



Appeal Decision

Hearing Held on 27 January 2021

Site visit made on 28 January 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2021

Appeal Ref: APP/R5510/W/20/3244256

Land forming part of 43 The Drive, adjacent to 68 and 113 Knoll Crescent, Northwood HA6 1HW

- 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 Mick Malski against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 70975/APP/2019/1984, dated 11 June 2019, was refused by notice dated 24 September 2019.
 - The development proposed is erection of two semi-detached houses with associated parking involving demolition of existing buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two semi-detached houses with associated parking involving demolition of existing buildings at land forming part of 43 The Drive, adjacent to 68 and 113 Knoll Crescent, Northwood HA6 1HW in accordance with the terms of application, Ref: 70975/APP/2019/1984, dated 11 June 2019, subject to the schedule of conditions attached to this decision.

Application for costs

2. At the hearing an application for costs was made by the Council of the London Borough of Hillingdon against Mr Mick Malski. This application is the subject of a separate Decision.

Procedural Matters

3. As part of the appeal, the appellant has submitted amended plans and updated arboricultural documentation¹, which propose to alter the parking layout to avoid development within the root protection area of a Grand Fir Tree located within the appeal site. In addition, the amended plans clarify the position of external steps to the side of the proposed development.
4. As the proposed changes are minor amendments, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I were to determine the appeal in accordance with the amended plans and supporting arboricultural documents. For the avoidance of doubt, I have determined this appeal on the basis of the amended plans.

¹ Tree Survey, Arboricultural Impact Assessment and Method Statement (Submitted 9 March 2020)

5. Following the submission of the amended plans and arboricultural documentation, the Council have advised that they no longer wished to defend the third reason for refusal which relates to the effect of the development on trees. I agree with the views of the Council in respect of this matter and hence it does not fall to be considered as a main issue.
6. The submitted plans show that there were previously two existing buildings located at the appeal site. However, following the determination of the planning application, the buildings were demolished by the appellant to comply with an enforcement notice² which took effect on 9 September 2020.
7. At the Hearing, the appellant explained that the land forming the appeal site was now in separate ownership from No 43. This was not disputed by the Council. As such, the land shown within the blue line on the submitted location plan no longer falls within the appellant's control. Despite this, owing to the site's former use as part of the rear garden of No 43, and, given that no evidence has been provided to demonstrate that the site's lawful use has changed, as a matter of fact and degree, for the purposes Policy DMH6 of the London Borough of Hillingdon Local Plan: Part 2 Development Management Policies and Site Allocations and Designations (the 'LPP2'), I consider that the appeal site is garden land.

Planning Policy

8. The LPP2 was adopted on 16 January 2020. The LLP2 supersedes the Hillingdon Local Plan: Part 2 – Saved UDP Policies (November 2012). It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.
9. On 21 December 2020 the Mayor of London sent to the Secretary of State the text of the Emerging Draft London Plan that he intends to publish, known as the 'Publication London Plan' (the 'PLP'). On 29 January 2021 the Secretary of State wrote to the Mayor to confirm that he is content for the new London Plan to be published, with no further changes. The London Plan will become operative on the date that it is published by the Mayor.
10. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework.
11. Given that the Secretary of State has confirmed that he is content for the plan to be published with no further changes, the PLP is the version of the London Plan which will become part of the development plan once published by the Mayor. For this reason, I attribute the policies contained within the PLP great weight as a material planning consideration.

