
Appeal Decision

Site visit made on 11 August 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/B5480/W/20/3250431

Land adjacent to 1 Torrance Close, Hornchurch RM11 1JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Oleg Rudenko (Omega Design and Build Ltd) against the Council of the London Borough of Havering.
 - The application Ref P1750.19, is dated 15 November 2019.
 - The development proposed is erection of a detached dwelling-house.
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Decision

1. The appeal is dismissed and planning permission refused for erection of a detached dwelling-house.

Preliminary Matters

2. The Council's appeal statement refers to the emerging Havering Local Plan 2016-31 (the LP). I attach limited weight to the LP as it has not been adopted and is therefore subject to change. Details of the level and significance of any unresolved objections have not been provided to me. The LP does not have the same statutory force accorded to adopted policies under s38(6) of the Planning and Compulsory Purchase Act 2004.
3. There are 3 trees within the appeal site which are subject of Tree Preservation Order (No 8) 1999. I note that the previous appeal scheme¹ proposed the removal of the oak tree T1, which the Inspector found to be acceptable. However, the plans for the current appeal scheme do not show the removal of the oak tree T1. I have therefore determined the appeal scheme on the basis that the 3 protected trees would be retained.

Main Issues

4. The Council did not make a decision on the planning application within the statutory period and this has taken the jurisdiction to determine the application away from the Council. However, the Council has provided an officer's report and an appeal statement which outlines that it would have refused planning permission. Based on the reasons set out in the officer's report and the appeal statement, I consider that the main issues are:
 - The effect of trees on the living conditions of future occupants of the proposed dwelling; and,

¹ Appeal ref: APP/B5480/W/17/3175801

- The effect of the proposed development on protected trees.

Reasons

Living conditions of future occupiers

5. The proposal follows a previous appeal scheme for the erection of a 2 storey dwelling, which was dismissed on 3 October 2017. The previous Inspector commented that due to the constrained nature of the site, the rear of the proposed dwelling would be located in close proximity to retained trees; and the garden area and outlook from the lounge, kitchen and one of the bedrooms would be affected by loss of light and overshadowing from the trees. The Inspector stated that this would give the garden and the outlook from those rooms a gloomy and oppressive character.
6. The current appeal scheme seeks to overcome the previous concerns by reducing the footprint of the proposed dwelling and siting it closer to No 1 Torrance Close. There would also be alterations to window openings, including: 2no rooflights to serve the rear bedroom; side patio doors to the kitchen; and 2no side windows to the lounge.
7. The canopies of the retained trees cover a significant proportion of the appeal site, and they would cause significant overshadowing of the rear lounge window; the patio doors and rear window of the kitchen; and, the garden. I appreciate that the lounge would also be served by 2 side windows, however they would be small and provide limited outlook. These windows would also be affected by overshadowing from the canopies of the oak trees T1 and T2. As the rear and side windows face the private garden area, they provide the main outlook, which would be gloomy and result in an oppressive living environment for future occupants. The front lounge window would be close to the parking area and the highway, which would not adequately mitigate the gloomy outlook towards the garden.
8. I therefore conclude that the restricted nature of the site and the overshadowing from tree canopies would result in unacceptable living conditions for future occupants of the proposed development. The proposal would therefore be contrary to Policy DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document Adopted 2008 (the Core Strategy), which amongst other things, states that planning permission will not be granted where the proposal results in unacceptable overshadowing and loss of sunlight/daylight to new properties. It would also be contrary to paragraph 127 of the National Planning Policy Framework (the Framework), which, seeks a high standard of amenity for future users.
9. The Council has referred to Policy DC4 of the Core Strategy, however this policy relates to conversions to residential and subdivision of existing residential dwellings, and so I consider that it is not relevant to the appeal.

Effect on protected trees

10. The previous appeal scheme proposed crown lifting works to the protected oak tree T2 due to the proximity of the proposed dwelling to the tree. The Inspector stated that the crown lift would reduce the contribution of this tree to the verdant character arising from the canopy of trees in the area. Furthermore, the Inspector noted that the rear garden of the proposed dwelling would be affected for much of the year by the overhanging canopy of the retained trees,

and the trees would be a dominant and oppressive feature of the garden. The close proximity of the proposed dwelling to the trees would raise undue pressure in the future for further works to the tree or potential removal.

11. Paragraph 6.10 of the Planning, Design and Access Statement dated November 2019 states that it is no longer proposed to crown the oak tree. However, the appellant's appeal statement comments that it is proposed to provide limited crowning to T2 for the purpose of good practice and maintain the health and vitality of the tree. Paragraph 5.1.2 of the Tree Survey Report² states that some management of the crown is to be advised if the impact upon future residents is to be minimised; and, parts of the lower crown, primarily to the southwest aspect, will pose a significant constraint upon the construction works, and thus, some facilitation pruning will be necessary.
12. Whilst the proposed dwelling would be sited nearer to No 1 Torrance Close, there would clearly need to be cutting back of the canopy to enable construction works given the close proximity of the proposed dwelling to the tree. An arboricultural method statement showing specifications of the proposed tree works is not before me, therefore I am not satisfied that the reduction of the canopy of the oak tree T2 would not harm the verdant character of the street scene.
13. As noted above, the canopies of the trees cover a significant proportion of the appeal site, which would cause significant overshadowing and a gloomy outlook from the lounge, kitchen and the garden. I have found that this would result in unacceptable living conditions for future occupants of the proposed development. I agree with the previous Inspector that whilst the potential residents would be aware of the position of the trees, the implications of living next to large trees could not be fully appreciated until occupation. Given my findings, the proposal would raise undue pressure in the future for further works to the trees or potential removal.
14. For these reasons, I conclude that the proposed development would harm the amenity value of the oak tree T2 and would also place unacceptable long-term pressure for the removal or significant works to trees which are subject of a TPO. The proposal would therefore be contrary to Policies DC60 and DC61 of the Core Strategy and guidance in the Protection of Trees during Development Supplementary Planning Document 2009, which, amongst other things, seek to protect and improve the amenity value afforded by trees, and complement or improve the amenity and character of the area. The proposal would also conflict with the Framework, which states that planning decisions should contribute to and enhance the natural and local environment.

Other Matters

15. The 2019 Housing Delivery Test (HDT) results indicate that delivery of housing in the borough was substantially below the housing requirement over the last 3 years. The presumption in favour of sustainable development set out in paragraph 11(d) of the Framework is therefore engaged.
16. This states that where the policies which are most important for determining the proposal are out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of

² Carried out by RGS Arboricultural Consultants dated July 2019 (Revised Nov 19)

- particular importance provide a clear reason for refusing the development, or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
17. In respect of the benefits of the proposal, paragraph 59 of the Framework refers to significantly boosting the supply of housing. The proposal would provide one additional dwelling, which would contribute towards meeting the Council's housing shortfall. The site is also in an accessible location close to shops, services and passenger transport facilities. Furthermore, there would be economic advantages from the construction and occupation of the proposed dwelling. However, the benefits of the proposal would be limited by the small amount of development.
18. I have found that the proposed development would result in unacceptable living conditions for future occupants. This would conflict with the Framework, which, seeks a high standard of amenity for future users, and I attach significant weight to this harm.
19. Furthermore, I have found that the proposed development would harm the amenity value of the oak tree T2 and would also place unacceptable long-term pressure for the removal or significant works to trees which are subject of a TPO. This would conflict with the Framework, which states that planning decisions should contribute to and enhance the natural and local environment. This matter attracts significant weight.
20. Taking the above factors into account, I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not represent sustainable development.
21. I have had regard to the concerns raised by interested parties, including: traffic; parking; impact of the proposed dwelling on the character and appearance of the street scene; loss of light to neighbouring property; and impact on sewer and drainage. The Council has raised no objections in these respects. As I am dismissing the appeal for other reasons, it has not been necessary for me to consider these matters further.

Conclusion

22. For the above reasons, and having had regard to all other matters, I conclude that the appeal should be dismissed.

C Osgathorp

INSPECTOR