
Appeal Decision

Site visit made on 29 January 2020

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/U5930/W/19/3239575

1 Withy Mead, Chingford E4 6JY

- 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 Andy Condon against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 191062, dated 27 March 2019, was refused by notice dated 8 July 2019.
 - The development proposed is the erection of a two storey, 2 bedroom, 3 person dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey, 2 bedroom, 3 person dwelling at 1 Withy Mead, Chingford E4 6JY in accordance with the terms of the application, Ref 191062, dated 27 March 2019, subject to the conditions in the attached schedule.

Procedural Matter

2. The names provided on the planning application and appeal forms differ. I understand that this stems from the incorrect name being used by the appellant on the planning application form. As such, the right of appeal lies solely with the original named applicant. The appellant has confirmed that they are happy for the appeal to proceed based on the name stated on the planning application form. I have considered the appeal on this basis.
3. I note the Council's comments about the description of development, but I do not consider the version set out on the planning application form to be unclear.

Main Issues

4. The main issues are the effect of the proposed development on: (i) the character and appearance of the area; (ii) the living conditions of existing and future occupants, with regards to amenity space provision, noise, vibration and overshadowing; and (iii) the Grade II Site of Borough Importance to Nature Conservation (SINC).

Reasons

Character and appearance

5. The appeal site relates to a two-storey semi-detached property situated off Withy Mead. The proposal would result in a new dwelling being erected within the side garden of 1 Withy Mead, with a garden proposed to the rear after the sub-division of No 1's existing garden. The new dwelling would be attached to the existing semi-detached pairing and form a terrace of three properties.

Although there are three semi-detached pairings near to the appeal site, including the pairing of 1 and 3 Withy Mead, the area is also characterised by two-storey terraced residential dwellings. The appeal site and Nos 1 and 3 are sited at 90 degrees to a linear form of development that extends northwards. Access from the site to the road is by a pedestrian walkway which runs next to a group of trees that occupy an embankment next to New Road.

6. The rear gardens of 3 and 5 Withy Mead do not have a uniform shape, unlike the rear gardens of other properties in the area. Overground trains travelling between central London and Chingford pass along the site's western boundary which is below the embankment that rises up to the railway line. Ground levels within the appeal site are flat.
7. Corner plots to the east, north and north-east of the site are generally open which creates a sense of spaciousness amongst the regular pattern of built form. The closest example of such a space is between Nos 3 and 5 next to the bend in the road. However the appeal site does not follow the corner plot layout or the spacious character that this brings given its position next to the railway line which, along with the embankment next to New Road and the residential properties to the north along Withy Mead, inhibits its contribution to the character and appearance of the area.
8. As each development proposal is considered on their own merits, the appeal scheme would not set a precedent for the formation of new dwellings on corner plots next to existing semi-detached or terraced properties as the appeal site differs to each of these.
9. The new dwelling would be of a similar scale, depth and massing as Nos 1 and 3. The proposal would also broadly respond to the design of dwellings in the area insofar as the building typology, layout, detailing and materials. While the new dwelling would be tight to the railway line, I am not of the view that this would result in a cramped form of development given that the plot would also include a rear garden together with cycle and bin storage. Thus, the proposal would not, in my view, harm the existing open character of the area.
10. I conclude, in respect of this issue, that the proposed development would not harm the character and appearance of the area, and would therefore accord with Policy CS15 of the Core Strategy (CS), Policies DM4 and DM29 of the Development Management Policies Local Plan (Local Plan) and the Urban Design Supplementary Planning Document (SPD). Together, these seek, among other matters, new development to be of a high standard of urban and architectural design which responds positively to, and reinforces the local context and character, taking into account patterns of development, scale, urban form, building typology and detailing.

Living conditions

11. The rear garden of No 1 would be split into two. A garden of around 54m² would be retained for the occupants of No 1, while a new garden roughly 55m² in size would be formed for the future occupants of the proposed dwelling. For one and two bedroom houses, Local Plan Policy DM7 and the SPD seek proposals to meet the minimum external space standard set out in Table 8.3 of 50m². Hence, the proposal would provide existing and future occupants with an external amenity space exceeding the minimum standard.
12. Ground within the existing garden is flat and fenced off from the railway

embankment that rises up to the railway line. Properties on Withy Mead to the north of the site characteristically have long linear gardens, but Nos 3 and 5 do not have uniform rear gardens as they taper to a point at the rear. They are considerably smaller than properties to the north. The proposed gardens would be of a uniform rectangular shape on level ground that would provide existing and future occupants with a well-designed, appropriately located and useable external amenity space. I note the Council's concerns about a precedent being set, but my findings relate to the circumstances of this case, which are not likely to be replicated elsewhere.

