



Appeal Decision

Site visit made on 29 January 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2021

Appeal Ref: APP/N5090/W/20/3260843

Queen Elizabeth's School, Queens Road, Barnet EN5 4DQ

- 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 Neil Enright of Queen Elizabeth's Boys School against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/1800/FUL, dated 14 April 2020, was refused by notice dated 23 June 2020.
 - The development proposed is Six new Eton Fives courts and sports store.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the Council issued its decision for this appeal proposal, the Council has issued a split decision (Ref TPF/0541/20) in relation to trees that are the subject of a Tree Preservation Order. It consented the felling of oak tree T4 but retention of T7. I have had regard to this in determining this appeal.

Main Issues

3. The main issues are the effect of the proposed development upon:
 - the character and appearance of the area;
 - protected trees;
 - biodiversity;
 - the living conditions of neighbouring occupiers in respect of noise and disturbance; and,
 - highway safety.

Reasons

Character and appearance

4. The school complex comprises a number of different age and style buildings within a central area bound by school playing fields to the north west and south east. The boundary between the complex of educational buildings and open fields to the north west is strongly defined by a grass embankment and a parallel internal access route lined by a row of mature trees which are the

- subject of a Tree Preservation Order (TPO). It provides a mature landscaped boundary and screening between the playing fields and the school buildings.
5. The new building, parking, and circulation area would be located on the playing field north west of the school buildings. It would be partly built into some of the embankment so as not to impinge on playing pitches. The new building would be of a significant height, width and depth. When taken with the parking area, the development would be a considerable break in the strongly defined line of the school buildings, representing a significant incursion onto the open field.
 6. Even if I were to agree the design and appearance of this style of building might be acceptable in principle on the school site, the scale and location would be significantly and harmfully at odds with the established building pattern and the open verdant character of the playing fields. It would be prominently visible from a number of residential properties to the east and west of the field, as well as significant sections of the public footway adjacent to the north of the field. The evidence before me does not suggest the harm could be remedied by the suggested planning condition in respect of landscaping.
 7. For the reasons set out above the development would be harmful to the character and appearance of the area. It would conflict with Policy CS5 of the Barnet Local Plan Core Strategy (2012) (the CS) and Policies DM01 and DM15 of the Barnet Local Plan Development Management Policies (2012) (the DMP). Amongst other things, these policies require that development respects local context, distinctive local character, the pattern of surrounding buildings, and preserves and enhances the character and appearance of the area.
 8. Most of the appeal site building and parking area is associated with the indoor sports facility, with no replacement outdoor space provided. Therefore, the development would also conflict with Policy DM15 of the DMP, which states open space will be protected except where the development proposal is a small scale ancillary use which supports the use of the open space and equivalent or better quality open space provision can be made.
 9. The Council's reason for refusal refers to Policy CSNPPF of the CS. This relates to the presumption in favour of sustainable development based upon a previous version of the National Planning Policy Framework. Therefore, it is of less relevance to this main issue than the policies referred to above.

Protected Trees

10. A row comprising 5no oaks, 1no birch and 1no sycamore tree forming part of the tree-lined boundary of the playing field are protected by the TPO (having regard to the removal of T4). The Arboricultural Impact Assessment (AIA) recommends that T7 is in poor structural condition and should be felled regardless of the future development. However, Ref TPF/0541/20 did not consent to the removal of T7 based upon the evidence provided. It was stated as having a special amenity value and a minimum life expectancy of 20 years.
11. Trees T3 and T5 are classed in the B1 category having a moderate quality and value, with a life expectancy of a minimum of 20 and 40 years respectively. There would be some intrusion into the Root Protection Area (RPA) of T3 and T5. This would be mitigated by the remaining RPA and careful pruning of any roots encountered. If T7 is retained there would also be some incursion into its

RPA, and T5 and T6 would require some containment works. Necessary works and protection could be secured through a planning condition for an Arboricultural Method Statement.

12. The trees have sufficient clearance from the proposed development. Limited future growth would be expected given their age. However, future pruning works would be required to contain them. Therefore, even without the loss of T7 the development would result in limited harm through required pruning works which would be likely to affect their special amenity value. This weighs against the proposal. The evidence does not demonstrate the removal of some containers in the RPAs in connection with this development would be an overall benefit, or that this could not take place without the appeal development.
13. For the reasons set out above the development would result in harm to protected trees. It would therefore result in a conflict with Policy DM01 of the DMP which requires development adequately protects existing trees and expects trees should be safeguarded.

Biodiversity

14. T4 which was identified as being hollow has now been removed. However, the trees in proximity to the appeal site large and mature. They could provide a suitable habitat for protected species, such as bats which are a European Protected Species, subject to a high level of protection. Given the scale and proximity of the construction works and on-going use, the development could result in sustained disturbance to or have harmful effects upon any protected species present. Standing advice outlined by the appellant indicates bat surveys should be required if (amongst other things) records show bats may be present, there are roosts in the development site or the area, or there are trees with features that bats tend to use nearby.
15. The AIA includes a survey of the closest trees. However, section 1.8.3 states that matters in respect of ecology are not considered by it and ecological advice should be sought. There is no definitive evidence to confirm the presence or absence of protected species on or around the appeal site. Circular 06/2005 is referenced in paragraph 175 of the National Planning Policy Framework (2019) (the Framework). It advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making a decision. Therefore, I am of the view that this matter cannot be dealt with by a planning condition.
16. Therefore, the development would potentially cause unacceptable harm to biodiversity. This would result in a conflict with Policies DM01 and DM16 of the DMP, which require development retains and enhances biodiversity. It would also conflict with paragraphs 170 and 175 of the Framework, which require development minimises impacts upon biodiversity, and if significant harm cannot be avoided, adequately mitigated, or, compensated for, then planning permission should be refused.
17. The Council has referred to Policy CSNPPF of the CS in its fourth reason for refusal. As this relates to the presumption in favour sustainable development based upon a previous version of the National Planning Policy Framework, it is of less relevance to this main issue than the policies I have referred to above.

