determining whether a development proposal is acceptable. I have noted that in refusing permission for reasons relating to the coalescence and over-concentration of flatted development the Council has not relied solely on the 10 per cent figure, but also on policies which do form part of the adopted development plan.

46. Furthermore, the Council acknowledges that the threshold of 10 per cent may not be regarded as a determining factor but claims that it relates directly to Policies BE13 and OE1 of the Saved UDP. However, this cannot be the case since neither of these which relate to the street scene and environmental impacts are identified in the HDAS Residential Layouts as relevant policies. I have also noted that policy OE1 is not identified in Reason for Refusal no 1 in any case.
47. On residential streets of more than 1 km in length the HDAS states that the proposed redevelopment site should be taken as the midpoint of a 1km length of road for assessing the 10 per cent rule. However, with regard to the current appeal site this wording is problematic since although Ducks Hill Road is more than 1 km in length the appeal site sits approximately 330 metres from the junction of Ducks Hill Road and Rickmansworth Road. The Council has therefore made an assessment on a 1 km length of Ducks Hill Road from its junction with Rickmansworth Road, meaning that sites in excess of 500 metres away from the appeal site have been taken into consideration in determining the percentage of properties which have been converted to flats or other forms of housing. However, the approach taken by the Council means that sites which are not reasonably related to the appeal site have been taken into account when assessing the effect of the proposal.
48. In these particular circumstances it seems more logical and reasonable to adopt the approach taken by the appellant which has assessed the single length of street stretching from 500 metres to the south of the appeal site to the end of Ducks Hill Road. This area of search covers sites which are reasonably well related to the appeal site rather than sites in excess of half a kilometre away.
49. At my site visit I observed the sites covered by the appellant's Flatted Development Report and agree with its conclusions that at present only five of the properties within the search area have been developed as flats out of a total of 76 properties along the Ducks Hill Road frontage. The current proposal would take this total to seven, which would be less than the 10 per cent threshold. As such, on the basis of the guidance alone I find there to be no conflict in purely percentage terms.
50. On-site parking provision would be in accordance with adopted parking standards based on the Public Transport Accessibility Level (PTAL) of the site and the number of bedrooms proposed. The Council does not consider that the development would result in a significant increase in traffic over that which is generated by the existing use of the site for two separate residential units. Furthermore, vehicle and pedestrian access and associated visibility for pedestrians and other highway users is considered to be satisfactory and cycle parking provision is found to be acceptable. Consequently, with particular reference to highways safety and access arrangements the Council finds there to be no conflict with the development plan. It is therefore unclear why Reason

for Refusal 1 refers to specific concerns relating to adverse impacts on the highway network which appears to me to be directly opposed to the conclusions of the Officer Report. I have also noted that no specific highway or infrastructure development plan policies are identified in the first reason for refusal.

51. I have no evidence that the proposal would lead to a cumulative adverse impact on the infrastructure of the surrounding area. Indeed, the development would represent Chargeable Development under the Hillingdon Community Infrastructure Levy.
52. Policies BE13 and BE19 of the Saved UDP relate to residential development and state that development will not be permitted if the layout and appearance fail to harmonise with the existing street scene or other features in the area and residential development should complement or improve the amenity and character of the area. In this decision I have previously concluded that the proposal would not have a harmful effect on the character and appearance of the area.
53. Therefore, on this issue I conclude that there would be no harmful effects from a coalescence of flatted development in the area with particular reference to character, the effect on the highway network and local infrastructure. As such there is no conflict with Policies BE13 and BE19 of the Saved UDP, Policy 7.4 of the London Plan and the HDAS Residential Layouts.

Other matters

54. I have taken the neighbours' comments into account; however, the matters raised have not led me to any different conclusion in this case.

Conclusion

55. I have found no harm with respect to Appeals A in terms of the living conditions of future occupants, the effect of the proposal on the character and appearance of the area, nor harm to flood risk. I have also concluded that the proposal represents the effective use of the land. However, with respect to Appeal A I have found that the proposal would be harmful to the living conditions of the occupants of neighbouring residential properties. That is the overriding consideration in that case.
56. With respect to Appeal B have concluded that the proposal would not be harmful with reference to effects of a coalescence of flatted development in the area. However, I have found there to be harm to the living conditions of the occupants of an adjoining property. In that case that is the overriding consideration.
57. Therefore, having had regard to all other matters raised and the evidence of all parties, I conclude that both Appeal A and Appeal B conflict with the development plan taken as a whole and they should be dismissed.

Alastair Phillips

INSPECTOR