
Appeal Decision

Site visit made on 7 April 2021

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 26th April 2021

Appeal Ref: APP/W5780/W/20/3258758

Land adjacent to 28-39 Malcolm Way, Wanstead, London E11 1PW

- 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 Spring Valley Limited against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 1536/19, dated 5 April 2019, was refused by notice dated 3 March 2020.
 - The development proposed is *"two x three storey (3 x bedroom) dwelling houses with associated car parking and amenity space"*.
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Decision

1. The appeal is allowed and planning permission is granted for two 3-storey, 3-bedroom dwelling houses with associated car parking and amenity space, on land adjacent to 28-39 Malcolm Way, Wanstead, London E11 1PW, in accordance with the terms of the application, Ref 1536/19, dated 5 April 2019, subject to the conditions in the attached schedule.

Costs Application

2. An application for costs has been made by the appellants against the Council. That application is the subject of a separate decision.

Preliminary Matters

3. In the application and associated documents, the appeal site is referred to in some documents as land adjoining Nos 28-39 Malcolm Way, and in others as No 1 Malcolm Way. On my site visit I saw that the site comprises a former landscaped area, lying adjacent to the block of flats numbered 28-39 Malcolm Way. In the absence of any further clarification, I have adopted this as the site address.
4. Since lodging the appeal, the appellant company has entered into a unilateral undertaking which provides for a financial contribution towards measures to mitigate possible impacts on the Epping Forest Special Area of Conservation (SAC).

Main Issue

5. The single main issue in the appeal is the effect of the proposed development on the existing trees on the site, and any consequent effects on the character and appearance of the area.

Reasons for Decision

6. The Council's concerns centre on a row of three lime trees, positioned on the boundary between the appeal site and The Ridings. All three trees are between 18-20m high. They can be seen in public and semi-public views from the end section of Malcolm Way, and from the footways linking Malcolm Way and The Ridings to Snaresbrook town centre. The lime trees therefore make some contribution to the area's visual amenity.
7. However, the area from which these views are obtainable is relatively small, and there are no significant views from longer distances. Furthermore, these three trees are seen in the context of numerous others within the landscaped grounds of the Malcolm Way and Ridings developments, including some of considerably better quality. Overall therefore, the lime trees' contribution to the area's character and appearance is quite limited. Contrary to the refusal notice, the Council has since confirmed that none of the trees in question is subject to any Tree Preservation Order.
8. The tree numbered T1 in the appellants' Tree Survey¹ has suffered the loss of a large branch, which has also taken with it a section of the main trunk. The resulting wound is clearly visible from ground level. I note the Council's suggestion that this need not be a weakness, if properly managed from here on. But I see no reason to doubt the evidence of the appellants' arboricultural consultant, that the heavy-handed 'topping' of this tree, prior to the appellants' involvement, left it highly vulnerable to decay; and that the bifurcation which has occurred since then is not only evidence of such decay taking hold, but has also exposed a greater area of the inner trunk, which is likely to accelerate that process. On this basis, it seems likely that the damage to T1 is irreparable, and on safety grounds its future life expectancy is short, at best.
9. The proposed new houses would be sited within a few metres from T1's rooting area. Conventional strip foundations would be likely to cause substantial root damage, but with piled or other specially designed foundations, it would be possible to reduce that damage significantly. If the tree were otherwise healthy, this approach might potentially enable it to be retained. But even if that were so, given the tree's poor physical condition, in this particular case it seems likely that the benefits would be short-lived.
10. Tree T2 has been pollarded in the past, but this work was carried out to a higher standard than on T1. Although T2 has been poorly managed since then, this appears capable of being rectified, by re-pollarding and regular maintenance thereafter. The proposed new building would affect only a relatively small portion of T2's rooting area. With piling or special foundations, it seems reasonably likely that the tree could be retained. However, the burden that this would impose on the development must be weighed against the benefits. For the reasons already stated, T2's contribution to the area is already limited. With the development now proposed, the tree would become largely hidden from Malcolm Way, and thus its contribution would be reduced further. To my mind, the benefits of retaining T2 would be small.
11. Tree T3 is in much the same condition as T2, and again requires some remedial pruning and on-going management to ensure its safety. But its rooting area is unlikely to extend into the footprint area of the proposed houses. The tree

¹ Tree Survey dated 22 July 2019

could be adequately protected by fencing and similar measures during construction. Subject to suitable conditions therefore, T3 would not be adversely affected by the development. It does not appear to be disputed that all of the other existing trees around the site could also be protected in the same way.