Main Issue

12. The main issue is the effect of the development upon the character and appearance of the area.

² Council Ref: HS/ENF/017180

Reasons

13. The appeal site comprises of a rectangular parcel of land to the rear of Nos 41 and 43 The Drive. The site is physically separated from Nos 41 and 43 by timber fencing with vehicular access provided by an existing crossover located off the turning head at the end of the southern arm of Knoll Crescent³.
14. The topography of the appeal site slopes downwards from a plateau area adjacent to the boundary with Nos 41 and 43 down to the eastern site boundary where the site adjoins a large wooded area. There are a large number of trees located within the site, many of which are mature specimens that are protected by a Tree Preservation Order (TPO)⁴.
15. It is proposed to erect a pair of semi-detached dwellings with associated parking and landscaping. The dwellings would be of a split-level design with accommodation over two floors. To facilitate the development, the existing ground level would be lowered at the western section of the site nearest to the boundary with Nos 41 and 43.
16. The southern arm of Knoll Crescent is a small residential cul-de-sac accessed from The Drive. The existing properties are located either side of the road and are of a two-storey design and appearance with consistent gabled roof forms which creates architectural balance and symmetry. The dwellings are set back from the highway between large front gardens, most of which provide off-street parking set amongst established landscaping and mature trees. Overall, Knoll Crescent has a suburban verdant character which contributes positively to the local distinctiveness of the area.
17. The appeal site forms the terminus of the southern arm of Knoll Crescent and its open nature allows for views of the site's landscape features, which includes several mature trees, in addition to the surrounding trees beyond the site boundaries, to be viewed from Knoll Crescent and from the rear aspects of the adjoining properties on The Drive. This provides an attractive verdant backdrop to the overall benefit of the visual amenity of the local area.
18. The appeal site has a lengthy planning history and there have been several applications for various forms of residential development dating back over the past ten years⁵, all of which have been unsuccessful.
19. The current proposal follows on from the previous planning application⁶ and appeal⁷, which sought permission for the erection of a pair of two-storey semi-detached dwellings. As part of the previous proposal, significant excavations were proposed at the appeal site, which included lowering the ground level of the existing embankment to the front of the dwellings. In addition, the proposed site plan showed the removal of two mature Ash trees.
20. In dismissing the appeal in May 2019, the Inspector concluded that the proposal would cause substantial harm to the open and verdant character of

³ Knoll Crescent features a northern arm and southern arm, which are physical separated by intervening garden land and a copse. The respective arms of Knoll Crescent form separate streets accessed from The Drive.

⁴ TPO No. 124 – The TPO covers land at 35-49 The Drive and includes several individual and a group of trees located within the appeal site.

⁵ Section 4 of the Statement of Common Ground

⁶ Council Ref: 70975/APP/2018/1295

⁷ PINS Ref: APP/R5510/W/18/3212491

the area through the impact upon protected trees and the harm to the contribution that the site makes to the character of the area.

21. In assessing the previous proposal, the Inspector stated that the Ash trees “form a fundamental aspect to the positive and natural appearance of the site and area”⁸. I share this view, and, on my site visit I observed that the trees, along with the other mature specimens at the site, which are to be retained, contributed positively to the verdant character of the local area.
22. In reaching their overall conclusion, the Inspector found that the harm to the open character of the site would be most obvious through the potential impact upon trees and the removal of substantial amounts of earth from the plot of the proposed houses in order to reduce their height⁹.
23. The appeal was determined before the adoption of the LPP2, which introduced the policy presumption against development upon residential gardens. Nevertheless, the Inspector’s conclusions in respect of the effect of the proposed development upon the character and appearance of the area are a material consideration in this case.
24. The proposed semi-detached dwellings would be sited in a similar position to the previous proposal. However, the current proposal would retain the existing embankment at the site and the ground level to the front of the proposed dwellings would be unaltered. Consequently, the excavations to the rear of the proposed dwellings would not be readily visible from the street.
25. Furthermore, the proposed development would retain the vast majority of the existing trees at the appeal site, including the mature Ash trees, which were previously shown for removal, with a site exclusion zone specified on the tree protection plan to safeguard the Ash trees during construction. The retention of the trees would safeguard the site’s verdant character.
26. The introduction of built development at the appeal site would alter the view of the existing trees when viewed from Knoll Crescent and the rear aspects of the adjoining properties on The Drive. However, the proposed dwellings would be of a split level design with a low ridge height and single storey appearance at the front of the properties. Consequently, given that most of the trees at the appeal site and those located beyond the site boundaries are mature specimens with high canopies, despite the proposed development, views of the extensive tree canopy would remain from Knoll Crescent and the rear aspects of the adjoining properties on The Drive. As such, the existing verdant backdrop and the area’s open character, which contributes positively to the visual amenity of the local area, would remain.
27. Furthermore, the proposed landscaping plan shows that ten new trees would be planted as part of the development, whilst a significant part of the appeal site to the west of the parking area would remain free from any form of built development. The new trees would be of a variety of species and most would be planted to the front of the proposed dwellings near to the car park area. In this location, the trees would be visible from the street, and, once established the trees would make a positive contribution to the area’s verdant character by increasing the stock of trees. Moreover, the large undeveloped area to the west of the parking area would retain the site’s open character.

⁸ Paragraph 15 of PINS Ref: APP/R5510/W/18/3212491

⁹ Paragraph 17 of PINS Ref: APP/R5510/W/18/3212491

28. The delivery and maintenance of the new trees and landscaping can be secured by a planning condition.
29. I am cognisant that the proposed parking and turning area would be readily visible from Knoll Crescent due to its position in the centre of the site near to the existing vehicle access. However, the parking and turning area would be set amongst existing and proposed landscaping, including the existing Grand Fir Tree. This layout would respond to the local distinctiveness of Knoll Crescent whereby most of the existing dwellings feature frontage parking set amongst landscaping and mature trees.
30. The Council have expressed concern that the design and appearance of the proposed dwellings would be at odds with the existing houses on Knoll Crescent, which are of a consistent architectural design and two-storey scale. Whilst I recognise that the proposed dwellings would have a differing appearance to the existing dwellings on Knoll Crescent, which would include a lower ridge height and single storey appearance, this in and of itself does not mean that the development is unacceptable in design terms.
31. Indeed, paragraph 127(c) of the Framework explains that “planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change”.
32. In this instance, the external surfaces of the proposed dwellings would be constructed from brick and tile, which would be in keeping with the local vernacular. Moreover, the front elevation of the proposed dwellings would feature a gable roof form, which would appear well related to the existing dwellings on Knoll Crescent.
33. In terms of the wider context, when viewed from within the site and the lower reaches of Knoll Crescent near to the proposed access, the proposed development would be seen amongst the roofscape of the properties located on The Drive, which includes a variety of pitched roof forms, with many of the properties, including No 41, featuring roof dormers similar to the design of those proposed at the rear of the proposed dwellings.
34. For these reasons, I conclude that the design and appearance of the proposed development would be sympathetic to the area’s local character. Consequently, and given my other findings above, I conclude that the proposal would have an acceptable effect upon the character and appearance of the area.
35. Policy DMH6 of the LPP2 states that “there is a presumption against the loss of gardens due to the need to maintain local character, amenity space and biodiversity. In exceptional cases a limited scale of backland development may be acceptable, subject to the following criteria: i) neighbouring residential amenity and privacy of existing homes and gardens must be maintained and unacceptable light spillage avoided; ii) vehicular access or car parking should not have an adverse impact on neighbours in terms of noise or light. Access roads between dwellings and unnecessarily long access roads will not normally be acceptable; iii) development on backland sites must be more intimate in mass and scale and lower than frontage properties; and iv) features such as trees, shrubs and wildlife habitat must be retained or re-provided”.

36. The supporting text to Policy DMH6 explains that the Council's restrictive approach has been informed by the London Plan¹⁰ (the 'LP') and reflects the direct and indirect value of gardens which includes the contribution to local character. Having regard to paragraph 213 of the Framework, I consider that Policy DMH6 of the LPP2 is consistent with paragraph 70 of the Framework and the Framework's aim of achieving well-designed places.
37. Policy DMH6 of the LPP2 does not define what constitutes an 'exceptional case' where a limited scale of backland development may be acceptable, nor does the supporting text direct the reader to a definition for this term anywhere else within the development plan. At the Hearing, the Council explained that the term was intentionally undefined to allow the decision maker to use their planning judgement to determine whether or not a proposal represented an 'exceptional case'. Consequently, this is a matter to be determined on a case by case basis.
38. Based on the wording of Policy DMH6, the policy presumption against development upon residential gardens has three purposes, which are to maintain local character, amenity space and biodiversity.
39. In this instance, I have found that the proposed development would have an acceptable effect upon the character and appearance of the area. Consequently, the proposal would accord with the first purpose of the policy, which is to maintain local character. In respect of the second purpose, the Council have raised no concerns about the maintenance of amenity space. Indeed, the parties agree that the site no longer forms part of the garden of No 43, and, thus it does not form amenity space associated with any existing property. Finally, in respect of the third purpose, the Council have raised no concerns about the effect of the proposal on biodiversity.
40. Therefore, whilst the proposal would be contrary to the policy presumption against development of residential gardens, the proposal would not conflict with the three purposes of the policy. For this reason, I consider that the proposed development passes the test of exceptionality.
41. Policy DMH6 states that where a development meets the test of exceptionality a limited scale of backland development may be acceptable subject to the proposal complying with criteria i), ii), iii) and iv) as set out within the policy wording.
42. Given that the development would deliver two semi-detached dwellings of modest proportions to the rear of existing residential development on The Drive, I consider that the proposal would constitute a limited scale of backland development. To this regard, I note that the parties agree that the proposal would constitute a form of backland development¹¹.
43. When assessing the proposal against criteria i), ii), iii) and iv) of Policy DMH6, the parties agree that the proposal would accord with criteria ii), iii) and iv). I agree with the views of the parties in respect of these matters.
44. However, at the hearing, the Council argued that the proposal would conflict with criteria i) of Policy DMH6, in so far as the proposed development would

¹⁰ Policy 3.5 of The London Plan: The spatial development strategy for London consolidation with alterations since 2011 (2016)

¹¹ Section 6 of the Statement of Common Ground

harm the visual amenity of the area, which in turn would cause harm to neighbouring residential amenity. Given my conclusions in respect of the effect of the development upon the character and appearance of the area, I disagree on this matter and find that the proposal would have an acceptable effect on neighbouring residential amenity. Therefore, I conclude that the proposal would accord with criteria i) of Policy DMH6.

45. For the reasons set out above, I have found that the proposal would constitute a limited scale of backland development which passes the test of exceptionality and complies with criteria i), ii), iii) and iv) of Policy DMH6 of the LPP2. Consequently, I conclude that the proposed development would accord with Policy DMH6 of the LPP2.
46. Furthermore, for the collective reasons given, I conclude that the proposal would accord with Policy BE1 of the London Borough of Hillingdon Local Plan: Part 1 Strategic Policies, Policies DMHB11 and DMHB12 of the LLP2 and Policy D3 of the emerging PLP which collectively require new development to be of a high quality design, which is well integrated within the surrounding area and harmonises with the local context. Furthermore, the proposal would accord with Policy 3.5 of the LP in so far as it requires new housing development to protect and enhance London's residential environment and attractiveness as a place to live.
47. The delivery of housing at the appeal site would also accord with the objectives of Policy H2 of the emerging PLP, which states that Boroughs should pro-actively support well-designed new homes on small sites through both planning decisions and plan-making in order to significantly increase the contributions of small sites to meeting London's housing needs.

Other Matters

48. The Council's Highways Officer has assessed the proposal and raised no objection. I have no reason to disagree with the Council in respect of this matter and note that the existing turning head at the end of Knoll Crescent would remain as part of the proposal. In addition, I am content that the drawings demonstrate that there would be adequate space for on-site parking and turning.
49. Local residents have expressed concerns that the proposed development may result in localised drainage issues and the loss of wildlife. However, no substantive evidence has been provided to demonstrate that such issues would arise as a result of the proposed development. Moreover, no concerns have been raised by the Council.
50. In determining the application, the Council concluded that the proposal would have no material impact on the living conditions of neighbouring occupiers. Based on my site observations, which included an assessment of the separation distances between the proposed development and the existing dwellings, I agree.
51. Concerns have been expressed that allowing this appeal would set an undesirable precedent which would make it difficult for the Council to resist further residential development at the appeal site. However, I have considered the proposal on its individual planning merits and found that it would constitute

an exceptional case when assessed against Policy DMH6 of the LPP2. As such, the appeal decision would not set an undesirable precedent.

52. I am cognisant that there may be some noise and disturbance when the building works take place. However, this will be short term and I am satisfied that any harmful disturbance could be dealt with by other legislation.
53. None of the other matters raised alter or outweigh my conclusions on the main issue.

Conditions

54. The Council have suggested ten conditions which I have considered against the tests as laid out in paragraph 55 of the Framework. In the interests of precision, I have amended the wording of some of the conditions.
55. Planning permission is granted subject to the standard three-year time limit condition. It is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
56. In the interests of the character and appearance of the area, it is necessary to impose conditions relating to materials, site levels, landscaping and cycle and refuse storage. To ensure that the proposed landscaping becomes established at the site, I have amended the suggested landscaping condition to include a five-year maintenance requirement. To safeguard the character and appearance of the area, it is necessary for the site levels to be agreed prior to the commencement of development.
57. In the interests of highway safety, it is necessary to impose a condition requiring details of the vehicle access to be agreed with the Council and constructed accordingly. To ensure the pedestrian visibility splays remain functional I have imposed conditions to restrict the height of any structure, erection or landscaping features placed/grown within them. I have also imposed a condition to ensure that the parking spaces are constructed prior to the occupation of the dwellings and retained as such thereafter.
58. To ensure the delivery of accessible housing, I have imposed a condition relating to the provision of step free access. In addition, I have imposed a condition which requires the dwellings to meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings. The delivery of accessible housing is a requirement of Policy 3.8 of the LP and Policy D7 of the emerging PLP.
59. To safeguard existing trees of amenity value, it is necessary to impose a condition requiring the development to be undertaken in accordance with the approved arboricultural impact assessment, method statement and tree protection plan. To ensure that the trees are protected during the entire construction period, it is necessary for the protective fencing to be erected prior to the commencement of development.
60. The appellant agreed to pre-commencement conditions relating to external materials and step free access. However, the Planning Practice Guidance states such conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission. I consider that there is

no clear justification for the imposition of pre-commencement conditions in relation to these matters. Therefore, I have altered the conditions to require the details to be submitted to and approved in writing by the Local Planning Authority prior to the erection of the development above slab level.

