



Appeal Decision

Site visit made on 28 October 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31/01/2022

Appeal Ref: APP/B5480/W/21/3268701

13 Burntwood Avenue, Hornchurch RM11 3JD

- 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 Jamie Atkins of Vera Acquisitions against the decision of the Council of the London Borough of Havering.
 - The application Ref P1189.20, dated 12 August 2020, was refused by notice dated 21 December 2020.
 - The development proposed is 1 x three storey, 6-bed detached dwelling, 3 x three storey, 5-bed detached dwellings, with associated parking and amenity space involving demolition of existing care home.
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Decision

1. The appeal is allowed and planning permission is granted for 1 x three storey, 6-bed detached dwelling, 3 x three storey, 5-bed detached dwellings, with associated parking and amenity space involving demolition of existing care home at 13 Burntwood Avenue, Hornchurch RM11 3JD in accordance with the terms of the application, Ref P1189.20, dated 12 August 2020, subject to the conditions set out in the Schedule at the end of this decision.

Preliminary Matters

2. I have taken the description of the development from the Council's decision notice and subsequent appeal documents as this accurately describes the proposal.
3. A revised version of the National Planning Policy Framework (the Framework) and a new London Plan 2021 (the London Plan) have been published since the appeal was lodged. The Council has also adopted a new Local Plan 2016-2031 (the Local Plan) and the Core Strategy and Development Control Policies Development Plan Document 2008 referred to in the Council's decision has been formally revoked. Both the Council and the appellant have had the opportunity to comment on these matters, and I have proceeded to determine this appeal on the basis of the adopted development plan.
4. The Council has stated that the presumption in favour of sustainable development outlined in paragraph 11(d) of the Framework is triggered due to the 2020 Housing Delivery Test (HDT) results. The 2021 HDT results were published on 14 January 2022, and these state that the presumption in favour of sustainable development in the Council's area remains in place and indicate that there has not been a significant improvement in the measurement of housing delivery. The Council has stated that it was seeking clarity on the

impact of the Local Plan stepped housing targets on the HDT, but I have not been informed that this situation has changed due to the adoption of the Local Plan. I have therefore proceeded to determine this appeal on the basis of paragraph 11(d) of the Framework.

Application for Costs

5. An application for costs was made by Mr Jamie Atkins of Vera Acquisitions against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Main Issue

6. The main issue in this appeal is the effect of the proposal on the living conditions of neighbouring residents with regards to privacy, outlook and light.

Reasons

7. The appeal site previously contained a large building to the front of the site which was used as a care home, with an extensive garden to the rear. At the time of my visit the care home had been demolished, although a single storey outbuilding had been retained.
8. Outline planning permission has previously been granted for the redevelopment of the site and its subdivision into smaller residential plots. However, compared to the access and layout of the previously permitted schemes, the appeal proposal has a number of changes, including the location of the access road and the arrangement of buildings. The evidence suggests that there has also been an increase in the indicative scale of the proposed dwellings, with habitable rooms and windows at second floor level.
9. Due to these changes, there is potential for the proposed dwellings to provide elevated views into neighbouring properties, including from the dwelling on plot 4 which is specifically referred to in the Council's reason for refusal. Despite the specific reference to plot 4, I consider that it is appropriate to consider the effects of all of the proposed dwellings, based on the evidence before me including comments from third parties.
10. With regards to 15 Burntwood Avenue, the arrangement of the appeal proposal and the dwelling at No 15 would not enable direct views into windows of habitable rooms. Proposed dwellings within the appeal site would enable views of the rear garden of No 15, but due to the separation distance from the boundary I consider that the degree of overlooking would not be unduly intrusive, even allowing for the window within the roof of the dwelling on plot 2.
11. The dwellings of plots 3 and 4 would look onto the property of 6 Porchester Close. However, due to the relative arrangement of the sites, the proposed dwellings would not enable direct views into the habitable rooms of No 6. Whilst windows of the proposed dwellings would enable a view of the rear garden, this would not be unduly intrusive due to the separation distance from the site boundary, as well as mitigation from boundary treatment.
12. The proposed dwelling on plot 4 would be located in close proximity with the boundaries of 22 Woodlands Avenue and 4 Porchester Close. However, the elevation of the dwelling on plot 4 facing Nos 22 and 4 would not include any

windows or openings above ground floor level. The insertion of further openings on flank walls within the development can also be controlled by condition. A first floor terrace located to the rear of the dwelling on plot 4 may enable views into the gardens of Nos 22 and 4, but this matter can be addressed by a condition requiring the provision of a privacy screen. On that basis, the appeal proposal would not enable elevated views from plot 4 into Nos 22 and 4, and would therefore not harm the privacy of residents of those properties.