The reason for refusal also refers to the Residential Design Guide Supplementary Planning Document (2016). This is aimed at the planning, design, and development of new housing. Therefore, it is of limited relevance to this non-residential development.

Living conditions

18. Sport England (SE) raised no objection to the development subject to the provision of a Community Use Agreement (CUA). With a CUA, notwithstanding the loss of some useable playing field, SE consider the application would result in a benefit that would outweigh the loss of the useable area of playing field, in accordance with its policies and paragraph 97 of the Framework. Therefore, a planning condition to secure a CUA is necessary to make this development acceptable.
19. Although community use is referred to in the Design & Access Statement, the appellant has suggested that there would be minimal community use of the development in comparison to other activities, and this and inter-school use would generally take place during school hours. However, paragraph 97 of the Framework requires development on a playing field has benefits which clearly outweigh the loss. Furthermore, SE's consultation response states that the CUA is necessary to ensure the benefit of the development outweighs the loss. Therefore, a satisfactory CUA is imperative to ensure the development outweighs the loss of playing field. To ensure a clear benefit in accordance with the Framework and SE's policies, it is likely that there would need to be a reasonable level of community use outside of school hours, for example at evenings and weekends.
20. Existing activities at the school outside of school hours are not clear. The development would provide six courts and accommodate up to 64 spectators. Its use in accordance with an acceptable CUA could be likely to result in a significant increase in the number of vehicular trips generated. In particular, outside of school hours, this would have the potential to cause significant disturbance to residents living in close proximity to the entrance and parking areas through vehicles manoeuvring, parking, car doors opening and closing, and conversations or voices of those attending the facility.
21. For the reasons set out above, I cannot be certain the development would not result in harmful living conditions to neighbouring occupiers with particular reference to noise and disturbance. Therefore, I cannot rule out a conflict with Policies DM04 and DM13 of the DMP. In combination and amongst other things these policies state that development is expected to protect the living conditions of neighbouring occupiers, and if it is likely to generate unacceptable noise levels, it will not normally be permitted.
22. Policy DM01 has been referred to in the Council's third reason for refusal. As this only refers to living conditions in the context of lighting schemes, daylight, sunlight, privacy, and outlook it is of limited relevance to this main issue. Policy CS5 of the CS mainly relates to protecting and enhancing character and design. Therefore, it is of limited relevance to this main issue.

Highway safety

23. My site visit can only represent a brief snapshot in time of highway conditions. At this time the surrounding residential roads and the access to the business park were quiet and on-street parking was available. Parking was also available within the school site. However, my visit was undertaken during the day when parking was restricted to residents in the Controlled Parking Zone (CPZ). Furthermore, it was at a time of a national Covid-19 lockdown, which places significant restrictions upon regular day to day activities. Therefore, traffic and parking would be likely to be greater outside of these restrictions.
24. The scale and use of the development in accordance with an acceptable CUA may be likely to result in a significant number of comings and goings associated with either school tournament or community use. This may significantly increase pressure on parking and highway use, including outside the restrictive hours of the CPZ. The information before me does not adequately clarify the existing or likely future traffic generation and parking needs, or demonstrate that the development could be operated in a manner that would not result in harm to highway safety.
25. For the reasons set out above I cannot be sure the development would maintain safe highway conditions on the local highway network. Therefore, the proposed development conflicts with Policy CS5 of the CS and Policy DM01 and DM13 of the DMP. Amongst other things these policies require development should ensure a safe environment and that there is no significant impact on the free flow of traffic and road safety.
26. The Council's reason for refusal refers to a conflict with Policy DM04 of the DMP. As this relates to energy and pollution, it is of less relevance to this main issue than the policies I have referred to above.

Planning Balance

27. The Framework states that applications for planning permission shall be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration.
28. The development would provide a larger on-site facility, benefitting the sports and activity curriculum, in an area where there is a limited number of facilities within a reasonable distance. Use by other schools, organisations and community users would provide wider benefits to physical education, health, and well-being. It would also benefit the promotion and development of Eton Fives. Based upon the extracts provided, these benefits would meet objectives of Policies CS7 and CS10 of the CS and Policy 3.16 of the London Plan (2016). In this regard it would also meet the objectives of paragraphs 91 and 92 of the Framework. There is support for the development from paragraph 94 of the Framework, which gives great weight to the need to create, expand or alter schools, and seeks to make effective use of land.
29. The site has been chosen to limit the effect on the playing field and playing pitches. It would also be closely located to other school buildings, parking, infrastructure, and be some distance from neighbouring properties. There would be economic benefits from the construction of the development and once complete may result in some small on-going benefits through employment opportunities. Based upon the evidence before me there is limited access to

public transport, so the development would gain limited support from Policy DM13 of the DMP, in respect of accessibility. In combination the economic, health, educational and social benefits advanced, attract significant weight in favour of the scheme.

30. However, the development would be significantly harmful to the character and appearance of the area and would result in harm to protected trees, in conflict with policies of the development plan. Furthermore, I cannot be certain that the proposals would not have an unacceptably harmful effect on protected species, the living conditions of neighbouring occupiers and highway safety. The nature of this harm is such that it attracts substantial weight against the proposed development. Overall, the harm identified outweighs the benefits of the development, and the development would not comply with the overarching aims of the Framework. Therefore, the proposals would not amount to a sustainable development under the terms of the Framework.

Conclusion

31. The proposed development would be contrary to the development plan and the Framework as a whole. There are no other considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR