



Appeal Decision

Hearing Held on 28 October 2020

Site visit made on 28 October 2020

by Mr Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th November 2020

Appeal Ref: APP/M5450/W/20/3250398 80 Kings Road, Harrow HA2 9JF

- 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 Ratnadeep Palit against the decision of London Borough of Harrow.
 - The application Ref P/4600/19, dated 29 October 2019, was refused by notice dated 23 December 2019.
 - The development proposed is described as: 'Proposed Double Storey Side, Single Storey Rear, Loft Conversion with Rear Dormer, and two Velux windows on the front slope, Front Porch and Flat Conversion into three Self Contained flats'.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of single dwellinghouse to three flats (2 x 2 bed and 1 x 1 bed); front porch; single and two storey side extension; single storey rear extension; rear dormer; two rooflights in front roof slope; parking; landscaping; bin / cycle storage at 80 Kings Road, Harrow HA2 9JF in accordance with the terms of the application, Ref P/4600/19, dated 29 October 2019, subject to the conditions set out at the end of this decision.

Applications for costs

2. An application for costs was made by Mr Ratnadeep Palit against the Council of the London Borough of Harrow. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description of development as it appears upon the Council's Decision Notice and the appeal form, as opposed to that given on the application form. This is because it is logically ordered and correctly references that the proposed side extension is part single storey.
4. The Mayor of London released in December 2019 a version of the emerging London Plan (the ELP) that he intends to publish. Nevertheless, it is the case that modifications could still be made before the ELP is published. Thus, notwithstanding that it has been through Examination in Public, the ELP is at a stage that attracts limited weight in decision-making, and I shall determine the appeal accordingly.
5. The nearest watercourse is positioned to the site's rear. Whilst named as the Yeading Brook at one point within the written evidence before me, I shall refer

to the watercourse as the river Roxbourne (the river) for the purposes of this decision. I am suitably content that this is correct and consider that no party with an interest in this appeal is prejudiced by me taking this approach.

Main Issue

6. Whether or not the proposal satisfactorily addresses the issue of flood risk.

Reasons

7. The appeal site is, for the most part, situated within fluvial Flood Zone 1 as illustrated through flood zone mapping produced by the Environment Agency (the EA). A portion of the property's rear garden, where built development is not intended as part of this proposal, falls within fluvial Flood Zone 2. The lands positioned beyond the site's rear boundary typically slope gently down towards the river and are predominantly comprised of neighbouring residential gardens.
8. The EA's surface water flood mapping (the EA's mapping) indicates that the site is at risk from surface water flooding. The site is, for the most part, defined as being at medium risk (Surface Water Flood Zone 3a), which translates to flood depths of 300mm-900mm during an extreme rainfall event (1 in 30 to 1 in 100 year event). Indeed, only a very small part of the site adjacent to its rear boundary is depicted to be at high risk of surface water flooding. This makes up part of a wider high-risk area, which stretches down to and alongside the river.
9. The EA's mapping thus indicates that, during the relevant return period, the site could be flooded to a maximum depth of 900mm. However, the appellant's representatives have sought to demonstrate through their own modelling of the site's catchment that the EA's mapping includes assumptions which result in an overestimation of the actual risk of flooding from surface water.
10. The appellant's model¹ (the model) seeks, amongst other provisions, to accurately simulate the interaction between surface water runoff and the river's flow and to clearly illustrate localised surface water flow paths. A catchment has been determined based on watershed considerations and the model has been constructed against what would appear to be fair and precautionary assumptions. Indeed, it is based upon circumstances of the river being in a near-flood condition.
11. The model also includes a peak rainfall intensity climate change allowance that I am satisfied is consistent with the relevant requirement set out via the Planning Practice Guidance (the Guidance). Indeed, it has not been clearly substantiated that the model or wider Flood Risk Assessment (FRA) fails to make appropriate allowances in a climate change context. The model indicates that the depth of flooding along the surface water flow path would not be expected to exceed 0.19m, or 185mm in precise terms as referenced elsewhere within the appellant's evidence.
12. It is the Council's case that, notwithstanding the model's findings, a 900mm figure should continue to apply. It is not, they consider, their role as Lead Local Flood Authority (LLFA) to review site-specific models. However, the Flood

¹ Technical Note: Modelling Surface Water at Kings Road, Harrow; 18 October 2019

and Water Management Act 2010 sets out that LLFAs must develop, maintain, apply and monitor strategies for local flood risk management and the Guidance similarly indicates that LLFAs are responsible for managing local flood risk, including from surface water. I also note that the West London Strategic Flood Risk Assessment specifies that flood plain compensation, within Surface Water Flood Zone 3a, can account for flood depths predicted by either the EA's mapping or site-specific modelling.

13. A chain of email correspondence between the appellant's representatives and the EA, for the most part dated 7 February 2020, appears within the evidence before me. This confirms that the EA would not review surface water data submitted as part of a planning submission and that, from their perspective, the responsibility to review/approve such data would fall to the LLFA. I do not dispute that any changes to the EA's mapping would ultimately need to be agreed by them. However, the process of periodically updating the EA's mapping is distinct from the determination of any individual planning application.
14. To my mind, any potential lack of in-house expertise or resources to robustly review the model (including the extent of the catchment used), does not discharge the LLFA's statutory responsibilities in this regard. There would have existed the opportunity to enlist external assistance, even potentially via the EA themselves, and/or to discuss different assessment options with the appellant's representatives. It was not the appellant's duty to approach the EA directly. Indeed, as evidenced through the chain of email correspondence referenced above, any such approach would have, in all probability, been unproductive.
15. The model demonstrates that the EA's mapping overestimates the risk of surface water flooding at the site. In the absence of clear contradictory evidence to the contrary, I am sufficiently content that the model provides an accurate indication of the anticipated maximum flood depth (185mm) at this site that is based upon the specific local circumstances that are to hand. Indeed, notwithstanding the noticeable reduction in maximum flood depth when compared to 900mm, there is no clear reason before me to doubt that the model is correct.
16. Contrary to the appellant's own experiences at the site, instances of historic flooding at or in proximity to the site since 2016 were referenced by the Council at the Hearing. However, no specific records or details have been put before me. Without such evidence, it is difficult to apply relevance to the Council's assertions in this regard. I was also unable to identify, during my inspection of the site, any clear indication (such as flood marks) to assist in demonstrating that past flood events have occurred.
17. Considering the 185mm maximum flood depth identified, there would be the potential for the proposal to exacerbate the risk of flooding off site if the flow of surface water during a flood event were to be impeded. For this reason, voids beneath the proposed extensions measuring up to 200mm in height are proposed in the interests of allowing flood water to flow freely during a flood event.
18. The void space would be installed with vertical steel bars designed to guard against the unwanted storage of materials. Subject to a robust scheme of management and maintenance being put in place, which could include such provisions as regular inspections and jetting to deal with build ups of silt for

example, I am satisfied that the intended void arrangements would be fit for purpose and would not lead to a potential expansion of the flood envelope at any neighbouring property.

19. For the above reasons, the proposal satisfactorily addresses the issue of flood risk. The proposal accords with Policy 5.12 of the London Plan (March 2016), Core Policy CS1 of the Harrow Core Strategy (February 2012), Policies DM9 and DM10 of the Harrow Council Development Management Policies (July 2013) (the DMP) and the National Planning Policy Framework (February 2019) (the Framework) in so far as these policies require that proposals requiring a Flood Risk Assessment must demonstrate that the development will be resistant and resilient to all relevant sources of flooding including surface water and that the design and layout of such proposals must contribute to flood risk management and reduction.