13. The second area of concern raised by the Council relates to the noise from the railway line. Local Plan Policy DM24 D) states that noise sensitive uses such as residential should be located away from major sources of noise pollution and vibration, unless appropriate mitigation can be provided. The policy explains that regard should be had to the noise exposure categories listed in Table 25.1. This table includes noise exposure categories relating to rail traffic during daytime and evening hours.
14. I am informed by the appellant that trains pass the site roughly every 15 minutes until around 23:30. The new dwelling would be closer to the railway line than the semi-detached pairing of Nos 1 and 3. These properties are the closest residential dwellings to the railway line within the vicinity of the site to the north of New Road. However, to the south of New Road, Heathlands Care Centre and 22-30 Russets Close are situated near to the railway line.
15. Five window openings are proposed in the new dwelling's flank elevation facing the railway. Even though the proposed window and door openings serving the main habitable spaces would be in the front and rear elevations, the potential remains for noise and vibration to affect future occupants living conditions.
16. A Noise Assessment Report (NAR) has been submitted by the appellant as part of the appeal. The NAR sets out measured noise levels of 59 L_{Aeq} ,dB between daytime hours (07:00 to 23:00) and 55 L_{Aeq} ,dB during night time hours (23:00 to 07:00). Thus, the measured noise levels fall into noise exposure category B.
17. Mitigation measures in the form of a suitable glazing system and ventilation are proposed so that the building matches or exceeds the sound reduction values identified in the NAR. These could be secured through the imposition of a planning condition, so that the proposal would accord with BS8233:2014 'Guidance for sound insulation and noise reduction for buildings'.
18. The measured noise level in the garden is above the guideline of 55 dBA set out in The World Health Organisation document 'Guidelines for Community Noise' and BS8233:2014 in respect of daytime noise levels within outdoor amenity areas. However, this guidance may not always be achievable on sites such as that subject of the appeal, and a compromise might be warranted between elevated noise levels and other factors. In this case, the other factors comprise of, but are not limited to: the efficient use of land in an accessible location and the provision of an additional dwelling in the Borough. While I agree with the NAR in that a close boarded boundary fence would not provide any mitigation for future occupants using the proposed garden due to the elevated location of the railway line, the proposal would not result in unreasonable levels of noise, which are linked to the short lived effect of passing trains roughly every 15 minutes.

19. The proposal would result in overshadowing at times during the day, but this would not be to such an extent that it would harm future occupants living conditions, especially as dual aspect rooms are proposed and given that the internal living space is of a satisfactory standard.
20. As such, I conclude on this issue that the proposed development would accord with CS Policy CS15, Local Plan Policies DM7 and DM24 and the SPD; which, among other things, seek functional development that provides: well-designed, appropriately located and usable external amenity space that meets the minimum standard; and appropriate mitigation for noise sensitive uses when they are located near to sources of noise pollution and vibration.

Site of Borough Importance to Nature Conservation

21. The SINC designation, which I understand to be a designation for its importance as a green corridor, includes the railway line and the embankment on either side of it. Hence, the appeal site lies outside of, but next to the SINC.
22. Local Plan Policy DM35 A) states that development proposals will not normally be granted planning permission where they pose adverse direct or indirect effects on any land or area within the identified SINC or to protected or priority species. However, in an exceptional situation where such proposals are permitted, any damaging impacts should be prevented by appropriate mitigation measures or use of conditions.
23. The Council are of the view that the proposed dwelling, given its proximity to the SINC would have some impact upon its biodiversity. While this may or may not be the case, the Council do not explain what the potential effect may be or on what aspect of biodiversity. However, it would seem that part of the Council's concerns relate to the proposal's effect on trees on and off the site.
24. An Arboricultural Impact Assessment (AIA) was submitted by the appellant as part of their appeal documentation. However, the situation on the ground appears to have changed since the AIA was prepared in September 2019 as there are no longer any trees on the site (Grp 1 and T2) and two trees situated within the railway embankment, including T1 have been felled.
25. Part G of Local Plan Policy DM35 says that the loss or damage of trees should be avoided where possible; and where this cannot be achieved, mitigation and compensation measures should be outlined and implemented. While the AIA sets out mitigation measures for Grp 1 and T2, and pruning works to T1, these can no longer be carried out. Pruning works are also recommended to Grp 2 to lift the crown. Subject to the imposition of a planning condition, these works would ensure no long-term negative impact is caused by the proposed development on Grp 2. The AIA recommends T3 (Ash) is felled and the stump poisoned as it is relatively small and of poor structural form.
26. The AIA does not consider it to be necessary or reasonable for additional planting to take place in mitigation. However, circumstances have changed since the AIA was prepared. The fruit trees once within the rear garden of No 1 are likely to have provided habitats for birds especially. Given the site's proximity to the designated green corridor, and the interconnectivity that could arise between the site and the SINC, it is reasonable and necessary for tree planting to be secured by planning condition to support the biodiversity value of the SINC. Subject to securing suitable replacements, this would also be likely to mitigate for the loss of T3.

