
Appeal Decisions

Site visit made on 30 November 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2022

Appeal Refs: APP/R5510/C/20/3260716 & 3260717

11 Woodgate Crescent, Northwood HA6 3RB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Naboth Gaza & Ms Agness Sakala against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 26 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of retaining walls to the rear and sides and levelling of garden, involving demolition of existing retaining walls (as shown with a green line in the approximate position with the excavated area hatched in blue on the attached plan).
 - The requirements of the notice are: (i) Demolish and remove the new retaining walls to the rear and side of the garden and reinstate the ground levels using insert material to the levels as detailed in existing plans refs: 1106/1/4 and 1106/1/5 that were submitted under Planning Application Ref: 61044/APP/2018/1825; (ii) Remove from the land all debris, waste, building materials, fixtures and fitting, plant equipment and machinery resulting from the remedial works listed in (i) above.
 - The period for compliance with the requirements is: Three months.
 - The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeals are dismissed and the Enforcement Notice (EN) is upheld.

Preliminary Matter

2. The EN refers to the development conflicting with certain policies from the London Plan 2016. However, in 2021 a new version of the London Plan was published. I asked the appeal parties to comment on the implications of this change to the development plan. Despite a further reminder to do so, I have not received any responses. I cannot continue to withhold the decision and so I have taken it that neither party has referred to any policies from the London Plan 2021 that the scheme either accords with or conflicts with. I have therefore determined the deemed planning application having regard to the Hillingdon Local Plan: Part 2 - Development Management Policies (2020) (LP).

Main Issues

3. The main issues are the effects of the development on flood risk and on the character and appearance of the area, having regard to trees and the site's location in the Gatehill Farm Estate Area of Special Local Character (ASLC).

Reasons

Flood Risk

4. Having read the appellant's 'Surface Water Drainage Strategy and Ground Water Assessment', I accept that the piling done for building the wall has not unduly affected groundwater flows in the local area. However, when building the wall, a 100mm diameter perforated pipe land drain was introduced behind the face of it to convey any groundwater build up. To mitigate flood risk posed by post development runoff, the report concludes that adequate control measures will be required within the site to ensure that surface water runoff is dealt with at source and the flood risk off site is not increased.
5. The house has been previously extended and in order that flood risk posed by post development runoff from these extensions was mitigated, a rainwater harvesting tank was put in the front garden. I am told that this was to ensure surface water runoff was dealt with at source and flood risk was not increased elsewhere. Without these appropriate mitigation measures, runoff from the additional roof area could have increased flood risk to the site and locality. This background indicates to me that potential increases to water discharge into local systems due to development needs careful consideration.
6. In the case of the appeal scheme, it has been assessed that the already installed rainwater collection tank does not have capacity to take water from the land drain behind the wall. It is, therefore, recommended that connecting the land drain to the existing private foul sewer network in the appeal site's back garden would be the only viable option for disposing any collected rainwater, without causing flooding on site and to the surrounding areas.
7. The problem with this strategy is that there is no evidence to show that the private foul sewer has the capacity to receive any additional discharge. Consequently, there is a risk that the sewer might not be able to cope and thus cause flooding further along the network. The appeal site's private sewer also crosses into and discharges into next door's private system. There is no evidence to show that the permission of the adjoining landowner has been sought or granted to allow this connection. There is a risk that the other landowner(s) could seek to prevent further water discharge from the appeal site across their land.
8. Furthermore, as the sewer is private there is nothing to show how this is maintained or what is its current state of repair. Also, as this private network then discharges into a public sewer, there is no confirmation from the water authority that any approval to increase the discharge is either needed or that it would be forthcoming. It seems to me that if the water authority does have some control over increasing discharge into the foul sewer, then it could be unlikely to give its consent given that there is a surface water drain in Woodgate Crescent.
9. In these circumstances I cannot be sure that the appeal development does not pose an unacceptable increased risk to flooding locally. I am not satisfied dealing with this by a condition because it might not be reasonable or make the development acceptable in planning terms. The development conflicts with the flood risk mitigation aims of policy LP policy DME19.

Trees

10. I have read the appellant's arboricultural report, including the update to the table that shows estimated stem diameters of the trees that were assessed. In my view, also taking account of what I saw on site, it is a fair and accurate assessment covering matters such as tree species, Root Protection Areas (RPAs) and the distance of the trees from the retaining wall. Two trees are identified that the retaining wall might impact upon – T4 (Ash) and T9 (Holly).
11. T4 is a tree that has been in decline for several years and its current contribution to the character and appearance of the area is therefore already limited. The works in constructing the wall may have caused some root loss which may hasten the tree's decline. However, the life of the tree was limited anyway and for sensible tree management, and duty of care purposes, it was ready for removal even before the wall was constructed. Moreover, losing one tree amongst the overall range of trees along this boundary would have a negligible adverse effect on the appearance of the surroundings.
12. T9 is a young tree. The RPA has been infringed only very marginally by the wall and it has therefore had no adverse effects on the long-term health and longevity of the tree. The Council raise that the wall is only just outside the RPA of a large oak tree (T1). That maybe so, but there is no evidence to substantiate that being close to, but outside the RPA, means that the health of the tree has been put at risk.
13. In view of the above, I find that the character and appearance of the area, having regard to trees and the site's location in the ASLC, has not been harmed. Therefore, the development accords with the aims of policy DMHB14 from the LP as they relate to safeguarding trees and recognising the contribution they make to the built environment.
14. I recognise that by dismissing the appeal, this might lead to significant remedial works to remove the development which that could pose a risk to the health of the trees due to further ground disturbances. However, only the two trees referred to above might have been affected by the work already carried out. Consequently, it is unlikely that any remedial works would cause any further harm to any other trees. It also seems that the Council think there may be a solution to this situation, and I would encourage the appeal parties to engage in early discussions to see if an acceptable result could be identified. The Council has powers to withdraw an EN or waive or relax any requirements of an EN. That though is a matter over which I do not have any control.

Conclusion

15. For the reasons given, the appeal should be dismissed and the EN upheld.

Gareth Symons

INSPECTOR