12. If T1 and T2 were lost due to the proposed development, replacement planting could be secured by condition. The species and location for any such new planting could be tailored to maximise the benefits to the public realm. In the medium to long term, this would be likely to be more beneficial than retaining T1 and T2, given both their limited value and their significant defects.
13. In the light of all the evidence, it seems to me that in this case the loss of trees T1 and T2 would not justify a refusal of planning permission. Nor would it be reasonable to impose conditions designed to secure the retention of either of these trees.
14. Policy LP38 of the Redbridge Local Plan (the RLP), adopted in March 2018, supports the retention of existing trees where they make a positive contribution and do not adversely affect the delivery of development. In the present case however, for the reasons already explained, T1 and T2 do not have significant amenity value now, and in the future their role is likely to decline further. And whilst their retention within the development would be physically possible, such a requirement would be an unnecessary hindrance to an otherwise acceptable scheme. The proposed development would therefore not conflict with Policy LP38.
15. I conclude that, subject to conditions to secure the retention of T3 and other nearby trees, and any necessary replacement planting for T1 and T2, the development would allow for the protection and retention of all the worthwhile trees in the vicinity of the site. The development would therefore have no adverse effects on the area's character or appearance.

Other matters

16. I note that in the Housing Delivery Test results published in January 2021, Redbridge Borough achieved only 59% of the required house building rate. In accordance with paragraph 215 and footnote 7 of the National Planning Policy Framework (the NPPF), this means that the NPPF's presumption in favour of sustainable development is engaged. In these circumstances, the benefit of providing additional housing adds substantial weight in favour of the appeal.
17. The development would provide one off-street parking space for each of the new dwellings. This is said to be within the maximum permitted by the relevant standards. There appears to be no minimum standard. Permit-controlled residents' parking is available on Malcolm Way, and I saw on my visit that the estate is also served by a number of private off-street parking areas. The site is close to Snaresbrook Station and Wanstead town centre, where public transport services are available. Based on all the evidence available, I see consider the parking provision proposed within the appeal scheme to be adequate.

Conditions

18. If permission is granted, a condition will be needed to secure the retention and protection of existing trees, to protect the area's visual amenity. However, for

the reasons already explained, this should exclude trees T1 and T2. For similar reasons, a landscaping scheme is required, and this should include replacement planting for T1 and T2 if these are lost.

19. A condition relating to surface water drainage is necessary to avoid flood risks, and to minimise any impacts on existing drainage infrastructure. Control over the choice of external materials is necessary to protect the area's character and appearance. A condition relating to accessibility and adaptability is justified in order to secure compliance with RLP Policy LP32.4(b). It is not necessary for this condition to refer to lifts, as the Building Regulations do not require such provision in every case. A requirement as to water efficiency is justified to secure accordance with RLP Policy LP32.3(d). A condition specifying the approved plans, and requiring adherence to these, is needed to define the nature of the approved development.
20. In so far as the conditions relating to tree protection and drainage require compliance prior to the commencement of the development, this is necessary for these conditions to have their intended effect. In both of these cases I note that the appellants have confirmed their agreement.
21. As far as the other suggested conditions are concerned, details of traffic routeing and other measures during construction are not necessary, as the proposed development is small in scale, and there is no evidence of any significant impacts in this respect. Policy LP22 does not appear to support such a requirement, especially on smaller schemes of this kind. A condition relating to land contamination is not justified, as there is no evidence of any potential contaminating uses or pollutants; the suggested condition does not appear to be supported by any advice from relevant technical officers. Accreditation under 'Secured By Design' is unnecessary on a scheme of this size, as security within dwellings is dealt with as part of the process for Building Regulations approval. Given my earlier findings regarding car parking, there is no clear justification for any restriction on parking permits. I have therefore not imposed any of these latter conditions.

Conclusion

22. I conclude that the proposed development would not adversely affect any trees of significant amenity value, and consequently the area's character and appearance would be unharmed. In these respects there would be no conflict with Policy LP38. No conflict with any other policies has been identified. The scheme therefore accords with the development plan as a whole.
23. In addition, the development would provide for an increase in the housing stock, in a Borough where housing delivery has recently fallen short of requirements. Having taken account of all the matters raised, no material considerations weigh against the development.
24. For these reasons, the appeal is allowed.

J Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans:

Proposed site plan 981.10.002
Proposed floor plans 981.10.100
Proposed roof plan 981.10.101
Proposed elevations 981.10.200
Proposed section and side elevation 981.10.300
Proposed bin store details 981.10.102 (Rev. A)
- 3) With the exception of trees T1 and T2 (as marked on the Tree Survey, dated 22 July 2019), no existing tree within the site or on adjoining land shall be cut down or uprooted, nor destroyed or damaged, and all such trees shall be retained during the course of the development and thereafter. No construction work shall take place, and no equipment, machinery or materials shall be brought on to the site, until protective fencing and ground protection have been installed around the trees to be retained, in accordance with details to be submitted to the local planning authority and approved in writing. The said fencing and ground protection shall be kept in place until all equipment, machinery and materials have been removed from the site. If, during the construction of the development or within 5 years from its first occupation, any retained tree is removed, destroyed or dies, it shall be replaced with a new tree, of a size and type to be approved in writing by the local planning authority.
- 4) No dwelling within the development shall be occupied until a scheme of hard and soft landscaping has been submitted to the local planning authority and approved in writing. The scheme shall make provision for new tree planting to replace trees T1 and T2, if these are lost during the course of the development. The scheme shall also include details of all other proposed planting, seeding, hard surfacing and boundary treatments, together with an implementation timetable for these works. Thereafter the landscaping works shall be carried out in accordance with the details and timetable thus approved. Any trees or plants which die, become seriously damaged or diseased, or are removed, within a period of 5 years from planting, shall be replaced in the next planting season with others of similar size and species.
- 5) No development shall be commenced until a surface water drainage scheme has been submitted to the local planning authority and approved in writing. The scheme shall show how run-off flows will be attenuated to no more than 5 litres per second, and shall include a surface water drainage management and maintenance plan for the lifetime of the development. No dwelling within the development shall be occupied until the surface water drainage scheme has been implemented in accordance with these approved details.

- 6) No construction work above ground floor slab level shall be carried out until details of the facing materials to be used on the external surfaces of the walls and roofs have been submitted to the local planning authority and approved in writing. Thereafter, the development shall be carried out in accordance with these approved details.
- 7) The dwellings hereby approved shall be constructed and fitted out so as to comply with Optional Requirement M4(2) 'Accessible and Adaptable Dwellings', as set out in Approved Document M of the Building Regulations. No dwelling shall be occupied until completion of all works relevant to compliance with Optional Requirement M4(2) has been notified to the relevant Building Control Body, or has been self-certified by a registered person, in accordance with Building Regulations procedures.
- 8) The dwellings hereby approved shall be constructed and fitted out so as to comply with Optional Requirement 36(2)(b) of Section G2 'Water Efficiency', as set out in Approved Document G of the Building Regulations. No dwelling shall be occupied until completion of all works relevant to compliance with Optional Requirement 36(2)(b) of Section G2 has been notified to the relevant Building Control Body, or has been self-certified by a registered person, in accordance with Building Regulations procedures.

[END OF SCHEDULE]