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## 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: 29<sup>th</sup> March 2021**

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**Appeal Ref: APP/Q5300/W/20/3256487**

**18 – 22 Waggon Road, Enfield EN4 0HL**

- 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 John Wood against the Council of the London Borough of Enfield.
  - The application Ref 15/04916/FUL, is dated 19 October 2015.
  - The development proposed is described as Demolition and replacement of 20 Waggon Road and formation of new access to serve up to three further dwellings to the rear of 18 – 22 Waggon Road EN4 0HL.
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### Decision

1. The appeal is dismissed, and planning permission is refused.

### Procedural Matters

2. The description of development in the banner heading above is taken from the original planning application form. However, I have considered the proposal on the basis of the description in the appellant's appeal form and the Council's committee report of 25 February 2020 as being for *Redevelopment of site and demolition of existing house to provide 4 x 5-bed detached single family dwelling houses with attached garages and rooms in roof, new access road from Waggon Road and associated landscaping*. I have omitted the reference to the amended drawing, as this is not a description of development. One of the rooms in each dwelling is proposed as a games room and I am considering these on the basis of the intended purpose and not as a bedroom.
3. Since the appeal was lodged the Government released the Housing Delivery Test (HDT) results on 19 January 2021, and the Mayor of London adopted the London Plan (2021) on 2 March 2021 which supersedes the London Plan (2016). I have given the parties an opportunity to comment on these matters and had regard to the comments in determining this appeal.
4. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council has subsequently advised it would have refused the application for the following reasons:

*The proposed subdivision of the existing site and the inappropriate siting of three new houses to the rear of the site, due to their size, scale, bulk, massing, layout and use of garden land would result in the introduction of a discordant and incongruous form of development that would be out of keeping with the*

*established pattern of development in the immediate area, that would result in demonstrable harm to the open character and appearance of the site and surrounding area and would be harmful to the amenity of neighbouring and nearby residents. In this regard the development would be contrary to ...*

*The proposed development, by reason of the loss of trees of significant amenity value and inadequate replacement, would be contrary to...*

5. I have had regard to these concerns and the views of interested parties in setting out the main issues below. The Council's first suggested reason makes reference to the amenity of neighbouring residents. As there is no reference to particular living conditions, I have taken this to relate to visual amenity which will feed into my assessment of the visual effects. The Council has not expressed an objection in respect of flood risk and biodiversity. However, having regard to matters raised by interested parties and the evidence before me, I have allowed the Council and appellant the opportunity to comment on these matters and taken these into account in determining this appeal.

### **Application for costs**

6. An application for costs was made by Mr John Wood against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

### **Main Issues**

7. The main issues are:
  - the effect of the proposed development upon biodiversity;
  - whether the proposed development represents an acceptable form of development having regard to policies concerned with flood risk; and,
  - the effect of the proposed development upon the character and appearance of the appeal site and the area.

### **Reasons**

#### *Biodiversity*

8. The appeal site comprises No 20 Waggon Road and the rear sections of back gardens of Nos 18 and 22. These are deep maturely vegetated gardens that include grassland, a number of trees and a wooded area sloping down to the Monken Mead Brook. The development proposes the demolition of a dwelling and removal of a significant number of trees. The Preliminary Ecological Appraisal (PEA) concludes there was negligible potential for harm to invertebrates however, stag beetles could be present at low density to the south of the site. The condition of trees and the dwelling did not provide suitable features for bat roosts, no badger setts were identified and there was no suitable habitat for water vole, otter, or dormouse. Subject to specified measures it concludes there would be no foreseen impacts to invertebrates, amphibians, badgers, bats, birds, mammals, or reptiles.
9. Notwithstanding some building work taking place at No 18 at my visit much of the habitat identified in the PEA remained. The PEA advises it provides a snapshot of the assessed habitat and wildlife value at the time of survey (dated 31 July 2015) and surveys greater than 2 years old may need to be refreshed.

There is potential for some of the habitats to have grown, changed, or evolved and for protected or priority species to be present. Given the length of time since the survey, the nature of the habitats and the surroundings, there is a reasonable likelihood of protected and priority species being present and affected by the development.

10. There is not an up to date survey to confirm the presence or absence of protected species. Circular 06/2005 referenced in paragraph 175 of the National Planning Policy Framework (2019) (the Framework) advises it is essential 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. This matter cannot be dealt with by a planning condition. The ecological mitigation and enhancements in the PEA and sought by the Council's suggested planning conditions do not mitigate my concerns.
11. Therefore, the development would potentially cause unacceptable harm to biodiversity. I cannot conclude the development would not conflict with Core Policy 36 of the Enfield Plan Core Strategy (2010) (the CS) and Policy DMD78 of the Enfield Development Management Document (2014) (the EDMD) which seek to protect and enhance biodiversity. There would also be a conflict with the aims of paragraphs 170 and 175 of the Framework, which requires development minimises impacts upon biodiversity, and if significant harm cannot be avoided, adequately mitigated, or, compensated for, then planning permission should be refused. The development conflicts with Policy G6 of the London Plan (2021) (the LP) which states proposals should manage impacts on biodiversity and secure a net biodiversity gain informed by the best available ecological information.

