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## Appeal Decision

Site visit made on 20 October 2020

**by Graham Wyatt BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> December 2020**

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**Appeal Ref: APP/J1535/W/20/3254429**

**Wayback, 179 Lambourne Road, Chigwell IG7 6JU**

- 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 Richard Hughes (Moor Blatch PLC) against the decision of Epping Forest District Council.
  - The application Ref EPF/2946/19, dated 5 December 2019, was refused by notice dated 16 March 2020
  - The development proposed is described as the "demolition of existing dwelling and erection of replacement dwelling".
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and erection of replacement dwelling at Wayback, 179 Lambourne Road, Chigwell IG7 6JU in accordance with the terms of the application Ref EPF/2946/19, dated 5 December 2019 subject to the conditions on the attached schedule.

### Preliminary Matters

2. The Epping Forest District Local Plan Submission Version 2017 (the LPSV) is currently under examination. Although the appellant questions the Council's argument that the policies referred to from the LPSV would not be the subject of further modifications, given its advanced stage, I can attach moderate weight to Policies H 1 and DM 9, referred to in the Council's decision notice.
3. The plans submitted in support of the development indicate the erection of a triple garage which would be located to the west of the site, adjoining Crosby Court. However, it has subsequently been clarified by both the appellant and the Council that the erection of a garage does not form part of the development. I have therefore determined the appeal on the basis of the drawings submitted with the application that relate to the proposed replacement dwelling only and not the proposed garage.

### Main Issues

4. The main issues in this appeal are:
  - whether the proposed development would reduce housing choice within the District; and,

- the effect of the development on the living conditions of adjoining occupiers with particular regard to outlook, overlooking and light at Crosby Court, School Cottage and Harsnett.

## **Reasons**

### *Housing Choice*

5. Emerging Policy H 1 of the LPSV seeks, amongst other things, to resist the loss of bungalows and specialist accommodation in order to provide a range of accommodation for people with accessibility needs, including the current and future needs of older people.
6. The existing building on the site is described by the Council as a chalet style bungalow which contains accommodation within its roof space. The appellant confirms that it provides a lounge/dining room, study, kitchen, WC, conservatory and a garage at ground floor level with a bathroom and three bedrooms at first floor level. Therefore, although I am mindful of the term chalet style bungalow, the existing dwelling does not provide all of its accommodation across the ground floor. Consequently, even if the building is considered to be a bungalow, it is clear that to function as an accessible dwelling, the building would require modifications for disabled users or those that require mobility assistance to access the bedrooms and bathroom.
7. Therefore, taking into account the specific limitations through the layout of the accommodation across the two floors within the existing building, it has limited potential to assist in providing accessible housing. Thus, the loss of the chalet bungalow would not have a significant adverse effect on the availability of local housing choice for older people or those with accessibility needs, nor would it undermine the objectives of emerging Policy H 1 of the LPSV in this respect.

### *Living Conditions*

8. The proposal seeks to demolish and replace the existing property with a new dwelling that would be repositioned further back into the site. The existing dwelling is set back from the road and adjacent to a row of properties at Crosby Court and behind a property known as School Cottage. Although the property known as Harsnett is further east from the existing property, as a result of the proposed siting of the new dwelling, it would sit behind both School Cottage and Harsnett.
9. Whilst I accept that the proposal would represent a marked increase in size in comparison to the existing dwelling, the separation distances proposed would ensure that the dwelling does not impact on the light currently afforded to the surrounding properties. The appellant has undertaken a daylight and sunlight assessment in accordance with the BRE<sup>1</sup> guidelines, which reveals that the development would have a very low impact on surrounding properties at 4-8 Crosby Court, School Cottage and Harsnett through loss of light, and in some cases light would improve. In the absence of any compelling evidence to the contrary, I have no reason to disagree with the findings of the BRE assessment.

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<sup>1</sup> Building Research Establishment

10. The proposed dwelling would be set further back into the site, increasing its distance from the surrounding properties. The appellant has also undertaken physical measurements of the proposal in relation to the neighbouring properties, none of which have been disputed by the Council or third parties. I am satisfied that as a result of the distance of the proposed dwelling from the surrounding properties and their gardens the proposal would not appear as an overbearing or domineering development nor, following its completion, would it create a sense of enclosure.
11. The development does not propose altering the current arrangement of perimeter landscaping at the site. Moreover, whilst there is a hedge on the western boundary which would be retained, given the absence of windows in the side elevation of the proposed dwelling, coupled with its separation distance and the oblique angle, the proposed dwelling would not result in undue overlooking to the properties on Crosby Court.
12. In addition, notwithstanding the repositioning of the dwelling within the site, the rear of School Cottage contains a belt of trees. Although the trees are rooted in the garden of School Cottage, they nonetheless provide an effective barrier between the sites and overlooking would not occur over and above that which currently occurs as a result of the existing arrangement.
13. Furthermore, the development proposes a two storey dwelling which would be flanked by two wings, one of which would be directly behind Harsnett. However, given the single storey nature of the wings, along with the distance of the two storey element from the garden and rear elevation of Harsnett, I am satisfied that these particular elements would be sufficient to ensure that undue overlooking to the rear the garden and habitable rooms would not occur.
14. Thus, the development would not result in harm to the living conditions of adjoining occupiers. It would not be in conflict with Policy DBE9 of the Epping Forest District Council Local Plan 1998 and Alterations 2006 (the Local Plan), Policy DM 9 of the LPSV and paragraph 127 of the National Planning Policy Framework (the Framework) which seek, amongst other things, to ensure that developments do not result in excessive loss of amenity for neighbouring properties.

