

Appeal Decision

Site visit made on 7 February 2019

by D Child BA BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2019

Appeal Ref: APP/B5480/W/18/3213126

2 Links Avenue, Romford, RM2 6ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Harps Johal of Paisley Amber Developments Ltd against the decision of the Council of the London Borough of Havering.
 - The application Ref P0760.18, dated 21 May 2018, was refused by notice dated 24 August 2018.
 - The development proposed is the erection of 1 no new dwellinghouse within the garden of 2 Links Avenue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the course of the appeal the appellant submitted a Unilateral Undertaking in relation to education contributions and the Council was given the opportunity to comment. I am grateful for the replies and I am satisfied this has not prejudiced either party. I shall proceed to determine the appeal on this basis.
3. Although the National Planning Policy Framework (the Framework) was revised in February 2019, the policies that are material to this case did not change fundamentally. My determination of the appeal has therefore had regard to the revised Framework.

Main Issues

4. The main issues are:
 - The effect of the development on the living conditions of the occupants of No 121 Main Road with specific regard to privacy and outlook, and the living conditions of future occupants having specific regard to natural light, outlook, and outdoor amenity space;
 - The effect of the development on the character and appearance of the area, having particular regard to the street scene; and
 - Whether the proposal would make appropriate provision towards the education infrastructure needs arising from the development.

Reasons

Living conditions

5. Although reduced in scale from earlier proposals, planning permission was refused, in part, due to concern that the proposed dwelling would unacceptably reduce the perceived level of privacy of the occupants of No 121 and have an overbearing impact on the outlook from it. The proposed ground floor windows would be screened by existing boundary treatment. The relationship between No 121 and the upper floor windows of the proposed dwelling would not be unacceptable, in terms of window to window distances. First and second floor windows would serve non-habitable rooms. They would be obscure glazed and set back further from the boundary than the ground floor ones. Nevertheless, the proposal would still result in 7 windows above ground floor level facing the rear garden of No 121 across a relatively short distance. Moreover, this is the main area of private outdoor amenity space for the occupants.
6. The Design for Living Residential Design Supplementary Planning Document 2010 does not set out minimum distances from boundaries, and the proposed dwelling would be at an angle to the common boundary. Furthermore, it is not uncommon to see other dwellings from rear gardens in the area. The proposed building to plot ratio would not conflict with Paragraph 026 of the Planning Practice Guidance, in terms of scale, with regard to building mass compared with open space. Nevertheless, at its nearest point the proposed dwelling would be located close to the common boundary. Because the dwelling would be substantial, it would add significant bulk and mass to the appeal site. As a result, it would appear from the rear garden of No 121 as an oppressive structure and result in a perceived loss of privacy for the occupants.
7. My attention has been drawn to the relationship between dwellings on different streets within Havering, and to a recent approval elsewhere within the Borough¹. However, these sites are located in different contexts and are not therefore directly comparable. Furthermore, full details of the circumstances that led to them being approved are not before me. In any case, each proposal must be considered on its own individual merits, with regard to the specific circumstances.
8. The Council is concerned that the second-floor dormer windows would not allow for adequate levels of natural light, or a satisfactory outlook for future occupants of the development, contrary to the requirements of Policy DC3 of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document 2008 (the CS). Moreover, that the proposed outdoor amenity space would be deficient, when compared to the size of other gardens in the area.
9. The appeal dwelling would have two dormer windows serving second-floor bedrooms, one to each. Although they would be relatively small, these windows would afford future occupants' an acceptable level of daylight, and sunlight, and an uninterrupted outlook across the street.
10. Although the building to plot ratio proposed would be higher than many dwellings on the street, it would not appear to be significantly higher than adjacent dwellings to the north; due to the curve of the road their rear gardens are smaller. The proposal would provide patio areas and usable side and rear gardens, which would be of an adequate size to meet the needs of a family for outdoor amenity space. The proposal would not therefore harm the living

¹ LPA Reference P1430.16

conditions of future occupants, having regard to natural light, outlook and external amenity space.

11. While I have found that the proposal would not harm the living conditions of future occupants, for the above reasons, I find that the appeal dwelling would appear as a dominant and overbearing structure in the outlook from the rear garden of No 121 Main Road, and that it would result in a significant sense of being overlooked and a perceived loss of privacy for the occupants. I therefore conclude that it would have an unacceptable adverse impact on the living conditions of the occupants of No 121 Main Road, having regard to privacy and outlook.
12. Accordingly, the proposal would be contrary to the privacy and amenity protection objectives of CS Policy DC61. The proposal would be contrary to Paragraph 127(f) of the Framework, which, amongst other things, requires that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Character and appearance

13. The site is situated on a curved section of Links Avenue, close to the junction with Main Road, and is an obvious gap site within an otherwise built up road frontage. Dwellings on the street are predominantly substantial detached properties of differing modern designs, separated by relatively narrow gaps. The road frontage of the appeal site is defined by a high brick wall, behind which are a number of mature and semi-mature trees. The front gardens of dwellings tend to be relatively small, whereas rear gardens are generally more generous.
14. Some dwellings on the street have accommodation within the roof space and dormer windows, and the host property has a large hipped roof with a front gable. While the design of dwellings on the street varies, substantial hipped roofs are not uncommon, and I saw at my visit that many dwellings have been significantly extended. Substantial dwellings are therefore part of the established character and appearance of the area. In this context, the mass of the proposed dwelling and its roof would be acceptable, and it would not be harmful to the street scene.
15. There is a consistent building line to the road frontage, as dwellings curve round the street, and the proposed scheme would broadly follow it. Although it would be slightly forward of the building line, and this would be apparent due to the curve of the road, it would not be perceived as being significant. Furthermore, a substantial domestic garage to the north of the site is located closer to the road.
16. The front elevation facing the Links would be symmetrical in appearance, with a recessed front entrance adding relief to the façade. Architecturally, the dwelling would be well articulated and balanced in appearance and it would be a positive addition in the street scene. The loss of trees required for the formation of the access would not cause significant harm, and the use of conditions to require an appropriate landscaping scheme would be capable of offsetting the loss of soft landscaping.
17. In the relevant reason for refusal, the Council refers to the Gidea Park 'special character area', and I have been provided with a copy of the Gidea Park

Conservation Area Character Appraisal and Management Proposals 1986. However, with reference to the Conservation Area Boundary Map, the appeal site does not appear to be located within it. Because there is little inter-visibility between the two, the Conservation Area cannot be appreciated from the appeal site. In any event, as I have found that the proposal is in keeping with the residential character of the area, it would not therefore adversely affect the setting of the Gidea Park Conservation Area.

18. For the above reasons, I conclude that the proposed scheme would not harm the character and appearance of the area, having particular regard to the street scene. Accordingly, the proposed development would not conflict with the requirements of CS Policies DC61 and DC69 to maintain, enhance or improve the character and appearance of the local area, or the design objectives of the policies of the London Plan. It would accord with Paragraph 127 of the Framework, which, amongst other things, requires that planning decisions are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Education infrastructure

19. Policy 8.2 of the London Plan 2016 sets out Mayoral expectations that Boroughs must refer to planning obligations that would be sought in the relevant parts of the development plan. Paragraph 34 of the Framework states, amongst other things, that plans should set out the contributions expected from development, and Paragraph 54 states that "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations...".
20. CS Policy DC72 seeks to ensure that new development makes an appropriate contribution to the infrastructure needs arising from development, including for education facilities. Policy DC29 states that the Council will seek payments from residential developers for the capital infrastructure of schools, required to meet the demands generated by residential development.
21. The Council seeks a contribution of £6000, 3% of which would be used to monitor the obligation. The calculation is based on the evidence underpinning the Planning Obligations Supplementary Planning Document 2013 (the Obligations SPD). Although it is common ground that the Obligations SPD is out of date, the requirement for the contribution is in accordance with up to date development plan policy. The need is evidenced by The London Borough of Havering Draft Commissioning Plan for Education Provision 2019 – 2023. The contribution is not a tariff, because it is not based on a fixed list of charges.
22. Paragraph 56 of the Framework states that planning obligations must only be sought where they meet all of the following tests²:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
23. From the evidence before me, there is a shortage of school places in the Borough. The proposal is for a large family dwelling which would be likely to

² Set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations)

generate additional demand for school places. The contribution would be directed at addressing this, and I therefore consider that an obligation is necessary to make the development acceptable in planning terms. The obligation would be directly related to the development, and, in my assessment, it would be fairly and reasonably related in scale and kind. Moreover, in accordance with Paragraph 54 of the Framework, it would not be appropriate to address this infrastructure need through a planning condition.

24. During the course of the appeal, the 2019 amendments to the Community Infrastructure Levy Regulations³, amongst other things, removed the previous restriction on pooling more than 5 planning obligations towards a single piece of infrastructure. Furthermore, although I do not have full details of the estimated cost of monitoring the development, it appears to me that the level of 3% quoted by the Council would not be unreasonable, and that it would be fairly and reasonably related in scale and kind to the development proposed.
25. In support of the appeal the appellant refers to a Written Ministerial Statement⁴, and to a Court of Appeal decision⁵. However, both were specifically concerned with affordable housing contributions. My attention has been drawn by both parties to appeal decisions in the Borough; a number of which support such an obligation⁶, and one which does not⁷. For the above reasons, I concur with the earlier Inspectors' reasoning that the contribution would meet the relevant tests set out in the Framework.
26. All of the above said, the supplied planning obligation would make the appropriate provision towards the education infrastructure needs arising from the development. Accordingly, the development would not conflict with the infrastructure requirements of CS Policies DC27 and DC29, Policy 8.2 of the London Plan, or the policies of the Framework.

Other Matters

27. The proposed dwelling would be designed with a mind to high standards of insulation and thermal efficiency, and the minimisation of water and energy consumption. While these are positive aspects of the proposal, they are neutral factors in the planning balance.
28. The Framework recognises that small and medium sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. The proposal would add one family dwelling to the local housing supply, in a location with good access to public transport, local services and facilities. The development would assist, in a small way, towards meeting the housing growth policies of the Framework and the London Plan, and there would be some limited economic benefits during construction. While these benefits weigh in favour of allowing the appeal, they do not outweigh the harm to the living conditions of the occupants of No 121 Main Street I have identified above.

³ The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019

⁴ House of Commons: Written Statement (HCWS50)

⁵ *Secretary of State for Communities and Local Government v West Berkshire District Council and another* [2016] EWCA Civ 441

⁶ APP/B5480/W/16/3165731; APP/B5480/W/16/3164262; APP/B5480/W/16/3160652; and APP/B5480/W/16/3157634

⁷ APP/B5480/W/17/3189409

Overall Conclusion

29. The proposed development would not harm the living conditions of future occupants, or the character and appearance of the area, and it would make appropriate provision towards the education infrastructure needs arising from the development. However, due to the harm identified above, there would be harm to the living conditions of the occupants of No 121 Main Street. The proposed development therefore conflicts with the local and national planning policy stated above. On balance, the adverse impact would significantly and demonstrably outweigh the benefits.
30. For the above reasons, the appeal should be dismissed.

D Child

INSPECTOR