



Appeal Decisions

Site visit made on 10 March 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th June 2020

Appeal A Ref: APP/W5780/W/19/3243306

1A Finchingfield Avenue, Woodford Green, London IG8 7LA

- 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 CHC Homes Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref: 3128/19, dated 24 July 2019, was refused by notice dated 14 October 2019.
 - The development proposed is described as: Demolish existing building and construct a new two-storey building comprising 3 flats, and construct crossover.
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Appeal B Ref: APP/W5780/W/19/3243307

1A Finchingfield Avenue, Woodford Green, London IG8 7LA

- 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 CHC Homes Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref: 3116/19, dated 24 July 2019, was refused by notice dated 15 October 2019.
 - The development proposed is described as: Demolish existing building and construct a new two-storey building comprising 2 flats, and construct crossover.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural matter

3. As set out above there are two appeals on this site. They differ only insofar as the proposal that forms the subject of Appeal B is for a building containing two flats rather than the three flats sought by the proposal that forms the subject of Appeal A. The proposed building is the same in siting, size and external appearance in both cases. The Council's reasons for refusal are essentially similar for both applications, although in the case of Appeal A there is an additional reason for refusal relating to the internal space within the proposed accommodation. I have considered each proposal on its individual merits.

However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

4. The main issues in both appeals are:

- The effect of the proposed development on the character and appearance of the area;
- Whether the proposed development would provide suitable living conditions for the future occupiers, with particular regard to outlook and, in respect of Appeal A only, internal living space;
- The effect of the proposed development on the Epping Forest Special Area of Conservation,
- The effect of the proposed development on the living conditions of the occupiers of the neighbouring residential property, with particular regard to outlook and enclosure; and
- Whether the proposed development makes suitable arrangements for the parking of cars.

Reasons

Character and appearance

5. Both appeal proposals involve the demolition of the existing single storey building on the appeal site and replacing it with a two storey building containing flats. In terms of the external appearance, both schemes are to all intents and purposes identical and the same drawing depicting the proposed elevations has been submitted with both schemes.
6. Finchingfield Avenue is a residential street comprised of two storey semi-detached and terraced properties finished in either brickwork or render and generally with hipped roofs. There are a small number of properties with gabled roofs, including the houses immediately adjacent to the appeal site at numbers 1 and 3. The houses are predominantly set on relatively large plots with short front garden areas, some of which have been given over to parking, and long rear gardens. To the north-northeast of the appeal site there are two storey terraced properties on Snakes Lane East with long rear gardens. Adjacent to these, at the junction of Finchingfield Avenue with Snakes Lane East, is an area of open space and landscaping. To the rear of the appeal site is a garage court adjacent to the rear gardens of the properties on Snakes Lane East. The majority of the houses on Finchingfield Avenue appear to have been built at the same time and, whilst there are some design differences, the use of a common palette of materials, design details, and similar fenestration patterns give the area a homogenous appearance.
7. The proposed building would share some similarities with the adjoining buildings in terms of having a perceived ridge height similar to that of the main roof of the adjoining house, and a ground floor porch and canopy that echoes the canopies present on other nearby houses. However, the mix of brickwork and render on the external walls would be inconsistent with the adjoining properties, which are wholly rendered, and in order to achieve the same roof pitch as these properties over a deeper plan form, the roof of the proposed

building would incorporate a flat central section that is inconsistent with other roofs in the area. The fenestration pattern of the first floor of the proposed building with uniform windows sizes, would also differ from that of the adjoining houses and the other houses in the street. Additionally, the much smaller quantum of amenity space would give the appeal building a distinctly different character from the surrounding buildings that occupy much larger plots.