### **Other Matters**

15. Within its written statement, the Council refer to Policy H4A of the Local Plan which seeks that provision is made for a range of dwellings to ensure an appropriate proportion of smaller dwellings, to meet identified housing needs on a site by site basis. However, the proposal does not represent the extension or conversion of an existing dwelling and thus, in the absence of any evidence to the contrary, I am not persuaded that Policy H4A is relevant to the development before me.
16. Although part of the proposed garden area is within the Green Belt, it is currently part of the garden area to Hainault Hall. Moreover, whilst close to its boundary, the proposal does not seek a development within the Green Belt. In addition, whilst I acknowledge that Hainault Hall has been granted planning permission for an annexe, the matter of adhering to conditions that control its use or occupancy and whether it has been extended beyond the scope of its permission, is a matter for the Council to consider.

17. Comments have also been made concerning the ownership of the site. However, the planning process does not override separate legal rights, nor does it provide legal rights where none currently exist. As such, it remains for the appellant to secure and maintain any rights required to develop the site, separately from the planning application and appeal process.

### **Conditions**

18. The Council has suggested a number of conditions that I have considered in accordance with the Framework and the national Planning Practice Guidance (PPG). The appellant has also agreed in writing that in accordance with the pre-commencement regulations<sup>2</sup>, such conditions are acceptable. In some instances, I have amended the conditions for clarity and concision.
19. Along with the standard time condition (1), the approved plans (2) should also be specified to provide certainty. In the interest of visual amenity of the site and area, details of the external finishes must be agreed in writing by the Council (3).
20. In order to protect the living conditions of adjoining occupiers and future users, both during and post development, conditions relating to the submission of details and the implementation of approved schemes relating to the following matters are required and necessary; construction method statement (4) and levels across the site (5), surface water disposal (6) contaminated land and remediation (7, 8 & 9) the disposal of excavated material (11) and the development must be carried out in accordance with the Basement Impact Assessment (12). In order to protect any archaeological remains that may exist at the site a scheme of investigation (10) is required to be submitted to the Council.
21. The Council has not suggested a landscaping scheme (13 & 14) to be submitted as part of the development. However, given the retention of landscaping within the site as part of the proposal, this would only be enhanced through additional planting. The appellant accepts that the imposition of such a condition would be acceptable<sup>3</sup>.
22. The Council also suggested a further condition restricting the use of the proposed garage. However, as planning permission has not been granted for this particular element through this appeal, it is a matter for future consideration. The PPG advises that the removal of permitted development rights will not pass the test of reasonableness or necessity and should only be used in exceptional circumstances<sup>4</sup>. Therefore, I find it unreasonable to require the blanket removal of permitted development rights at the appeal site.

### **Conclusion**

23. For the reasons given above, and having regard to the development plan when read as a whole, the appeal is allowed.

*Graham Wyatt*

**INSPECTOR**

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<sup>2</sup> Town and Country Planning (Pre-Commencement Conditions) Regulations 2018

<sup>3</sup> Paragraph 110, Statement of Case, DLBP dated June 2020

<sup>4</sup> Paragraph: 017 Reference ID: 21a-017-20190723

### **Schedule of Conditions**

1. The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.
2. The development hereby permitted shall be carried out in accordance with the following approved plans listed in schedule: L 9523 Rev 0, 5703 P4\_SK01, 5703 P4\_SK02, 5703\_01, 5703 P4\_SK04, 5703 P4\_SK05, L 9523 and 191109-P-11 insofar as they relate to the development hereby approved.
3. No construction works above ground level shall have taken place until documentary and photographic details of the types and colours of the external finishes have been submitted to and approved by the Local Planning Authority, in writing, prior to the commencement of the development. The development shall be implemented in accordance with such approved details.
4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  1. The parking of vehicles of site operatives and visitors
  2. Loading and unloading of plant and materials
  3. Storage of plant and materials used in constructing the development
  4. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  5. Measures to control the emission of dust and dirt during construction, including wheel washing.
  6. A scheme for recycling/disposing of waste resulting from demolition and construction works.
5. No ground works shall take place until details of levels have been submitted to and approved by the Local Planning Authority showing cross-sections and elevations of the levels of the site prior to development and the proposed levels of all ground floor slabs of buildings, roadways and accessways and landscaped areas. The development shall be carried out in accordance with those approved details.
6. Prior to preliminary ground works taking place, details of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such agreed details.
7. 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.

8. Following completion of the measures identified in the approved remediation scheme, and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.
9. In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the Phase 2 report, 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.
10. No preliminary ground works shall take place until, a programme of archaeological trial trenching and excavation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the application and approved by the Local Planning Authority.
11. All material excavated from the below ground works hereby approved shall be removed from the site.
12. Works to construct the basement shall accord strictly with the details specified in the Basement Impact Assessment accompanying the application, prepared by RSA Design, Ref: 191110/BIA dated November 2019.
13. No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

14. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

**~End~**