Conclusion

61. For the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Christopher Miell

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing No: 17/3088/10 – Location Plan
 - Drawing No: 17/3088/12 REV:C – Proposed Site Plan
 - Drawing No: 17/3088/13 – Proposed Floor Plans
 - Drawing No: 17/3088/14 REV:C – Proposed Elevations
 - Drawing No: 901.19.1D – Landscape Proposals
 - Tree Survey, Arboricultural Impact Assessment and Method Statement (Submitted 9 March 2020)
- 3) No development shall take place until plans of the site showing the existing and proposed ground levels and the proposed finished floor levels of all proposed buildings have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter the development shall not be carried out other than in accordance with the approved details.
- 4) Prior to the erection of development above slab level, full details and/or samples of all materials, colours and finishes to be used on all external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved details.
- 5) No dwelling shall be occupied until the hard and soft landscaping scheme as set out on drawing no. 901.19.1D has been implemented in full. Any changes to the approved scheme must be agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in full accordance with the approved details.

Any trees or plants 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 similar size and species.
- 6) Prior to the erection of development above slab level, full details of cycle and refuse storage to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The cycle and refuse storage shall be implemented as approved prior to the first occupation of the development and retained as such thereafter.
- 7) Prior to the erection of development above slab level, details of the vehicle access between the development and the highway, which shall include details of pedestrian visibility splays and any alterations to the existing footway, kerbs and surfacing material, shall be submitted to and approved in writing by the Local Planning Authority. The access shall be provided in accordance with the approved details prior to the first occupation of the development and retained as such thereafter.

- 8) No structure or erection exceeding 0.6 metres in height shall be placed within the pedestrian visibility splays referred to in condition 7.
- 9) No shrubs, trees or other vegetation shall be allowed to grow above 0.6 metres in height within the pedestrian visibility splays referred to in condition 7.
- 10) No dwelling shall be occupied until space has been laid out within the site for four cars to be parked, in accordance with drawing no. 17/3088/12 REV:C, and that space shall thereafter be kept available at all times for the parking of vehicles.
- 11) Prior to the erection of development above slab level, details of step free access via the principal private entrance of the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and such provisions shall remain in place for the life of the approved dwellings.
- 12) The dwellings hereby approved shall be constructed to meet the standards for a Category 2 M4(2) dwelling, as set out in Approved Document M to the Building Regulations 2010 (as amended), and all such provisions shall remain in place for the life of the approved dwellings.
- 13) No site clearance or construction work shall take place until the protective tree fencing has been erected in accordance with the details approved within the Tree Survey, Arboricultural Impact Assessment and Method Statement as amended (Ref. 707 & 901) including Tree Protection Plan 701.17.3C (dated 25.11.19).

Thereafter, the development shall be implemented in accordance with the approved details. The fencing shall be retained in position until the development is completed.

The area within the approved protective fencing shall remain undisturbed during the course of the works and in particular in these areas:

- 2.a There shall be no changes in ground levels;
- 2.b No materials or plant shall be stored;
- 2.c No buildings or temporary buildings shall be erected or stationed.
- 2.d No materials or waste shall be burnt; and.
- 2.e No drain runs or other trenches shall be dug or otherwise created, without the prior written consent of the Local Planning Authority.

***** END *****

APPEARANCES

FOR THE APPELLANT:

Mr M Malski	Appellant
Mr S Barker MA (Cantab) MA MRTPI	Barker Parry Town Planning
Ms K Sharland MPlan MRTPI	Barker Parry Town Planning
Mr J Lopez, Barrister	Francis Taylor Building Chambers

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Volley DipTP MSc MRTPI	Council of the London Borough of Hillingdon
Ms K Munro, Solicitor	Council of the London Borough of Hillingdon
Mr C Merrett, Barrister	Francis Taylor Building Chambers

OTHER INTERESTED PARTIES:

Mr T Sherling	Northwood Residents Association
Mr D Bradley	Local Resident
Mrs L Bradley	Local Resident
Mr M Haffner	Local Resident
Mr V Thakrar	Local Resident

DOCUMENTS SUBMITTED AT HEARING:

1. Aerial photographs of the appeal site
2. Appendix 4: Glossary - Hillingdon Local Plan: Part 1 - Strategic Policies (Adopted November 2012)