8. As consequence of these factors, the proposed building would not appear well integrated with its surroundings and would appear as an incongruous addition to the street scene. This would be exacerbated by the location of the appeal site at the end of the existing group of buildings and its high degree of visibility across the area of open space adjacent to the junction, which would emphasise the divergent roof form. As a result of the above, I find that the appeal proposals would be harmful to the character and appearance of the area.
9. I accept that the existing building on the appeal site is not wholly in keeping with the surrounding area. Nevertheless, the proposed replacement building would be both significantly taller and more prominent. I also have had regard to the presence of a more recently built property at 241 Snakes Lane East which is accessed from Finchingfield Avenue. This building also adopts different design approach to its surroundings. However, it is a detached property on a large plot and, due to the degree of separation from other properties, it is not seen in the immediate context of the built form on either street. Consequently, I do not consider that this represents a reason for accepting the appeal proposal.
10. I therefore conclude that the proposed development in both appeals would cause harm to the character and appearance of the area. It would not comply with the relevant requirements of Policy 7.4 of the London Plan 2016 (the London Plan) or Policy LP26 of the Redbridge Local Plan 2018 (the Local Plan) which seek to ensure that new development is of a high standard of design that is well integrated with its surroundings and has regard to its context.

Living conditions of future occupiers

11. When taken together, Policy 7.4 of the London Plan and Policy LP26 of the Local Plan seek to ensure, amongst other matters, that new development is of a high standard of design that provides high standards of accommodation for housing in terms of size, quality, and arrangement of internal space and external private amenity space. London Plan Policy 3.5 and Local Plan Policy LP29 set out minimum internal space standards for new development which reflect the minimum space standards set out in the Technical housing standard – nationally described space standard (NDSS). The National Planning Policy Framework (the Framework) also expects that new development provides a high standard of amenity for future users.
12. The proposal that forms the subject of Appeal A would provide three dwellings: one, two bedroom, flat on the ground floor; and two, one bedroom, flats on the first floor. The description of the development on the planning application form does not refer to the occupancy of the proposed flats. However, the Design and Access Statement submitted with the application sets out that the ground floor flat would be a two bedroom, 4 person, (2b4p) flat and the first floor flats one bedroom, one person, (1b1p) flats.

13. It is not in dispute that the proposed ground floor flat meets the required gross internal area (GIA) for a 2b4p flat set out in the development plan and the NDSS. In respect of the first floor flats, these would meet the minimum GIA of 39m² for a 1b1p flat. However, the NDSS also sets out that in order to provide two bed spaces a bedroom should have a minimum floor area of 11.5m². Both upper floor flats have bedrooms that meet this minimum requirement. Notwithstanding the assertion in the design and access statement, this would allow for the proposed upper flats to be occupied by more than one person. No mechanism is proposed to limit the occupation of the upper flats to a single person. I do not consider that a condition seeking to restrict the occupation of the upper flats would be either effective or enforceable, as it would be practically impossible to determine whether a breach of the condition had occurred. I therefore consider that the upper floor flats should be treated as one bedroom, 2 person, (1b2p) flats.
14. The required minimum GIA for a 1b2p flat is 50m² and at approximately 39m² each, both upper floor flats fall well short of this. In respect of Appeal A, I find that the proposed development would not provide suitable living conditions for the future occupiers in terms of internal space and would conflict with the requirements of London Plan Policy 3.5, Local Plan Policy LP29 and the NDSS.
15. With regard to Appeal B, whilst not specified on the planning application form, the Design and Access Statement for this proposal sets out that it would provide two, 2b4p, flats. Both flats would meet the minimum GIA requirement of 70m².
16. I have had regard to the Council's point that the proposed new flats on both floors would have a floor to ceiling height of 2.3 metres. This meets the requirements of the NDSS. The notes to Table 3.3 that forms part of London Plan Policy 3.5 suggest that, due to the heat island effect in London, a minimum ceiling height of 2.5m for at least 75% of the gross internal area is strongly encouraged to ensure that flats have adequate light, ventilation and sense of space. Whilst the proposal does not comply with this aspect of London Plan Policy 3.5, the provision is not mandatory, and the surrounding area is not particularly densely developed and has a suburban character. In this context, although the proposals diverge from the suggested floor to ceiling height in Policy 3.5 of the London Plan, in and of itself, this would not make the proposal unacceptable. However, it does not overcome the shortfall in GIA in the first floor flats proposed by Appeal A and adds to my concern that these would not provide adequate living space for two people.
17. Both appeal proposals would provide private external amenity space that meets the minimum requirements for private external space set out in Local Plan Policy 29. I also saw that there was a large public park a short distance from the appeal site.
18. In quantitative terms, both proposals meet the minimum requirement for private amenity space. However, the principal living area of the ground floor flat in both schemes is located at the rear of the proposed building. These rooms would look out onto the proposed external amenity space for the flat which, although it would be approximately 10 metres wide, would only be approximately 1.5 metres deep and bounded by a high brick wall at the rear of the site that separates the appeal site from the garage court to the rear. Due to the shallow depth of the rear courtyard space and the height of the

