



Appeal Decision

Site visit made on 3 September 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2020

Appeal Ref: APP/N5090/W/20/3248916

Brook Lodge, 7A Argyle Road, London N12 7HS

- 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 Sterling Development (London) Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/6393/FUL, dated 29 November 2019, was refused by notice dated 7 February 2020.
 - The development proposed is demolition of the existing detached dwelling and garage block and construction of 2 No. 3 bedroom detached dwellings units.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (a) whether the proposal would satisfy national and local policy requirements in minimising flood risk and (b) the implications of the proposal on the local ecology.

Reasons

Flood Risk

3. The site is adjacent to the Dollis Brook. Whilst most of the site is located within Flood Zone 1 (with a low probability of flooding), its western extent is located within Flood Zones 2 and 3 (with medium and high probability of risk from flooding)¹. The proposed dwellings would be largely sited within Flood Zone 1, but parts of Unit 2 would be in Flood Zone 2 and its rear garden within Flood Zones 2 and 3. A decking area to the side and rear of Unit 2 would be largely within Flood Zone 2. The replacement dwellings would be classified in PPG as “*More vulnerable*” development in relation to flood risk².
4. Policy DM04 of Barnet’s Development Management Policies DPD (2012) and Policy 5.12 of the London Plan (2016) require new development in areas at risk from fluvial flooding to demonstrate application of the sequential approach set out in the National Planning Policy Framework. The Framework has a strategy to direct development away from areas at highest risk of flooding. At Paragraph 163 it states that planning applications should be supported by a site specific flood risk assessment (FRA) and a sequential test as applicable. The proposal is accompanied by a FRA but not by a sequential test.

¹ Planning Practice Guidance (PPG) Table 1 Flood Zones Reference ID: 7-065-20140306

² Planning Practice Guidance (PPG) Table 2 Flood risk vulnerability classification Reference ID: 7-066-20140306

5. The FRA confirms no records of historic flooding on any part of the site, and lists benefits including that most of the site would remain dry during extreme modelled scenarios and that the proposal would result in less hard surfacing than the present situation, thereby improving permeability. The appellant contends that as intrusion into an area outside Flood Zone 1 (where residential development can be accepted) would be "*de minimis*" that a sequential test in this case should not be a requirement.
6. Paragraph 164 of the Framework states that applications for some minor developments should not be subject to a sequential test. Footnote 51 explains that this includes householder development and small non-residential extensions; however, in this context, the term minor development does not include new dwellings, as proposed at the appeal site. As such, it is appropriate to ascertain through a sequential test if there are reasonably available sites for the development in areas with a lower probability of flooding. As it has not been shown that such sites do not exist the proposed development would be contrary to the national and local policy requirements identified above.
7. The appellant points out that only a tiny part of the house on plot 2 would be within an area outside Flood Zone 1 and that the house could be redesigned to ensure it does not encroach outside of this. But the submitted proposal should be assessed in accordance with development plan policies and requirements set by the Framework. The appellant claims that the Council considers there to be no present circumstances where it is envisaged that alternative sites for housing development could not be found elsewhere in the borough to justify housing development outside Flood Zone 1. Whilst this may be the case, having regard to the thrust of relevant policy on flood risk, this is not sufficient reason not to submit a sequential test for a development that requires one. It would be inappropriate to circumvent this requirement through a grant of planning permission and requiring flood risk mitigation measures to be subject to a planning condition. The FRA indicates that a sequential approach has been applied within the site and the most vulnerable development placed at lower areas of flood risk. The site layout would appear to verify this; but this does not exempt the requirement for the sequential test set by the Framework.
8. A fallback scenario has been presented in which householder permitted development allowances could be exercised to build a side extension, an outbuilding and hard surfaced area that would encroach further beyond Flood Zone 1 than the present proposal. This remains a possibility but there is no indication of intent to carry out such works before me or a Lawful Development Certificate in place to demonstrate the extent of works envisaged. Conversely, the proposal is the second planning application seeking redevelopment of the site for housing. As such, I attach only limited weight to the fallback scenario.

Ecology

9. The Dollis Brook adjacent to the site is designated as a Site of Importance for Nature Conservation (SINC). Policy DM16 of the DMP promotes the interests of biodiversity and where a development will affect a SINC expects the proposal to meet the requirements of Policy 7.19E of the London Plan. This sets out a hierarchy of measures for considering proposals that would directly, indirectly or cumulatively affect a site of recognised nature conservation interest.
10. The appellant contends that as designation of the SINC does not extend to the appeal site itself and that the Council has not explained precisely its concerns

that a requirement for an Ecological Impact Assessment (EcIA) should not be applied. But Unit 2 would be very close to the SINC and the more intensive use of the site as a whole could have indirect impacts, such as noise, shading, lighting etc, as envisaged by Policy 7.19E. Whilst the use of planning conditions in relation to tree retention, tree planting and other matters could help to mitigate such impacts, it would be appropriate to first require an EcIA to better comprehend local biodiversity interests and the likely impacts of the proposal.

11. The Dollis Brook is lined by trees within the park to its western side and feeds into the Brent Reservoir Site of Special Scientific Interest. It forms a wildlife corridor and has the potential to be used by bats. Given the proximity of the dwelling and garage block to be demolished to this corridor, it would be appropriate for a Preliminary Roost Assessment to be undertaken to establish the presence of bats and the need for any further survey or mitigation. There are no circumstances before me to indicate that surveys should be left to planning conditions following a grant of planning permission. The presence or absence of protected species, and the extent to which they could be affected by the proposed development, should be established before planning permission is granted, as material considerations might not otherwise be considered.

Other matters

12. I have noted the representations from nearby residents, mainly against the proposal. These raise issues other than those identified in the Council's decision notice. The proposal would result in a relatively crowded appearance to this section of Argyle Road but given the mixed nature of buildings in the immediate area, the proposal would not be materially harmful to the character and appearance of the area. Both houses would have 2 parking spaces, and these would utilize existing vehicle crossovers; the proposal would not therefore be likely to lead to parking congestion or be materially harmful to road safety. There would be sufficient separation from the rear windows to the proposed houses to the nearest dwellings in Westbury Road to safeguard living conditions at these dwellings.

Conclusion

13. The proposal would result in the benefit of a net increase of one dwelling which would make a modest contribution towards housing need, but this would be outweighed by the harm in relation to flood risk and ecological considerations that I have described. Moreover, the proposal would be contrary to relevant development plan policies pertaining to these issues. For the reasons given and having regard to all other matters raised the appeal is dismissed.

Rory MacLeod

INSPECTOR