#### *Flood Risk*

12. The flood zones associated with the Monken Mead Brook are largely within the confines of the brook corridor around the appeal site, therefore, the appeal site is located within Flood Zone 1 and there is a low probability of river flooding. However, evidence has been provided by an interested party that some of the development to the rear of the appeal site would be constructed on areas at low and medium risk of surface water flooding.
13. The development would result in a significant increase in built development and impermeable surfaces. Paragraph 155 of the Framework states inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Paragraph 158 states development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding, and the sequential approach should be used in areas at risk from any form of flooding. Similarly, paragraph 7-033-20140306 of the Planning Practice Guidance states the sequential approach to locating development should be applied to all sources of flooding.
14. There is no evidence that demonstrates there are not other appropriate sites reasonably available in areas with a lower risk of flooding. Therefore, the sequential test has not been passed. The use of mains drainage and the requirements in the suggested condition in respect of a sustainable drainage strategy are matters to be dealt with if the sequential test is passed. This does not overcome the need to carry out a sequential test. There is no objection

from the Environment Agency, however, their advice is in relation to river flooding and not surface water flooding and the sequential test.

15. The sequential test has not been met and the development is therefore unacceptable in relation to flood risk. It conflicts with paragraphs 155 and 158 of the Framework, the relevant provisions of which I have referred to above.

#### *Character and appearance*

16. The appeal site plots include parts of long generous and maturely landscaped rear gardens, with a significant number of trees present. Such is the number, location, and size of trees, they provide a maturely vegetated appearance making a positive amenity and visual contribution to the appeal site and the area. Some trees around the brook corridor and to the north and west of the appeal site would be retained. However, a significant number of trees and vegetation are to be lost, to be preplaced by dwellings of a significant scale, paving, and areas for access, parking, and circulation. The built development, vehicles and associated activity would result in a significant urbanisation that would be harmful to the character and appearance of the appeal site and area, which would be visible from a number of nearby properties.
17. The plans indicate limited scope for replacing the lost trees under the suggested condition, given the site layout and provision of private amenity space. There is no substantive evidence to give certainty a Tree Preservation Order would be applied. There is no other suitable means before me that would secure the long term protection of either retained trees or new planting, to ensure trees are retained within the appeal site and reach a maturity and spread that would mitigate the harmful effects of the development.
18. The design, scale and position of the replacement dwelling would be in keeping with the varied character of neighbouring dwellings and the new access would not be significantly greater than the width of the existing driveway. The twin gable front, crown roof and layout of dwellings to the rear are of a similar size, bulk, massing, spacing, appearance, plot size and layout as neighbouring dwellings on Warner Close, and a similar distance to those on Kingswell Road. Therefore, I do not agree it constitutes overdevelopment or is out of keeping with the pattern of urban development in the vicinity. Nevertheless, the urbanisation of the appeal site and loss of trees would result in harm to the character and appearance of the appeal site and the area.
19. For the reasons set out above the development would result in harm to the character and appearance of the appeal site and the area. Therefore, it would conflict with Policies DMD7, DMD8, DMD37 and DMD80 of the EDMD and Policy G7 of the LP. Amongst other things these require development does not harm and reinforces the character and appearance of the area including the positive contribution of landscape features, protects and retains trees, and that removed trees are adequately replaced based on their existing value. It would also conflict with paragraphs 127 and 170 of the Framework which expects development to be sympathetic to local character and contribute to and enhance the natural environment.
20. Policies DMD6 and DMD8 of the EDMD and Core Policy 30 of the ECS relate to residential character and general standards for new development. Having regard to the Council's concerns I do not find conflict with the relevant provisions of those policies specifically in respect of the proposed scale, bulk,

massing, and layout in relation to surrounding development. However, this does not mitigate the other harm I have found.

### **Planning Balance**

21. The Framework states that applications shall be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration. The 2020 HDT results indicate the Council has only been able to deliver 56% of its required housing over the last 3 years, significantly below the threshold of 75% in footnote 7 of the Framework. However, in accordance with paragraph 11d)i) of the Framework the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development, as it is in an area at risk of flooding for which the policies of the Framework have not been met. Therefore, the tilted balance does not apply.
22. The development would result in a more efficient use of land, helping to boost the supply and choice of housing, meeting policies in this regard. It would provide social benefits through a net increase of three family sized dwellings, making a modest contribution to housing needs. There would be a modest temporary economic benefit during construction, and once occupied a small benefit to the local economy. There is no evidence to demonstrate that CIL contributions from this development would result in an overall net benefit. Even if the effects of works from this contribution were to result in a benefit, it would be likely to be small, attracting a small amount of weight in favour of the scheme. There are also some modest ecological enhancements proposed. The benefits of the development attract modest weight in favour of the scheme.
23. Compliance with policies in respect being in keeping with the design and layout of neighbouring dwellings are neutral matters attracting neutral weight. If the development were to be compliant with policies in respect of matters such as access and parking, refuse storage and collection, resource and energy efficiency, the living conditions of neighbouring occupiers and those of new occupiers, these would also be neutral factors in the balance.
24. However, the development would result in the loss of a significant number of trees resulting in harm to the character and appearance of the appeal site and the area. It conflicts with the policies of the Framework in respect of flooding and has not passed the sequential test. I also cannot conclude the development would not result in unacceptable harm to biodiversity. These are matters that attract significant weight against the scheme. Therefore, the policy compliance and the benefits of the scheme do not outweigh the harm from the development. Therefore, planning permission should be refused.

### **Conclusion**

25. The proposed development would be contrary to the development plan and the National Planning Policy Framework read as a whole. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan or the Framework. Therefore, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR