



Appeal Decision

Site Visit made on 8 November 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2021

Appeal Ref: APP/U5930/W/21/3273302

22 Winslow Grove, Chingford, London E4 6EU

- 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 Osman Ahmet against the decision of Waltham Forest London Borough Council.
 - The application Ref 202881, dated 15 September 2020, was refused by notice dated 5 January 2021.
 - The development proposed is described on the application form as: 'Subdivision of site and construction of a three storey, 3-bedroom, dwelling house with associated car parking space, refuse and recycling storage'.
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Decision

1. The appeal is allowed and planning permission is granted for a subdivision of the site and the construction of a three storey, 3-bedroom dwellinghouse with associated car parking space, refuse and recycling storage together with the replacement planting of a tree subject to a tree preservation order at 22 Winslow Grove, Chingford, London E4 6EU in accordance with the terms of the application, Ref 202881, dated 15 September 2020, subject to the conditions set out at the end of this decision.

Applications for costs

2. An application for costs was made by Mr Osman Ahmet against Waltham Forest London Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The main parties have suggested that the description of development as stated upon the application form and on the Council's Decision Notice ought to be amended to refer to the intended planting of a tree to replace a felled protected specimen. Given the statutory duty to replant that applies under Section 206 of the Town and Country Planning Act 1990 (the Act), I am satisfied that it is appropriate to use a description that references this matter. I shall proceed on this basis and am satisfied that no party with a potential interest in the appeal's outcome is prejudiced by me doing so.
4. Since the determination of the application that is now the subject of this appeal, the London Plan 2021 has been published. The main parties to this appeal have had opportunities to comment upon any relevance of this to the outcome of the appeal.

Main Issues

5. The main issues are:

- The effect upon the character and appearance of the area, having particular regard to the intended relocation of a felled protected tree;
- Whether or not the proposal would have an acceptable effect upon the living conditions of future occupiers of the proposed development and of existing neighbouring occupiers, having particular regard to the effect of the intended replacement tree upon access to light; and
- Whether or not acceptable living conditions for future occupiers of the proposed development would prevail, having particular regard to the intended provision of private amenity space.

Reasons

Character and appearance

6. The site once contained a mature Oak tree (the original tree), the subject of a tree preservation order¹. This specimen was felled following 2018 correspondence between the appellant and the Council's Tree Preservation and Nature Conservation Officer, who acknowledged that the tree was dead and recommended that works proceeded as soon as practicably possible in the interests of safety. Section 206 of the Act dictates that in such circumstances it is the duty of the owner of the land to plant another tree of an appropriate size and species at the same place.
7. Whilst the replacement tree is not intended to be planted in exactly the same position as the original tree, its placement would at least loosely correspond with its original position as depicted on the map associated to the tree preservation order.
8. I have limited information before me as regards the precise form of the original tree prior to its deterioration in health. Even so, historic images appear within the submitted evidence that clearly illustrate that it was once a substantial specimen of vigour that exceeded the heights of the nearest buildings. A significant portion of its crown would have been visible from a wide variety of local vantage points and, in this sense, the original tree would have contributed positively to the verdant residential character and appearance that remains readily identifiable local to the site.
9. Even so, the original tree occupied a setback position relative to the highway. Indeed, its trunk would have been set behind the respective rear building line of No 22 Winslow Grove (No 22) (as originally constructed). Thus, notwithstanding the open nature of No 22's side garden, the presence of frontage development would have dictated that from only a narrow spectrum of potential vantage points would lower elements of the original tree have been readily visible.
10. Thus, even if a replacement tree were to be planted in exactly the same position as the original tree and in isolation of new development, it would realistically offer a limited contribution to the Winslow Grove streetscene until of sufficient height and presence to be read and experienced in conjunction

¹ Tree Preservation Order (No. 31/02) 2002

with the roofscapes of neighbouring properties. In this sense, whilst the replacement tree would be further stepped back from the highway and beyond the new dwelling now proposed, I do not find that the intended relocation would lead to any significant loss of public amenity. This is particularly so when noting the local area's continuing green character and appearance and the existence of various established tree specimens close by.

11. I have noted references to potential causes for the original tree's demise. However, for the avoidance of doubt, I witnessed nothing upon my inspection to clearly indicate that on-site development was the principal contributory factor.
12. For the above reasons, subject to a planning condition being imposed to secure that the replacement tree would be of a suitable size and species, I find that unacceptable harm would not be caused to the character and appearance of the area having particular regard to the intended relocation of a felled protected tree. The scheme satisfactorily accords with Policies CS5 and CS15 of the Waltham Forest Local Plan Core Strategy (March 2012) (the CS) and Policies DM29 and DM35 of the Waltham Forest Local Plan Development Management Policies (October 2013) (the DMP) in so far as these policies set out that proposals should incorporate high quality landscaping and tree planting where appropriate.

Living conditions – access to light

13. The replacement tree is proposed to be sited on a southern orientation relative to the rear elevation of the proposed dwelling. Once established/matured there would exist the potential for the replacement tree to obscure some light from reaching the external grounds and internal areas of the dwelling.
14. Nevertheless, a not insignificant separation distance to the replacement tree's trunk is proposed. Indeed, it would be planted towards the southern end of the site within an area of garden intended to be retained for the existing occupiers of No 22. Thus, particularly when noting that merely a single replacement tree is proposed, the future potential for undue overshadowing or loss of light to occur to the detriment of future occupiers' living conditions would be limited and not at a level translatable to material harm. This finding similarly applies to the existing occupiers of neighbouring properties, including at No 22 (even when acknowledging its single storey rear extension).
15. For the above reasons the proposal would be reasonably anticipated to have an acceptable effect upon the living conditions of future occupiers of the proposed development and of existing neighbouring occupiers, having particular regard to the effect of the intended replacement tree upon access to light. The scheme satisfactorily accords with Policy CS15 of the CS and Policies DM7 and DM32 of the DMP in so far as these policies require that new development should ensure that daylight/sunlight, outlook and privacy is maintained for existing occupants and their neighbours in their homes and gardens as well as for the intended occupants of new habitable rooms.

Living conditions – private amenity space

16. Minimum external space standards are set out in the supporting text to Policy DM7 of the DMP, where it is indicated that, in this instance, a minimum of 60 square metres of private amenity space should be provided. It is also set out

that a flexible approach shall be taken when applying the external space standards, with matters including the character of the area and the accessibility of parks and green spaces capable of being considered.

17. The extent of private amenity space to be provided would fall short of 60 square metres in area. Nevertheless, a readily useable and logically laid out rear amenity space is proposed. Furthermore, an abundance of wide grassed verges and publicly accessible parks exist in proximity to the site. Notwithstanding the ongoing effects of the Covid-19 pandemic and the associated importance of the role performed by private amenity spaces, I am satisfied that a suitable level of provision would be provided in this instance.
18. For the above reasons, I find that, having particular regard to the intended provision of private amenity space, acceptable living conditions for future occupiers of the proposed development would prevail. The scheme accords with Policy CS15 of the CS and Policies DM7 and DM32 of the DMP in so far as these policies require that external amenity space is well-designed, appropriately located and useable.

Other Matters

19. The site lies in proximity to the Epping Forest Special Area of Conservation (the SAC), such that I must have regard to The Conservation of Habitats and Species Regulations 2017 (as amended). These regulations require that, where the project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the project's implications in view of the relevant site's conservation objectives.
20. I understand the SAC to be comprised of various habitats of high nature conservation value and the evidence before me indicates that the site's location falls within the calculated Zone of Influence for recreational pressure. On this basis, the proposal would be likely to have a significant effect upon the SAC. As set out in the Council's Delegated Report, an initial draft of costed Strategic Access Management Measures (SAMM) has been prepared in the interests of mitigating the effects of recreational pressure. A proportion of these costs is expected to be collected via new residential developments within the Borough.
21. I am led to understand that Natural England, in their role as the Statutory Nature Conservation Body, is supportive of the Council's approach to not applying a SAMM levy upon minor development proposals due to the administrative costs being greater than the sums generated. This is provided that the expected proportion of the overall costs of implementing SAMM is ultimately contributed. From the evidence before me, I have no reason to doubt that this shall be the case. As such, I am sufficiently satisfied that proportionate mitigation would be delivered in the event the proposal be implemented. I thus find that the scheme would not adversely affect the SAC's integrity.

Planning Balance

22. The replacement tree would offer a reduced contribution to the verdant character and appearance of the local area when compared to the contribution formerly offered by the original tree. Whilst I have identified that unacceptable harm would be avoided for reasons that are set out above, the scheme would

lead to some adverse impact in a character and appearance sense. Even so, particularly when factoring in the constraints/limitations that would realistically be associated with seeking to successfully undertake replacement planting closer to the site's frontage (most particularly if at exactly the same position as the original tree), I apportion limited weight to this harm.

23. The scheme's benefits, which include the delivery of an additional housing unit on an urban site well served by facilities and services in accordance with the Government's objective of significantly boosting the supply of homes, would outweigh the harm identified. Indeed, the proposal accords with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conditions

24. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the National Planning Policy Framework (July 2021) (the Framework) and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes and have omitted others. Pre-commencement conditions have only been imposed where agreed to in writing by the appellant.
25. In the interests of certainty, a condition specifying the suite of approved plans is required. In the interests of protecting the character and appearance of the area, a condition to secure full details of the external facing materials is required. For the same reason and to ensure visual interest to the new building's elevations, a condition to ensure that windows are set within reveals of meaningful depth is reasonable.
26. In the interests of protecting the visual and residential amenities of the area and of promoting the provision of a secure development, a condition securing the details and subsequent implementation of boundary treatments is reasonable and necessary. As these treatments would likely be erected towards the end of the construction phase, the appropriate trigger point for both submission and implementation is prior to the development's first occupation. On a site of this scale and composition it would be unnecessary to impose a condition requiring any further details in a crime prevention sense.
27. In the interests of protecting the living conditions of nearby residents, a condition to control the hours of demolition/construction work is reasonable. However, given the relatively limited extent of works and building materials anticipated and the site's realistic ability to accommodate storage and loading/unloading activities, a detailed Construction Logistics Plan would be unduly onerous and unnecessary to condition in either a residential amenity or highway safety sense.
28. Given that no substantive alterations to existing access arrangements are proposed, a condition related to the undertaking of highway works is unnecessary. In any event, any such works would be subject to a separate application outside of the planning process. Due to the limited scale of development under consideration, I also see no reasonable need for a condition survey of the carriageway and footways to be undertaken.
29. In the interests of protecting the visual amenities of the area and of securing biodiversity enhancements, a detailed soft landscaping and planting plan (to

include the provision of biodiversity enhancement measures) is reasonable and necessary to secure via condition. I note that, whilst the intended replacement tree would be subject to the protections accorded by the tree preservation order, it would be unreasonable to require the ongoing maintenance of all new planting for the lifetime of development.

30. To guard against any potential risks in a flood risk/drainage sense, it is reasonable and necessary to secure the full details and implementation of a sustainable drainage system. Indeed, Policy DM34 of the DMP suggests that greenfield run-off rates should be achieved through the maximisation of Sustainable Urban Drainage Systems where possible. When compared to the drainage condition drafted by the Council, I have used more concise wording in the interests of offering flexibility whilst acknowledging the scale of development under consideration.
31. In the interests of promoting a sustainable and energy efficient development, a condition to secure a reduction in carbon emissions over and above Building Regulations requirements and a standard of energy performance equivalent to Code for Sustainable Homes Level 4 is reasonable and necessary. Such an approach would be in broad accordance with the requirements of Policy DM10 of the DMP, which references the achievement of zero carbon development.
32. To minimise water usage in accordance with the requirements of Policy DM34 of the DMP, a condition is necessary to secure that the relevant 105 litre standard is met. To protect air quality, a further condition is reasonable to ensure best practice is followed as regards the use of Non-Road Mobile Machinery on-site.
33. The Framework sets out that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this case, noting the relatively constrained extent of private amenity space to be provided, I see clear justification in withdrawing permitted development rights related to the future provision of extensions and outbuildings (Classes A and E). Nevertheless, I have not been provided with convincing evidence to demonstrate that it would be either reasonable or necessary to impose any further restrictions in this sense.
34. In broad accordance with the requirements of Policy DM30 of the DMP, it is reasonable to impose a condition requiring that the scheme meets optional accessibility/adaptability standards as set out in the Building Regulations.
35. Details of the refuse and cycle storage facilities to be installed, which I am satisfied would be fit-for-purpose, are illustrated upon the submitted plans. Nevertheless, in the respective interests of protecting amenity and of influencing sustainable travel choices, a condition to ensure the implementation and subsequent retention of these facilities is reasonable and necessary. There is no clear reason to dictate that lighting at this site needs to be conditioned.

Conclusion

36. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A100_1A; A100_2A; A100_3B; A101A; A102A; A103A; A104A; A105A; A106A; A107A.
- 3) No development shall take place until samples and/or a full schedule of materials to be used in the construction of the dwelling's external surfaces have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out solely in accordance with the approved details.
- 4) No development shall take place until full details of a sustainable drainage system to deal with surface water drainage from the site as well as associated maintenance details have been submitted to and approved in writing by the Local Planning Authority. The approved system shall be implemented in full prior to the first occupation of the development and thereafter shall be maintained in accordance with the approved maintenance details for the lifetime of the development.
- 5) No development (other than enabling ground works) shall take place until details of the measures to be implemented to ensure that a 35% reduction in carbon emissions beyond the requirements of the 2013 Building Regulations is achieved, including details of how the energy aspects (Ene 1) of Code for Sustainable Homes Level 4 (or an equivalent standard) will be met, have been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of the development, a report from a suitably qualified Assessor (or equivalent) confirming that the development meets the 35% carbon reduction target as well as Level 4 standards shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the measures taken and included within the Assessor's report shall be maintained in full accordance with the approved details.
- 6) No development shall take place until full details of the size and species of the replacement protected tree (as depicted upon approved plan A100_3 B) have been submitted to and approved in writing by the Local Planning Authority, and its planting shall be carried out in the first planting season following the first occupation or completion of the development, whichever is the sooner.
- 7) Prior to the first occupation of the development, details relating to the siting, design, height and finish of all new walls, gates, fencing, railings and any other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out solely in accordance with the approved details and thereafter retained as such.
- 8) Prior to the first occupation of the development, a detailed soft landscaping and planting plan to incorporate biodiversity enhancement measures including the provision of habitat boxes shall be submitted to and approved in writing by the Local Planning Authority. The

development shall be implemented in full accordance with the approved details.

- 9) Prior to the first occupation of the development, a scheme detailing the measures to be installed to achieve water usage of less than or equal to 105 litres per person, per day, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved scheme and thereafter the installed measures shall be retained.
- 10) All window reveals on the external faces of the development hereby permitted shall be of a depth of a minimum of 115mm measured from the face of the building and shall thereafter be maintained.
- 11) Waste and bicycle storage facilities shall be implemented in full accordance with the details depicted upon approved plans A101A and A107A, and shall subsequently be retained at all times thereafter.
- 12) Demolition or construction works shall take place only between 0800 and 1800 hours on Mondays to Fridays and between 0800 and 1300 hours on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
- 13) The development shall be built to comply with The Building Regulations (2010), Access to and use of buildings, Approved Document M (as amended), Volume 1: Dwellings, M4(2): Category 2 – Accessible and adaptable dwellings.
- 14) No Non-Road Mobile Machinery (NRMM) shall be used on the site unless compliant with the NRMM Low Emission Zone requirements (or any superseding requirements) and until it has been registered for use via the NRMM register (or any superseding register).
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking and/or re-enacting that Order with or without modification, no development under Schedule 2, Part 1, Classes A or E shall be carried out unless approved by way of separate planning permission.