Other Matters

20. Pre application discussions took place between the appellant's representatives and the Council's Infrastructure Team in their role as LLFA. There are not written minutes available of a meeting that I understand took place in April 2019, and there are conflicting accounts as regards the outcome of the discussions and the advice given to the appellant's team. For the avoidance of doubt, it is not my role to come to a finding on what was or wasn't advised at pre-application stage. I have instead focussed upon the merits of the planning submission having considered all the written and oral evidence put before me.
21. The Council has provided copies of two appeal decisions² that relate to sites situated elsewhere within the Borough. Both were unsuccessful due to flood risk factors. With respect to the appeal at Westleigh Gardens, it is evident that an acceptable FRA was absent. As regards the Village Way case, it is apparent that limited evidence was before the Inspector. To the contrary, in the case of the appeal that is before me, a comprehensive FRA has been produced that provides an assessment of flood mitigation measures and of the intended approach to surface water management at the site. The other appeal decisions referenced are thus of limited relevance.
22. The proposal accords with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conditions

23. The Council has suggested a number of conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and the Guidance. As a result, I have amended some of them for consistency and clarity purposes and omitted one related to permeable paving.
24. In the interests of certainty, a condition specifying the approved plans and documents is required. In the interests of protecting the character and appearance of the area, conditions are reasonable and necessary to ensure that external facing materials match those of the existing building and to secure a scheme of hard and soft landscaping (including details of the scale and composition of boundary treatments) and planting implementation and replacement. The specific locations of boundary treatments are not necessary

² APP/M5450/D/16/3153290 and APP/M5450/D/16/3266205

- to secure via condition as these are already clearly depicted upon the approved site plan.
25. In the interests of protecting the living conditions of future and neighbouring occupiers, a condition is reasonable and necessary to secure that new first floor level openings are obscure glazed where annotated to be so on the approved plans.
 26. In the interests of protecting the general amenities of the area, a condition is reasonable and necessary to secure that refuse and recyclables are stored in full accordance with the designated storage areas that are depicted upon the approved site plan. The Council indicated at the Hearing that similar conditions have proved useful and enforceable elsewhere and I have no clear reason to question this. This is notwithstanding that other mechanisms to monitor and control refuse storage arrangements could exist outside of the planning system.
 27. It is not reasonable to insist upon further refuse storage details or the provision of actual storage structures. This is because each of the individual flats would be served by its own private storage area that would typically be discreetly positioned and a potentially high number of bins would not be stored communally. Whilst one of the flat's storage areas would be positioned in proximity to the site's front boundary, the number of bins to be stored in this location would be anticipated to be limited and it was apparent from inspection that similar such arrangements were not rare in the local area. An adverse visual impact would thus be avoided and satisfactory compliance with Policy DM45 of the DMP would be achieved.
 28. Each of the flats would be served by its own private external space, such that opportunities for the secure storage of multiple bicycles would avail. Nevertheless, Policy 6.9 of the London Plan (March 2016) states that cycle parking facilities shall be provided in accordance with minimum standards and the guidance set out in the London Cycle Design Standards. To ensure that this would be the case and to promote sustainable travel choices, a condition is reasonable and necessary to secure full details of the intended installations as well as their subsequent retention.
 29. In the interests of ensuring that an appropriate level of vehicular parking provision is retained at the site, it is reasonable and necessary to secure that the site's forecourt area is retained solely for such purposes. It was evident from inspection that a parking area capable of accommodating at least two parked vehicles was already in place. It is thus not reasonable to require that an amended site plan be provided to confirm this.
 30. In the interests of ensuring that adequate wastewater infrastructure is in place and to ensure the provision of separate surface and foul water systems, it is reasonable and necessary to secure a scheme of sewage disposal.
 31. In the interests of securing the provision of a sustainable drainage system that mirrors pre-development run-off rates, it is reasonable and necessary to secure via condition a scheme for the attenuation, storage and disposal of surface water at the site, as well as associated details of long-term management and maintenance of the system to be installed. It would not be reasonable or necessary to specify that permeable paving need necessarily be installed. Indeed, the suite of measures to be implemented has yet to be finalised.

Notwithstanding the site's susceptibility to surface water flooding, the appellant's representatives provided assurances at the Hearing that infiltration has not been ruled out as a potential option.

32. The Framework sets out that planning conditions that restrict the future use of permitted development rights should only be used where there is clear justification to do so. In the interests of maintaining mixed, balanced, sustainable and inclusive communities, and when noting that the appeal property is presently a single dwellinghouse, a condition is reasonable and necessary and therefore justified to withdraw the future use of permitted development rights that would potentially allow each of the approved flats to be used in multiple occupation.

Conclusion

33. For the reasons given above, the appeal is allowed subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 9449/P/01/C; 9449/P/02/C; 9449/P/03/C; 9449/P/04/C; 9449/P/05/C; Design and Access Statement; Flood Risk Assessment (October 2019).
- 3) The development hereby permitted shall not progress beyond damp proof course level until details of the works for the disposal of sewage to be provided on site have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the works so agreed and the works shall thereafter be retained.
- 4) The development hereby permitted shall not progress beyond damp proof course level until details of the works for the attenuation, storage and disposal of surface water to be provided on site, alongside associated long-term maintenance and management details, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the works so agreed and the works shall thereafter be retained. The details of long-term maintenance and management shall include provisions with respect to the ground level voids depicted upon approved plan 9449/P/05/C, which themselves shall be retained at all times following their installation.

- 5) The development hereby permitted shall not progress beyond damp proof course level until a scheme of hard and soft landscape works has been submitted to and approved in writing by the Local Planning Authority. The soft landscape works shall include planting plans and schedules of plants, noting species, plant sizes and proposed numbers/densities. The hard landscape works shall include details of boundary treatments (materials, scale of boundary) to demarcate access to, and the boundaries between, the subdivided rear garden as well as details of the hard-surfacing materials to be used. The development shall be implemented in accordance with the approved scheme.
- 6) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the development, or the completion of the development, whichever is the sooner. Any existing or new trees or shrubs which, within a period of 5 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 a similar size and species, unless the Local Planning Authority agrees any variation in writing.
- 7) Notwithstanding the cycle storage details that are depicted upon approved plan 9449/P/04/C, the development hereby permitted shall not be occupied until full details relating to the provision of storage for at least 6 bicycles have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to the first occupation of the development and shall thereafter be retained.
- 8) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used to the existing building.
- 9) In accordance with the approved plans, the first floor level windows on the side and rear elevations of the side extension hereby permitted, that are depicted to serve a shower/WC and landing area upon approved plan 9449/P/03/C, shall be installed with purpose-made obscure glass and be fixed closed below a height of 1.7m above finished floor level, and shall thereafter be permanently retained in that form.
- 10) Refuse and recyclables shall be stored at all times, other than on collection days, in the designated refuse storage areas depicted upon approved plan 9449/P/04/C.
- 11) The site's hard surfaced forecourt area, as depicted upon approved plan 9449/P/04/C, shall at all times be retained for the sole purpose of parking private motor vehicles.
- 12) The flats hereby permitted shall be used as Class C3 dwellinghouses only and, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no change of use permitted by Schedule 2, Part 3, Class L shall take place.

APPEARANCES

FOR THE APPELLANT

Ratnadeep Palit	Appellant
Yussuf Mwanza	Planning Consultant, MZA Planning
Kirsty Thomas	Flood Risk Consultant, Herrington Consulting

FOR THE COUNCIL

Katie Parkins BSc (Hons)	Principal Planning Officer
Tony Donetti HNC FIHE	Infrastructure Manager
Hanna Miturska BSc	Engineer

DOCUMENTS SUBMITTED AT THE HEARING

- Copies of emerging Policies SI12 and SI13 of the ELP, with accompanying table of contents dated December 2019 and covering email dated 28 October 2020
- List of addition draft planning conditions – email dated 28 October 2020
- Written costs rebuttal for the Council – email dated 28 October 2020