



Appeal Decision

Site visit made on 1 December 2020

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st February 2021

Appeal Ref: APP/R5510/W/20/3253781

5-6 Firs Walk, Northwood HA6 2BZ

- 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 J Gavacan (Gavacan Homes) against the Council of the London Borough of Hillingdon.
 - The application Ref 30837/APP/2019/3096, is dated 18 September 2019.
 - The development proposed is the demolition of a property at 5 Firs Walk and amendments to the plot boundary of 6 Firs Walk. The erection of 3 detached 4 bedroom dwellings with parking and associated external works/landscaping. 2 houses to be accessed off Foxdell. 1 house to be accessed off Firs Walk.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of a property at 5 Firs Walk and amendments to the plot boundary of 6 Firs Walk. The erection of 3 detached 4 bedroom dwellings with parking and associated external works/landscaping. 2 houses to be accessed off Foxdell. 1 house to be accessed off Firs Walk at 5-6 Firs Walk, Northwood HA6 2BZ in accordance with the terms of the application, Reference 30837/APP/2019/3096, dated 18 September 2019, subject to the following conditions in the attached Schedule A.

Procedural Matters

2. The application is in outline form with access to be determined at this stage, and all other matters reserved for future consideration. There is a site layout plan showing access for 2 dwellings off Foxdell and 1 dwelling off Firs Walk. A plan with details and measurements of a cross-over into Foxdell has also been submitted for consideration.
3. Additionally, the site layout plan shows the siting of the 3 dwellings, their footprints and roof forms, and landscaping. During the consideration of the planning application, the forward projecting integral garage on plot 1 on this plan was deleted and is considered under this appeal. Nevertheless, these details have been treated as indicative of how development could be laid out, designed and landscaped given the outline nature of the application.
4. The appeal is against the non-determination of a planning application by the Council. Had it been in a position to do so, the Council would have refused the planning application for the following reasons:-

- 1) The proposed development, by reason of its siting and the significant loss of existing gardens would appear at odds with the prevailing character of the surrounding area and would be a cramped form of development which would have a detrimental impact on the visual amenity and character and appearance of the area. The harm would be further exacerbated by the loss of mature soft landscaping and proposed layout of the built footprint. The development would be contrary to Policies DMH 6, DMHB 11, DMHB 12 and DMHB 14 of the Local Plan: Part Two - Development Management Policies (2020), Policies 3.5, 7.1 and 7.4 of the London Plan and the NPPF (2019).
 - 2) The proposed development, in the absence of a Section 106 legal agreement fails to provide contributions towards the improvement of services and facilities as a consequence of demands created by the proposed development (in respect of highways works and Project Management and Monitoring). The scheme therefore conflicts with Policy DMCI 7 of the Hillingdon Local Plan: Part Two Development Management Policies (2020), the London Borough of Hillingdon Supplementary Planning Document on Planning Obligations, Policy DF1 of the London Plan Intend to Publish Version (2019), Policy 8.2 of the London Plan (2016) and paras 54-57 of the NPPF 2019.
5. A Unilateral Undertaking (UU) dated 4 December 2020 is concerned with the owners/developer entering into a highway agreement and the carrying out of highways works to enable access of Foxdell. It also details a monitoring fee to be paid to the Council. Parties refer to 'Foxdell' and 'Foxdell Close'. In this decision, "Foxdell" has been used but both terms relate to the same road.

Main Issues

6. The main issues are the effects of the proposal on (a) the character and appearance of the area and (b) the safety of pedestrians, cyclists and drivers using the proposed accesses adjacent to Foxdell and Firs Walk.

Reasons

Character and appearance

7. The appeal site comprises a dwelling at 5 Firs Walk and much of the frontage, including garden, of the dwelling at 6 Firs Walk. Both dwellings are of substantial size set in spacious and landscaped plots. They are located at the end of Firs Walk and adjacent to the end of a residential street at Foxdell. To the north, there are the rear gardens of properties on Dene Road.
8. Dwellings along Firs Walk and Foxdell are substantial in size and set in generous sized plots. However, the degree of plot spaciousness varies with those in Firs Walk generally greater than those within Foxdell. Dwellings in Foxdell are generally smaller and more closely sited to one another in a more regimented pattern. The dwellings within Firs Walk also have more varied individualistic designs. The appeal site lies on Firs Walk but it also relates to the residential development at Foxdell by reason of its adjacent location.
9. Policy DMH 6 of the Hillingdon Local Plan: Part Two - Development Management Policies (DMP) 2020 indicates a presumption against the loss of gardens due to the need to maintain local character, amenity space and biodiversity. The proposal would result in the loss of gardens.