boundary wall, the outlook from the principal living area of the ground floor flat in both cases would be extremely restricted. As a result of this constrained outlook, the ground floor flat in both schemes would not, in my view, be a pleasant place to live and in qualitative terms does not represent a high standard of design that would provide suitable living conditions for the future occupiers.

19. I therefore conclude that the proposed development in both appeals would not provide suitable living conditions for the future occupiers, with particular regard to outlook. It would not comply with the relevant requirements of London plan Policy 7.4, Local Plan Policy LP26 and the Framework. I further conclude, in respect of Appeal A only, that the proposed development would not provide suitable living conditions for the future occupiers in terms of internal space. It would conflict with the relevant requirements of London Plan Policy 3.5, Local Plan Policy LP29 and the NDSS.

The effect of the proposed development on the Epping Forest Special Area of Conservation

20. The appeal site is located within the identified Zone of Influence (ZOI) of the Epping Forest Special Area of Conservation (SAC). Local Plan Policy LP33, cited in reason for refusal 3 on both decision notices relates to heritage assets and is not relevant to Special Areas of Conservation. Policy LP38 addresses protecting trees and landscape in planning decisions. This policy is also silent in respect of SAC's and mitigating the effect of development. In this respect the appeal proposals do not conflict with these policies.
21. However, The National Planning Policy Framework seeks to ensure that internationally designated sites, such as SACs, are conserved and that, if significant harm to biodiversity cannot be avoided, or adequately mitigated, planning permission should be refused.
22. I have been provided with a copy of the Interim Mitigation Strategy for Epping Forest Special Area of Conservation 2018 (the Mitigation Strategy) which identifies that any additional homes built within the ZOI, when taken in combination with other plans and projects, have the potential to increase pressure on the forest, and would have a likely significant effect on the health of Epping Forest, largely due to increased recreational use. The Mitigation Strategy also identifies that there is no way of preventing more people who come to live in the ZOI as a result of new residential development from visiting the forest, and that there is a need to undertake measures to mitigate the likely significant effects, and for new developments to make a contribution towards their implementation. The Mitigation Strategy also sets out a number of mitigation measures to address recreational pressure on the SAC as a result of new development.
23. Based on the evidence before me, I am satisfied that it is necessary for the proposed development to contribute to the mitigation measures identified to manage recreational pressures on the SAC. The Mitigation Strategy does not set out what the level of individual contributions should be but the Council state that this amounts to £30 per new dwelling.
24. Whilst the appellant company state that they are willing to make this payment, no mechanism, such as a Unilateral Undertaking, is proposed to secure this, and no Unilateral Undertaking has been provided. The letter included in the

Appendix to the Council's Statement of Case suggests that a direct payment can be made. However, within the context of this appeal, this does not provide me with any confidence that either the payment would be made, or that it would be used for the required purpose.

25. An exemption for small sites from tariff based contributions was introduced by a Written Ministerial Statement (WMS) in 2014¹ and a subsequent change to the Planning Practice Guidance (PPG).
26. The revised National Planning Policy Framework was published in 2018 and updated in 2019. This sets out the Government's latest national policy. Prior to this, it was set out within the original, 2012, Framework and, additionally, through a series of WMS issued in the period following its publication. A WMS cannot be cancelled or withdrawn and, as they remain extant, the statements of policy within them may remain a potential, relevant material consideration in decision-making. As statements of policy, they are unlikely to remain relevant where the policy they contain has clearly been overtaken by more recent statements of policy, such as the revised Framework.
27. The provisions of the WMS exempting small sites from tariff-style contributions have not been incorporated into the Framework and were removed from the PPG chapter on Planning Obligations when it was updated in March 2019, although the exemption from providing affordable housing on small sites is retained. Consequently, it is not clear whether the exemption for small sites is applicable and there is no evidence from either party in respect of this matter. The WMS, however, remains extant and the updated PPG states that the Community Infrastructure Levy is the most appropriate mechanism for capturing developer contributions from small developments.
28. This notwithstanding, the Framework seeks to protect designated sites such as SACs. The appellant has submitted no substantive evidence in respect of the effect of the proposed development on the protected site. The evidence from the Mitigation Strategy is clear that, in order to avoid the potential adverse effects arising from new residential development within the ZOI, mitigation is required. The conservation of the SAC is a matter which must carry considerable weight as a material consideration. Whilst the WMS may also be a material consideration, based on the evidence before me in this case, it would not outweigh the need to mitigate the effects of the proposed development on the SAC or indicate that the requirement for developer contributions in the Mitigation Strategy, which are necessary in order to comply with the requirements of the Framework, should be set aside.
29. In the absence of a planning obligation or unilateral undertaking, I cannot be satisfied that the development proposed by both appeals would not cause harm to the protected site. The PPG is clear that a planning condition cannot be used to require the payment of money and that a positively worded condition which requires the applicant or appellant to enter into a planning obligation is unlikely to pass the test of enforceability. The PPG is also clear that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in most cases. Such a condition may be appropriate only in exceptional circumstances, for example, where there is clear evidence that the delivery of a major or complex development would otherwise be at serious risk. The appeal proposal is not a

¹ Support for small scale developers, custom and self-builders - 28 November 2014

major or complex development scheme, nor would it deliver any significant public benefits. Consequently, I do not find that there are any exceptional circumstances that would allow this matter to be dealt with by way of a planning condition.

30. In the absence of a planning obligation or unilateral undertaking to secure the required mitigation, I conclude that it has not been demonstrated that the appeal proposals would not cause harm to the Epping Forest Special Area of Conservation. It would not comply with the relevant requirements of the Framework which expect new development to protect or enhance internationally designated sites.

Living conditions of the neighbouring occupiers

31. In both cases, the proposed new building is externally identical in size and form. The proposed building would be immediately adjacent to the neighbouring property at 1 Finchingfield Avenue which is an extended semi-detached house. At first floor level it would project approximately 1.86 metres beyond the rear elevation of the neighbouring building and approximately the same distance beyond the front elevation. I saw during my site visit that there are windows to habitable rooms in the neighbouring house close to the common boundary with the appeal site.
32. Due to the angled boundary between the appeal site and the neighbouring property, and the distance of the window on the front elevation of the neighbouring house from the boundary, the proposed new building would not have a significant adverse effect on the outlook from this window,
33. On the rear elevation of the neighbouring property, the window is closer to the boundary. In addition, the boundary is angled towards the neighbouring property. This would result in the new section of wall appearing more visible from within the neighbouring house and would reduce the extent of the outlook from this window. This would have an effect on the living conditions of the occupiers of the house. However, the neighbouring house is dual aspect and the proposal would only affect this one window. It would not affect other windows to habitable rooms in the property. When taking the neighbouring house as a whole, the effect of the proposals would not be so significant as to warrant withholding planning permission on this ground.
34. It is not argued by the Council that the appeal proposals would result in loss of light or overshadowing to the adjoining house and, due to the relative positions of the existing and proposed buildings, I have no reason to find differently.
35. I therefore conclude that the proposed development in both cases would not cause harm to the living conditions of the occupiers of the neighbouring property, with particular regard to outlook and enclosure. It would not conflict with the relevant requirements of Local Plan Policy LP26 and the Framework, insofar as they expect new development to not result in an adverse impact upon the amenity of neighbouring occupiers.

Whether the proposed development makes suitable arrangements for the parking of cars

36. Local Plan Policy LP22 promotes sustainable transport in terms of the location of development, supporting transport projects that improve the public transport network, and supporting the delivery of Crossrail and improvement to stations

on the Central Line. The appeal site is in an area which has a Public Transport Accessibility Level of 3 which indicates a moderate level of public transport connectivity. There is no evidence that either of the appeal proposals would generate high transport demands and I do not find that the proposals inherently conflict with this policy.

37. Policy LP23 of the Local Plan expects, among other matters, that new development provides sufficient cycle and car parking, and meets the minimum and maximum parking standards set out in the London Plan. Both the appeal schemes propose the provision of two off street parking spaces. The London Plan parking standards indicate that within the area that the appeal site is located up to 1.5 spaces per dwelling should be provided. Neither proposal exceeds the standards set out in the London Plan.
38. The Council suggest that the proposed access arrangements to the site would result in the loss of an off street parking space. The car parking surveys submitted with the applications show that parking in the area is well used but is not at the level where parking stress is unacceptable and that on street parking spaces would still be available. This coincided with my observations at the time that I was at the site. I accept that this is just a snapshot of the conditions at the time, however, I have no reason to believe that this was not typical. I also saw when I visited the site that the area of highway that the Council refer to is smaller than a standard off street parking bay, both in terms of length and width, and is more like a localised road widening.
39. On this basis there is no substantive evidence that the proposed parking arrangements are inadequate or intrinsically unsafe. I note that there is an objection from the Highways Authority to the proposed configuration but also that the Highways Authority consider that this could be overcome by a condition requiring a new parking arrangement with both spaces accessed from the existing access from the highway to the north of the appeal site. This would require some consequential changes to access ramp to the front of the proposed new building and the proposed cycle and bin storage. These would not fundamentally alter the proposal.
40. I therefore find that the proposed development would provide suitable arrangements for the parking of cars. It would not conflict with the relevant requirements of Policy LP23 of the Local Plan.

Conclusion

41. I have found that in the case of both Appeal A and Appeal B that the proposed development would cause harm to the character and appearance of the area, would not provide suitable living conditions for the future occupiers, and that it has not been demonstrated that the appeal proposals would not cause harm to the Epping Forest Special Area of Conservation. As such the proposed development would conflict with relevant policies in the development plan, the NDSS, and the Framework.
42. Although I have found that the proposed development would not cause harm to the living conditions of the occupiers of neighbouring properties and would make suitable provision for the parking of cars, neither of these points, either individually or collectively, would outweigh the other harm that I have found.

43. The Framework seeks to significantly increase the supply of housing and it is not in dispute that the appeal proposals would add a small number of additional dwellings to the housing stock of the Borough. However, it is not contended that the Council cannot demonstrate a deliverable five year supply of housing land nor is it argued that the Council is not meeting its targets for delivery of new housing. The very small contribution to the supply of housing in the area that the appeal proposal would make would not overcome the harm that the proposed development would cause or justify providing housing that does not provide suitable living conditions for the future occupiers. No other material considerations have been identified that would indicate that planning permission should be granted for a development that does not comply with relevant policies in an up to date development plan.
44. For the above reasons, I conclude that both appeals should be dismissed.

John Dowsett

INSPECTOR