



Appeal Decision

Site visit made on 8 December 2020

by **A Blicq BSc (Hons) MA CMLI**

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

Appeal Ref: APP/Y5420/W/20/3257208

27 Shepherds Close, Hornsey, London N6 5AG

- 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 and Mrs Candice Lake and Didier Ryan against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2019/3260, dated 28 November 2019, was refused by notice dated 5 February 2020.
 - The development proposed is 3 bedroomed house on vacant land to the west of Shepherds Close.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Didier Ryan and Candice Lake against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - Whether the development would preserve or enhance the character or appearance of the Highgate Conservation Area (HCA); and,
 - The living conditions of occupiers of 27 Shepherd's Close with particular regard to light.

Reasons

Character and appearance

4. Shepherd's Close (the Close) sits on a south facing slope accessed from Shepherd's Hill, close to Highgate station. It is a small 1960's estate with a distinctive and repeated typology of staggered pairs of modest town houses arranged in terraces around three sides of the L-shaped access road. It forms a discrete cluster within the grander development pattern of 19th and early 20th villas and flatted developments on large plots, that largely characterise Shepherd's Hill.
5. The appeal site is a small parcel of land located towards one side of the access road. It is directly opposite 26 and 27 Shepherds Close (Nos 26 and

- 27) and separated from those plots by a footway. It has a narrow road frontage, and to the rear abuts Parkland Way, designated Metropolitan Open Land and Site of Interest for Nature Conservation (SINC). A tall and prominent retaining wall forms the boundary with a flatted development on elevated ground (Eton Court) on the remaining side.
6. The HCA Character Appraisal (HCACA) highlights the area's cohesive character. Although 6 – 27 Shepherds Close and the garages are noted in the HCACA as negative contributors, the Close is not particularly visible from Shepherd's Hill. Moreover, there is a high degree of architectural consistency within the Close and a strong and appropriate relationship with the underlying topography.
 7. An earlier appeal decision¹ noted that the Close contributed to the diverse quality of the HCA. On balance I conclude that the Close has design merits, which, whilst of no heritage value per se, contribute positively to the underlying urban form for the reasons set out above.
 8. The appeal site is lined on the road frontage with mature conifers. This supports representations that the site once formed part of No 27's garden and that these conifers are evidence of former hedge planting. It affords views over its unmanaged ground and through dappled shade, to denser planting associated with Parkland Way. In this tight building pattern the site provides a welcome buffer between the western end of The Close and the retaining wall. It also contributes, albeit in a minor way, to the mosaic of semi-natural open spaces and mature vegetation that runs through Highgate village.
 9. I conclude that the significance of the HCA is derived from its diversity of built fabric, its high proportion of fine period architecture, all underpinned by the underlying topography. This has shaped the development pattern and influenced the retention of significant and less significant areas of open space and woodland. The Neighbourhood Plan (NP) and the HCACA reinforce my observations that mature vegetation and the patchwork of open space, whether large or small, are key characteristics of Highgate's very special village character.
 10. The appellants argue that as the HCACA identifies 6 – 27 Shepherds Close as negative contributors, this should weigh in favour of the appeal. However, the site has not been in the same ownership as No 27 for a considerable period and there is nothing before me to suggest that the site is viewed as a negative contributor. Moreover, I see no significance in the plot's omission from the descriptions of the building pattern set out in the HCACA. It would be unreasonable to expect an analysis of every plot in Highgate, particularly where there is no particular contribution to, or detracting from, heritage significance.
 11. Furthermore, the heritage statement is somewhat inconsistent in this regard. It states that the site is a *part of the negative contributors* to the special character of the HCA, and then states that *it neither contributes positively, nor detracts*. In any case, it is unclear how the development would alter the situation with regard to Nos 6 – 27.

¹ APP/Y5420/A/03/1108911

12. The appellants argue that this is not a garden plot and therefore should not be subject to relevant local policies that restrict development on garden plots. I appreciate that it was severed from the plot of No 27 by a previous owner. The 1968 Title shows the plot to contain the dwelling of No 27 and the appeal site. The appellants argue that a dashed line along what is the appeal site boundary demonstrates that the appeal site is a separate plot. However, other dashed lines appear to indicate a variety of ground features such as footways and paths. This dashed line coincides with the extent of 'fill' during the Close's development and it seems more likely that the line represents a change in level. In any case, the site was originally within No 27's ownership and was contiguous with No 27's garden areas. The appellants argue that this was always a development plot, but it remains that past applications to build on the site have been refused. In any case, whatever the original intention, this application has to be assessed in the current planning context.
13. Moreover, the site history outlines a stop-start development approach as land was released. The design and access statement indicates that the original developers concluded the site could not be developed under the business model deployed elsewhere at the Close. The sequence of development suggests that this plot was left-over space, too small and inconveniently orientated to be developed in the same manner as the previous dwellings. In any case, in some respects whether the land should or should not be considered to be garden land or an infill plot is not determinative as Policy DM7 of the Local Plan (LP) refers to both.
14. Plot constraints have clearly influenced the proposed dwelling's design. One side wall would abut the retaining wall, and the dwelling's long side elevation would face the front elevations of Nos 26 and 27 across the footway, at a distance of some 9 - 10 metres. It would also be elevated above Nos 26 and 27 by about 1.75 metres.
15. The dwelling would occupy about half the site area. This is not necessarily of concern in a tight building pattern but in this case the external space would be very thinly spread around three elevations. On the southern side of the dwelling, which is the only side of the dwelling where there is more than a narrow strip of external space, the maximum garden depth would be about 6 metres at the widest point of the tapered site, alongside the public footway. This would reduce to about 2 metres alongside the bowed southern elevation before widening out to about 3 metres for an outdoor dining area. The paucity of meaningful external space in this instance suggests a dwelling that is too large for the plot.
16. The dwelling would also be a dominant and intrusive presence in the Close, particularly given the lack of separation from the footway on its front elevation, and its elevated site relative to Nos 26 and 27.
17. Moreover, its vertical timber cladding, bowed southern and minimalist elevations would fail to relate to or reflect any of the distinctive 1960's styling and architectural features that define The Close. Whatever the architectural merits of the existing typology, it has a consistent, notable and underlying character in a small scale and intimate setting. As such, I give great weight to the incongruity of the proposed dwelling's design. My reasoning would be the same if the site was not in a conservation area.

18. All the external space is shown as being heavily planted. However, the space's limited width and the proximity of Nos 26 and 27, and public footways, suggest that planting would not achieve the size and extent necessary to provide screening. It would be very likely to oversail neighbouring front gardens which are themselves of very modest size, as well as public circulation space. This concern would not be resolved by the planting of lighter foliaged trees which also require space to provide screening and a woodland ambience.
19. The appeal statement describes a dwelling almost entirely obscured in from public view in a woodland setting but I conclude that the available space would make this very difficult to achieve. In any case, vegetation cannot be presumed to persist for the lifetime of a building and could be removed at any time. Moreover, if a development requires tree planting to make it acceptable this generally signifies that the development is unsuitable.
20. I also find the 3D tree and shrub visualisations to be slightly mis-scaled and to overstate the form and impact of the vegetation shown. I conclude that the planting would not provide the proposed effect, and that even if there was some external planting the dwelling would not be totally obscured.
21. The development would also remove a small piece of open space within what is already a highly urbanised setting. The previous appeal decision noted that the site *'provides a wedge of open land which is in a prominent position in the Close'*, and *'provides an attractive green vista and makes a positive contribution to the street scene and this part of the conservation area'*. On the basis of my observations I see no reason to disagree with the previous Inspector.
22. I conclude that the development's design and footprint would appear cramped and contrived on this site. It would be incongruous, overly large for the site and would remove the buffer that separates the Close from the development fronting Shepherd's Hill. It would therefore detract from its context.
23. I appreciate that some of the boundary conifers may be reaching an age where some management is required. However, I could see beneath the canopies into the site and I disagree with the argument that the development would allow vistas through the site that are currently blocked. Not only would the dwelling itself prevent vistas through its external space from all but a very limited public viewpoint, the remaining vistas would cross the outdoor dining area. Although living conditions have not been raised as a concern by the Council, the appellants' argument in this regard appears to presume that their very limited amenity space would be in public view. It seems highly unlikely that this would be acceptable to future occupiers.
24. The heritage statement notes that neither the site nor the Close have heritage significance. However, although parts of the Close might be neutral or even considered to detract from the HCA, it is within the HCA, and is therefore part of a designated heritage asset. In any case, there is very little before me to indicate how the development would improve the character or appearance of those negative elements identified by the HCACA.
25. In the light of the above, I conclude that the development would be detrimental to the significance of the HCA, which would amount to less than substantial harm. In such circumstances Paragraph 196 of the National

Planning Policy Framework (the Framework) states that the harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimal viable use. In this case there would be a small public benefit from the provision of one dwelling and this is considered further in the planning balance.

26. The development would therefore fail to preserve or enhance the character or appearance of the HCA, contrary to the provisions of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
27. It would also be contrary to Policy DM9 of the Local Plan (LP), Policy SP12 of the Strategic Policies (SP) and Policy 7.8 of the London Plan (LOP) which, taken together, are concerned with the safeguarding of heritage assets. It would be contrary to LP Policy DM7 which states that proposals for infill, backland and garden land must relate appropriately and sensitively to the surrounding area and established street scene, and LP Policy DM1 which requires development to respond positively to its surroundings in form, scale and massing. I also find that the proposals would fail to comply with the aims SP Policy SP11 which require development to respect its local context.
28. The development would also fail to accord with Policies DH2 and DH10 of the Neighbourhood Plan (NP) which taken together require development to preserve or enhance the open semi-rural or village character, and insofar as I have concluded that this site was formerly garden land, to resist the loss of garden land. In any case the supporting text for this policy sets out that the concern is the erosion of green and open spaces which make a positive contribution to the character and appearance of conservation areas.
29. I also find that the development would fail to comply with LOP Policy 7.4 which requires development to have regard to its context and improve an area's visual or physical connection with natural features amongst other considerations, and LOP Policy 7.6 which requires buildings to incorporate design appropriate to its context.

Living conditions

30. The design and access statement illustrates the results of a Visible Sky Component (VSC) analysis for No 27, using the methodology set out in the BRE guidance.
31. The analysis shows that the VSC for occupiers of No 27 would be slightly more than the threshold of 27 per cent. It would also, on the basis of the diagram, reduce the VSC by 0.8 compared to the current situation. However, it is unclear whether the proposed tree planting has been taken into account. Such planting would introduce obstructions in areas outside the blue shaded area and would reduce the number of unaffected sky indicators.
32. In any case, although a reduction of less than 80 per cent is deemed acceptable, to be at 80 per cent indicates that the development would be on the cusp of the reduction in light being noticed by the occupiers of No 27. Taking trees on the site into account would be likely to reduce light levels to less than 80 per cent of the current value.
33. In any case, it is apparent from the sections that someone standing just inside No 27's ground floor window would be unable to see the sky when looking out of the windows unless they craned their neck at a severe angle.

For people further within that room, there would no views of the sky at all. I appreciate that there are conifers on the appeal site but vegetation is generally less permanent than a dwelling. Given the proposed dwelling's extent and orientation relative to No 27, any diffuse daylight reaching the ground floor of No 27 will be entering from oblique angles rather than from all angles as is the current situation. Moreover, the fact that none of the room will receive direct skylight as far as I can see suggests that there would be a notable deterioration in the distribution of daylight within No 27. It is also highly likely that there would be a strong perception that light levels had been adversely affected.

34. I conclude that the development would therefore have an adverse effect on the living conditions of occupiers of Nos 26 and 27 with regard to light. It would fail to accord with Paragraph 127 of the Framework which requires development to provide a good standard of amenity for existing occupiers.

Other matters

35. The appellants argue that they received positive pre-planning advice. However, the advice sets out that the principle of housing may be considered acceptable subject to minimising land take, its impact on the openness of the site, and having a better response to the surrounding natural and built context. This advice is consistent with the Council's reasoning at determination. In any case, the advice concludes by stating that this is not a formal response with regard to future planning applications.
36. Whether or not the site contained lock up garages in the 1950's is not determinative. These had been cleared by the time No 27 was built and the title drawn up. In any case, the development is significantly larger than any garages that might previously have occupied the site. Moreover, even where the principles of residential development are acceptable it does not necessarily follow that all such sites can accommodate residential development.
37. The management of Eton Court supports the application as it may reduce fox and rat nuisance on that site. However, I doubt that the development would make much difference. The development would not necessarily prevent animals moving between Eton Court and the adjoining Parkland Way.
38. Whether there has been permission for a detached house in the past weighs neither for nor against the appeal as this has to be determined in the current planning context. In any case, the planning history shows that the Council has resisted repeated applications for a dwelling on this site since the 1970's.
39. Interested parties have raised other concerns but as I have found harm in relation to the main issues it is not necessary for me to consider them further.

Planning balance

40. The appellant argues that the Council has not met its housing targets. The latest housing delivery test² shows that the Council has met 55% of its requirements, and the Council has not disputed the appellants' argument in this regard. However, the development would provide one modest dwelling which would make a very small contribution to local housing supply.

² MHCLG November 2019

41. Whilst I appreciate that the Council seeks to find small sites to accommodate residential growth, as does the emerging London Plan, the adverse impacts of the development, as set out above, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

42. I conclude that the development would be contrary to the Act, the Framework and relevant local policies. Although it would make a minor contribution to local housing supply, which is a material consideration, this is insufficient to outweigh the conflict with the development plan taken as a whole.
43. The appeal is dismissed.

A Blacq

INSPECTOR