10. The indicative site layout plan shows 3 substantial sized dwellings, with accommodation with the roof. Prominent single storey projections are shown on 2 of the dwellings which would be well set forward of the existing building lines along Firs Walk and Foxdell. Together with hard surfacing for vehicle parking and manoeuvring, this would leave little opportunity for any meaningful frontage landscaping. As a result, such a development, as indicated, would be excessively dominant within the street and would not harmonise with the context of the area.
11. However, the dwellings and hard surfacing are indicative only because layout is not a matter to be considered under the application. Matters of layout, appearance, landscaping and scale are reserved for further consideration under any subsequent reserved matters planning application(s). The indicated layout represents only one possible way of developing the site. Means of access is the only matter fixed in terms of developing this site under the proposal.
12. Given this, the principle of development for 3 four-bedroomed dwellings, with accesses as proposed, on the site has to be considered. In this regard, the site could be developed with 3 similar sized plots matching the pattern of development in Foxdell. Such plot sizes would not be significantly smaller than those adjacent in Foxdell and plot widths would be approximately 16m, which would be well within the range that prevail in Foxdell based on what I saw on my site visit. The appellant indicates a range of approximately 14-18m which has not been disputed.
13. Significantly, there would be scope for smaller four-bedroom dwellings with greater space about them on the plots. In this regard, the indicated dwelling footprints and details show substantial sized dwellings. Therefore, a scheme could be devised for 3 smaller sized dwellings on the site within generous sized and landscaped plots which would be in keeping with the character and appearance of the area, taking into account the more spacious nature of Firs Walk compared to Foxdell.
14. Dene Road Area of Special Local Character is situated to the north of the site and is characterised by substantial dwellings set in greater sized and landscaped plots than dwellings and plots outside of it, including the appeal plots. Nevertheless, the siting of the development would not directly relate to this area by reason of its separation and siting beyond the retained dwelling at 6 Firs Walk. Unlike the previous dismissed appeal proposal on the site, no part of a neighbouring property at Dene Road is included within the proposals.
15. The dismissed appeal concerned the demolition of the dwellings at 5 and 6 Firs Walk with six dwellings where the Inspector found the development to be cramped, an adverse effect reinforced by the regularity and uniform spacing of the plot frontages. However, this appeal scheme considered 4 rather than 3 dwellings in the area around the demolished dwelling at No 5. Furthermore, the previous Inspector considered the position and footprint of the 4 dwellings because layout was a matter considered under the outline proposal. In contrast, layout is not considered under the current outline proposal. Therefore, there are material differences between the two appeal schemes which distinguish one from the other. In any case, every proposal has to be considered on its particular planning merits as has been undertaken here.
16. In summary, a development of 3 dwellings would not harm the character and appearance of the area as it could be designed to the highest standards for all

the above reasons. Similarly, it could harmonise with the local context by taking into account the surroundings, plot coverage and established street patterns, building lines and setbacks, streetscape rhythm and be well integrated with the surrounding area, having regard to landscaping treatment. Accordingly, the proposal would comply with DMP Policies DMHB 11, DMHB 12 and DMHB 14.

17. Similarly, it would comply with Policies 3.5, 7.1 and 7.4 of the London Plan (LP) (2016), which collectively and amongst other matters, requires housing design to enhance the quality of local places, taking into account physical context, local character and density, to be of highest quality in relation to their context and the wider environment, and new buildings to reinforce or enhance character.
18. In conclusion, the proposal would conflict with the presumption against the loss of gardens under DMP Policy DMH 6 but would comply with above referenced DMP and LP policies. However, the explanatory text to the DMP Policy DMH 6 states in general, that development will not be permitted on garden land which indicates an exception can be made in some circumstances under the plan. There would be no conflict with DMP Policy DMH 6's need for development to maintain local character, amenity space and biodiversity. For all these reasons, the loss of garden land would be acceptable and accordingly, the proposal's compliance with the identified DMP DMHB and LP Policies would outweigh any conflict with DMP Policy DMH 6.

Access

19. DMP Policy DMT 2 requires proposals to ensure safe and efficient access to the highway network and that there are suitable mitigation measures to address any traffic impacts in terms of capacity and function of existing roads. Under DMP Policy DMCI 7 and LP Intend to Publish Version (IPV) (2019) Policy DF1, it must be demonstrated that there will be sufficient infrastructure to support development and that development should address strategic as well as local priorities in planning obligations respectively.
20. The UU indicates that a highway agreement should be entered into with the Council which would ensure the carrying out of the highway works for access of Foxdell, prior to the commencement of development. These works would be carried out at as cost in accordance with the provisions of the highway agreement. A monitoring fee is also required to be paid prior to the commencement of development. In respect of the monitoring fee, this would be justified given the Council's monitoring requirements as set out in its Planning Obligation Supplementary Planning Document July 2014. With the obligation, acceptable access into Foxdell would be provided in accordance with DMP Policies DMT 2 and DMCI 7, LP Policy 8.2 and LIPV Policy DF1.
21. Accordingly, the obligation would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Accordingly, the proposal would comply with the tests of paragraph 57 of the National Planning Policy Framework (the Framework) and the statutory tests within the Community Infrastructure Levy Regulations (CIL) 2010 (as amended).
22. The Council has confirmed Foxdell to be an adopted public highway but this is disputed by third parties. However, this would not be a reason to withhold

planning permission as this is a separate legal matter between parties. In planning land use terms, the access is acceptable on highway grounds and the obligation requires the developer/landowners to enter into a highway agreement with the Council to secure access as part of the permission.

Other matters

23. With a net increase of two dwellings, the additional traffic generation along Foxdell would be small. For Firs Walk, there would be a negligible increase in traffic generation because there would be no increase in dwellings accessing this Road. Parking provision would be detailed under subsequent reserved matters and there is no reason why it could not be provided given the size of the site. There is no evidence that increased traffic movements would have an unacceptable impact on highway safety.
24. The Highway Authority has raised no objection on traffic congestion, parking stress and highway safety grounds to the proposal. There would be no requirement for significant vehicle turning facilities because the roads concerned are not significant traffic thoroughfares and nor has the Highway Authority highlighted any need. For all these reasons, the development would not result in an unacceptable impact on highway safety of road users and the residual cumulative impact would not be severe.
25. Matters of appearance, scale and layout are reserved for future consideration where the effect on the development on the living conditions of neighbours, having regard to light and privacy would be fully considered. At this outline stage, there are no fundamental living condition issues affecting the acceptability of development. The indicative plan shows that three dwellings could be sited a significant distance from neighbouring properties and there would be scope to obscure glaze any windows above the ground floor, flanking neighbouring properties, to prevent overlooking.
26. For the neighbouring dwelling at Foxdell, the indicative siting would result in overshadowing during the early evening, but this property would receive light, including sunlight, at other times of the day. Therefore, the living conditions of these neighbouring occupiers would not be significantly affected and the principle of development of this site would be acceptable, taking into account the residents' living conditions. Nevertheless, such a matter requires further Human Rights assessment, a matter raised by third parties.
27. There is no policy requirement for affordable housing or community provision on this site. Residents of the development would use local services, such as doctors' surgeries and schools, but there is no evidence from providers that this proposed development would significantly hinder service provision for local people. Similarly, statutory undertakers have not objected in respect of sewage disposal.
28. The remaining part of the property at No 6 could come forward for redevelopment. However, any such proposal must be determined on its individual planning merits, having regard to site circumstances, planning policy and material considerations. Therefore, such a concern of precedent does not justify withholding permission in this instance.
29. For the reasons indicated, the development would create high quality buildings and places which is fundamental to what the planning and development

process should achieve under the Framework. In this regard, the site is large enough to ensure any development could be visually attractive as a result of good architecture, layout, appropriate and effective landscaping, and sympathetic to local character.

Development Plan balance and Human Rights

30. There would be no harm to the character and appearance of the area and the development would not result in an unacceptable impact on highway safety nor would the residual cumulative impacts on the road network be severe. The proposal would comply with the development plan taken as a whole. There are no considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan.
31. Under the Convention of Human Rights, there would be interference with a residents' home and family life for the neighbouring Foxdell property under Article 8 and the peaceful enjoyment of their possessions under Article 1 of the First Protocol. These are qualified rights whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Legitimate and well-founded planning policy requires the planning system to provide living accommodation for future generations and for all the previous reasons, the impact on living conditions of the residents would not be significant. In the circumstances, the interference is therefore necessary and proportionate, and there would not be a violation of the residents' human rights. For all these reasons, planning permission should be granted for the development.

Conditions

32. Suggested conditions have been considered in light of the advice contained in Planning Practice Guidance. Some have been amended and shortened in the interests of clarity and precision taking into account the guidance. Instead of the suggested full permission commencement condition, conditions setting out requirements for reserved matters and commencement of development following the approval of the last reserved matters are set out.
33. For the avoidance of uncertainty and to allow for applications for minor material amendments, a condition is necessary specifying the approved drawings in respect of means of access. In the interests of highway safety, a condition is necessary setting out pedestrian visibility splays for the accesses. LP Policy 3.8 requires accessible and adaptable, and wheelchair user dwellings. However, the policy also requires Councils to identify the needs for these requirements. In the absence of any need justification, the condition is not necessary. Conditions relating to materials, refuse storage screening, cycle storage, boundary treatments, landscaping and levels are not necessary at this stage. They relate to matters of appearance, landscaping, layout and scale which are reserved for subsequent consideration.

Conclusion

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted.

Jonathon Parsons

INSPECTOR

Schedule A

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 19-2752-LP01 Rev A, 19-2752-03 Rev A and 19-2752-100 Rev B (only in respect of means of access to the surrounding highways).
- 5) The Firs Walk and Foxdell accesses shall be provided with those parts of 2.4m x 2.4m pedestrian visibility splays which can be accommodated within the site in both directions and shall be maintained free of all obstacles to the visibility between heights of 0.6m and 2.0m above the level of the adjoining highway.