13. The rear of the proposed dwellings would look onto 1 and 3 Tall Trees Close. Due to the relationship with No 3, there is potential for views to be provided of habitable rooms to the rear. However, as a result of the separation distance between the existing and proposed dwellings, the degree of overlooking from rooms within the proposal would not be intrusive. This would also be the case in respect of No 1, with further mitigation provided by the angle of view. First floor terraces to the rear of the dwellings would also enable a view of the rear gardens and elevations of Nos 1 and 3. However, the separation distance to both the site boundary and the rear elevations of the existing dwellings would mean that the degree of overlooking would not be unduly intrusive. Whilst residents of Nos 1 and 3 may be aware of activity on the proposed terraces, this would not be sufficient reason to withhold planning permission for the reasons stated previously in respect of separation distances.
14. In respect of 11 Burntwood Avenue, the proposed dwellings would be a suitable distance from the garden of the property so that any overlooking from windows or first floor terraces would not be intrusive. The Council Officer's report refers to granny annexes to the rear of No 11 and indicates that these do not contain openings facing the appeal site. However, I saw that buildings adjacent to the boundary included rooflights. That said, due to the separation distances and the limited angle of view enabled by the rooflights, I do not consider that the proposal would lead to an intrusive degree of overlooking into these buildings. The proximity of the existing annexe buildings at No 11 to the means of enclosure around the site, and the subsequent screening effect, would also mitigate potential overlooking into any openings on their rear elevation.
15. With regards to outlook, the elevation of the dwelling on plot 4 closest to Nos 22 and 4 would be stepped down towards the boundary, so that it would not appear as an overdominant feature in views from those properties. Although the scale and massing of the proposed buildings has increased compared to that indicated for previous proposals, there would still be an appreciable gap between the proposed 3 detached dwellings to the rear of the site. The development would therefore not lead to a terracing or enclosing effect in views from neighbouring properties.
16. Due to the separation distance between the proposed buildings and the site boundaries to the east and west, the proposal would not lead to an unacceptable loss of light or overshadowing to neighbouring properties along those boundaries. The dwelling and detached garage on plot 4 would be located in close proximity to the boundaries with Nos 22 and 4. However, due to the limited height of the garage and the reduced height of the proposed dwelling close to the boundary, the proposal would not lead to a significant loss of daylight or sunlight to the adjacent properties.

17. I have had regard to a previous Appeal Decision¹ for the site which referred to proximity of development at ground and first floor level to common boundaries. In comparison, the appeal proposal would introduce accommodation at second floor level. However, I have assessed the appeal proposal on its own merits and the previous Decision does not lead me to a different conclusion on this main issue.
18. I conclude that the proposal would not lead to unacceptable harm to the living conditions of neighbouring residents with regards to privacy, outlook and light. The proposal would therefore not conflict with the amenity considerations of policy 7 of the Local Plan. The proposal would also not conflict with the Framework with regards to achieving a high standard of amenity for existing and future users of property. The proposal would also not conflict with Standard 1 of the London Housing Supplementary Planning Guidance 2016 in respect of how the design responds to its physical context.

Other Matters

19. In respect of character and appearance, the backland nature of the development has been established by previous permissions on the site. I have also previously concluded that the proposal would not lead to a terracing effect to the rear of the site. The substantial scale and design of the building to the front of the site is commensurate with the size of the site and the character of other substantial dwellings within this area.
20. Third party comments have raised concerns about the accuracy of the submitted plans, including details of garden lengths. However, the Council has not raised any issues with the submitted plans, which would have been validated as part of the planning application process. I have determined this appeal on the basis of the submitted plans, and compliance with them can be required by condition. An indicated 'kick' in the boundary is a minor issue of detail which can be addressed by conditions relating to boundary treatment and the extent of hard surfacing including the access road. Therefore, although I have considered this matter, the concerns expressed do not lead me to alter my decision.
21. There are a number of trees on the site, many of which are the subject of a tree preservation order. Visually important trees at the front of the site are shown as being retained, as are a number of other trees within the site. The protection of existing trees to be retained and the relationship to the development proposed, as well as the planting of new trees, can be addressed as part of a condition requiring the submission of a landscaping scheme.
22. Due to the limited number of dwellings proposed I do not consider that noise or pollution from cars accessing the site would be sufficient to warrant the refusal of planning permission, even allowing for the backland nature of the development.

Conditions

23. The Council and consultees have suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance. As a result, I have amended some of the conditions for clarity and accuracy.

¹ Appeal ref: APP/B5480/A/14/2229395

24. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty. The list of plans is taken from that provided by the appellant as this is more complete, accurate and relevant than the details specified on the Council's decision.
25. A condition requiring details of hard and soft landscaping is appropriate in the interests of character, appearance and biodiversity. These details should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations. Conditions in respect of boundary treatment and external materials are appropriate in the interests of character and appearance. Details of the hard landscaping would include the surfacing materials of the access road and a separate condition in respect of this is therefore not required. A condition requiring a visibility splay at the site entrance is required in the interests of highway safety.
26. A Condition in respect of the hours of construction and other site operations is appropriate to protect the living conditions of nearby residents with regards to noise and disturbance.
27. Conditions in respect of a privacy screen for plot 4, the control of openings on the garage at plot 4 and the removal of permitted development rights in respect of windows or other openings on all of the proposed dwellings are required in the interests of the privacy of nearby residents. Details regarding refuse and recycling facilities shall be provided in the interests of the living conditions of future residents and the character and appearance of the area.
28. A condition requiring the submission of a Construction Method Statement is required in the interests of highway safety, the living conditions of nearby residents and sustainable waste disposal. These details should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
29. A condition regarding the provision and retention of car parking is appropriate in the interests of highway safety. I have imposed conditions requiring that the development accords with mobility standards to enable their use by people with mobility impairment, which would ensure the most effective use of the housing stock and in the interests of equality.
30. A condition in respect of the installation of ultra-low NOx boilers is required to minimise the impact of building emissions on air quality. A condition regarding Secured By Design is appropriate in the interests of the living conditions of residents regarding safety and reducing fear of crime. A condition requiring details of external lighting is appropriate in respect of the living conditions of nearby residents.
31. A condition is required regarding water efficiency in the interests of environmental sustainability. The timing of demolition works and the removal of trees etc. shall be controlled in the interests of the protection of wildlife.
32. I have imposed a condition in respect of the drainage of swimming pools as suggested by Thames Water to address matters of flooding and drainage capacity. Other matters referred to by Thames Water, including the prevention

of sewage flooding as well as groundwater and surface water discharge, are more appropriately addressed by other controls including the Building Regulations.

33. I have included conditions in respect of land contamination in the interests of public safety. These include details which should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
34. The Council has suggested a condition requiring that development is carried out in accordance with an Extended Phase 1 Habitat Survey (Preliminary Ecological Assessment). However, the appellant has confirmed that no such Survey was submitted in relation to the appeal proposal, and based on the evidence before me this condition is therefore not reasonable or necessary.
35. The Council has also suggested a condition in relation to the windows of an annex to plot 4. However, I have not imposed this condition as there is no such annex on the submitted plans, and the detached garage for plot 4 is addressed by other conditions.

Conclusion

36. Whilst I have had regard to the presumption in favour of sustainable development, I have concluded that the proposal would not conflict with the development plan and there are no material considerations that indicate the appeal should be determined other than in accordance with it. For the reasons given above, I therefore conclude that the appeal should be allowed.

David Cross

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: 1698/01, 1698/02B, 1698/03A, 1698/04, 1698/05A, 1698/06A, 1698/07A, 1698/08A, 1698/09A, 1698/012A and 1698/13.
- 3) Prior to the commencement of the development hereby permitted, there shall be submitted to and approved in writing by the Local Planning Authority a scheme of hard and soft landscaping, which shall include details of proposed tree planting, all existing trees and shrubs on the site, and details of any to be retained, together with measures for their protection in the course of development. All planting, seeding or turfing comprised within the scheme shall be carried out in the first planting season following completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local Planning Authority.

- 4) No works above damp proof course for the development hereby permitted shall be carried out until the details of all proposed walls, fences and boundary treatment shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
- 5) The proposals should provide a 2.1 metre by 2.1 metre pedestrian visibility splay on either side of the proposed access, set back to the boundary of the public footway. There should be no obstruction or object higher than 0.6 metres within the visibility splay.
- 6) All building operations in connection with the construction of external walls, roof, and foundations; site excavation or other external site works; works involving the use of plant or machinery; the erection of scaffolding; the delivery of materials; the removal of materials and spoil from the site, and the playing of amplified music shall only take place between the hours of 8.00am and 6.00pm Monday to Friday, and between 8.00am and 1.00pm on Saturdays and not at all on Sundays and Bank Holidays/Public Holidays.
- 7) No works above damp proof course for the development hereby permitted shall be carried out until the written specification of external walls and roof materials to be used in the construction of the buildings shall be submitted to and approved in writing by the Local Planning Authority and thereafter the development shall be constructed with the approved materials.
- 8) No works above damp proof course for the development hereby permitted shall be carried out until the details of a privacy screen for the terrace on plot 4 (as shown on drawing no 1698/08A), have been submitted to and approved in writing by the council. The approved privacy screen shall be constructed prior to the first occupation of the site and shall remain as such thereafter.
- 9) There shall be no openings on the rear and east side of the Plot 4 Proposed Garage (drawing number 1698/13), unless details have been submitted to and approved in writing by the Local Planning Authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no window or other opening (other than those shown on the submitted and approved plans) shall be formed in the flank walls of the buildings hereby permitted, unless specific permission has been sought and obtained in writing from the Local Planning Authority.
- 11) No building shall be occupied until refuse and recycling facilities are provided in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling facilities shall be permanently retained thereafter.
- 12) No development shall take place until a Construction Method Statement is submitted to and approved in writing by the Local Planning Authority. The Construction Method Statement shall include details of:
 - a) parking of vehicles of site personnel and visitors;
 - b) storage of plant and materials;

- c) dust management controls;
- d) measures for minimising the impact of noise and, if appropriate, vibration arising from construction activities;
- e) predicted noise and, if appropriate, vibration levels for construction using methodologies and at points agreed with the Local Planning Authority;
- f) scheme for monitoring noise and if appropriate, vibration levels using methodologies and at points agreed with the Local Planning Authorities;
- g) siting and design of temporary buildings;
- h) scheme for security fencing/hoardings, depicting a readily visible 24-hour contact number for queries or emergencies;
- i) details of disposal of waste arising from the construction programme, including final disposal points. The burning of waste on the site at any time is specifically precluded.

The development shall be carried out in accordance with the approved Statement.

- 13) Before the buildings hereby permitted are first occupied, the area and buildings set aside for car parking shall be laid out and surfaced, and retained permanently thereafter for the parking of vehicles and shall not be used for any other purpose.
- 14) All dwellings hereby approved shall be constructed to comply with Part M4(2) of the Building Regulations - Accessible and Adaptable Dwellings.
- 15) No works above damp proof course for the development hereby permitted shall be carried out until details of access to demonstrate compliance with British Standards 8300 1:2018 and Building Regulations part M, including information of landings/resting positions, tactile paving, and cross falls shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details.
- 16) Prior to the first occupation of the development, details shall be submitted to and agreed in writing by the Local Planning Authority for the installation of Ultra-Low NOx boilers with maximum NOx Emissions less than 40 mg/kWh. Where any installations do not meet this emissions standard it should not be operated without the fitting of suitable NOx abatement equipment or technology as determined by a specialist to ensure comparable emissions. The installation of the boilers shall be carried out in strict accordance with the agreed details and shall thereafter be permanently retained. Following installation emissions certificates will need to be provided to the Local Planning Authority to verify boiler emissions.
- 17) The development hereby permitted shall achieve:
 - a) A Certificate of Compliance in respect of the Secured by Design scheme; or
 - b) Security standards (based on Secured by Design principles) to the satisfaction of the Metropolitan Police.

Details of which shall be provided to the Local Planning Authority and approved in writing prior to the first occupation of the approved development. All security measures applied to the approved development shall be permanently retained thereafter.

- 18) No building shall be occupied until external lighting is provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The lighting shall be provided and operated in strict accordance with the approved scheme.
- 19) All dwellings hereby approved shall comply with Regulation 36 (2)(b) and Part G2 of the Building Regulations - Water Efficiency.
- 20) Any demolition works and/or removal of trees, hedgerows, shrubs or tall herbaceous vegetation shall be undertaken between October and February inclusive.
- 21) With regard to the emptying of swimming pools forming part of the development into a public sewer:
 - a) the pool to be emptied overnight and in dry periods; and
 - b) the discharge rate is controlled such that it does not exceed a flow rate of 5 litres/second into the public sewer network.
- 22) Prior to the commencement of the development hereby permitted, the following shall be submitted to, and approved in writing by, the Local Planning Authority:
 - a) A Phase I (Desktop Study) Report documenting the history of the site, its surrounding area and the likelihood of contaminants, their type and extent incorporating a Site Conceptual Model.
 - b) A Phase II (Site Investigation) Report if the Phase I Report confirms the possibility of a significant risk to any sensitive receptors. This is an intrusive site investigation including factors such as chemical testing, quantitative risk assessment and a description of the sites ground conditions. An updated Site Conceptual Model should be included showing all the potential pollutant linkages and an assessment of risk to identified receptors.
 - c) A Phase III (Remediation Strategy) Report if the Phase II Report confirms the presence of significant pollutant linkage requiring remediation. A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to all receptors must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, the proposed remediation objectives and remediation criteria, timetable for works, site management procedures and procedure for dealing with any previously unidentified contamination. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
 - d) Following completion of measures identified in the approved remediation scheme mentioned in c) above, a Verification Report that demonstrates the effectiveness of the remediation carried out, any requirement for longer term monitoring of contaminant linkages, maintenance and arrangements for contingency action, must be

produced, and is subject to the approval in writing of the Local Planning Authority.

- 23) a) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.
- b) Following completion of the remediation works as mentioned in a) above, a Verification Report, demonstrating that the works have been carried out satisfactorily and remediation targets have been achieved, must be submitted to and approved in writing by the Local Planning Authority.

End of Schedule