27. On this basis, I conclude, in respect of this issue that the proposed development would accord with Local Plan Policy DM35, CS Policy CS15, and the SPD; which jointly, among other things, seek new development to incorporate high quality and inclusive design measures to create an attractive, healthy and sustainable environment by retaining and integrating existing wildlife habitats and features and enhancing them where appropriate. Where retention, restoration or enhancement measures are not considered possible, mitigation and compensation measures should be outlined and implemented.

Other matter

28. I note the comments from Network Rail and the proposal's proximity to the railway line, but there is no substantive evidence to suggest that the proposal would be within the realm of the railway or affect the safe operation of it.

Conclusion and conditions

29. I have had regard to the planning conditions suggested by the Council. Where appropriate I have amended and amalgamated these so that they accord with the six tests set out in paragraph 55 of the National Planning Policy Framework. In the interests of certainty, I have imposed an approved plans condition which includes the tree protection plan from the AIA. In the interests of the future health of future occupants of the development and to protect the pollution of groundwater, I have imposed a condition about contaminated land due to the adjacent railway line.
30. A condition in respect of materials is necessary in the interests of the character and appearance of the area. Given the situation on the ground insofar as trees, I have imposed conditions to secure details of hard and soft landscaping and so that existing landscaping is protected. Both are necessary to support the biodiversity value of the SINC and the character and appearance of the area.
31. A planning condition is necessary to secure mitigation measures for noise and mechanical ventilation in the interest of the living conditions of future occupants of the dwelling. Conditions are necessary, in the interests of preventing water pollution, flood risk and to ensure the dwelling has adequate drainage facilities, to secure details of drainage connections and for surface water drainage works. I have imposed a planning condition restricting the enlargement, improvement or alteration of the dwelling and the erection of incidental buildings due to the size of the plot and to enable the replacement planting to support the biodiversity value of the SINC. The other restrictions suggested by the Council are not necessary and are unreasonable. In the interests of residents living conditions, I have imposed a condition about the hours of work on the site.
32. A condition for an ecological assessment is not necessary as the trees closest to the proposal have been felled. A condition about external plumbing and pipework is not necessary to make the proposal acceptable in planning terms.
33. For these reasons set out above, I conclude that the appeal is allowed.

Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 231-01 and HWA10387_TPP except in respect of the tree protection measures shown on plan HWA10387_TPP for Grp 1, T1 and T2.

Before development commences

- 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the Local Planning Authority within 21 days of the report being completed and approved in writing by the Local Planning Authority.
- 4) All the trees shown on plan HWA10387_TPP as "to be retained" and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the Local Planning Authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.

Before work above slab level

- 5) Prior to the construction of the development hereby permitted above slab level, samples and/or a schedule of materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) Notwithstanding any indications on the approved plans, details of hard and soft landscaping on site, including details relating to the siting, design and height and finish of all new walls, gates, fencing, railings and other means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is constructed above slab level. The landscaping scheme shall include details of the retained and proposed planting around the site, written specifications (including cultivation and other operations associated with plant and grass establishment); schedules

of plants noting species, plant supply sizes and proposed numbers/densities where appropriate and demonstrate that all hardstanding areas are permeable. The approved scheme shall be carried out in the first planting season following the occupation of the development hereby permitted or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) Noise mitigation measures and details of the mechanical ventilation system shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted is constructed above slab level. The approved scheme shall produce internal noise levels specified in table 4 section 7.7.2 of BS8233 and meet the WHO night time noise standard of 40 dB LAmax and the mechanical ventilation system shall meet or exceed the specifications set out in clause 6, schedule 1 of the Noise Insulation Regulations 1975 with regard to acoustic performance and airflow rates. The approved scheme shall be completed prior to the occupation of the development and retained thereafter.
- 8) No development (other than demolition, site clearance and preparation, ground works and development below slab level) shall take place until a scheme detailing measures to reduce water use within the development, to meet a target water use of 105 litres or less per person, per day, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved scheme and thereafter retained.

Before occupation

- 9) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.
- 10) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted to the Local Planning Authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Post occupancy and management

- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no development under Schedule 2 Part 1 Classes A and E shall be carried out unless expressly authorised by a planning permission.
- 12) Works of demolition and construction shall be carried out during the hours of 08:00 to 18:00 hours Monday to Friday, and 08:00 to 13:00 hours on Saturdays, with no noisy working audible at the site boundary being permitted on Sundays or Bank Holidays.

END OF SCHEDULE