



Appeal Decision

Site visit made on 23 March 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2022

Appeal Ref: APP/Q5300/W/21/3273405

24-26 Churchbury Lane, Enfield, EN1 3TY

- 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 Rosegem Ltd against the decision of London Borough of Enfield.
 - The application Ref 20/02821/FUL, dated 27 August 2020, was refused by notice dated 18 March 2021.
 - The development proposed is the demolition of the existing buildings providing supported living accommodation and erection of a detached 2-storey building with additional accommodation in the roof area, to provide four class C3(b) uses (up to six people living together as a single household and receiving care) and provision of associated car parking to the front and side, cycle parking and refuse/recycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant suggests that revisions were made to their proposal prior to the Council's decision, and they have provided me with copies of those updated drawings. However, both the Council's Decision Notice and the reasoning in their Officer Report refer to the original drawings.
3. Commentary in the undated Officer Report notes that "*opportunity to the applicant was provided to provide/revise information as necessary. The applicant declined this offer and requested the determination of the application based on the information submitted thus far*". Given this, the degree of engagement of third-parties with the proposal as a whole, and the issue of trees and parking in particular, and having regard to both the Procedural Guide to Planning Appeals and the Wheatcroft Principles, I have determined the appeal on the basis of the plans that were definitively before the Council when it made its decision and on which parties were consulted.

Main Issues

4. The main issues are:
 - whether the proposal would provide suitable living conditions for future occupiers having regard to the quality and quantity of internal and external space,
 - the effect of the proposal on the character and appearance of the area,
 - the effect of the proposal on the living conditions of the occupiers of neighbouring properties with specific regard to loss of privacy,

- whether the transport related effects of the proposal are acceptable,
- whether the development can be carried out without conflict with road users or harm to the amenity of the area,
- whether the proposal would retain and protect trees on the site, and
- whether the proposal would appropriately manage flood risk.

Reasons

Living conditions for future occupiers

5. The appeal proposal is to provide “*four class C3(b) uses (up to six people living together as a single household and receiving care)*”. Although this specific proposal, residential accommodation where care is provided, has its own section within the Use Classes Order, it is a subset of the “*Class C3. Dwellinghouses*” section.
6. The appellant suggests that the appeal proposal would provide a good standard of assisted care accommodation and that these standards are different to those required for a good standard of residential accommodation. As a result, the appellant suggests that space and quality standards applicable to residential accommodation are not relevant.
7. Despite this, there is nothing in the evidence before me to suggest why residents in assisted care accommodation should not be afforded the same standards and amount of internal space as occupiers of any other, unassisted, residential accommodation. Indeed, given the apparent reliance on care and the need for on-site, in-unit assistance, ample space would appear to be an important requirement.
8. As the proposal is, at its heart, a proposal for dwellinghouses, I do not consider it appropriate, on the basis of the evidence before me, to allow development which does not meet space quality and quantity standards with regards to indoor space, layout, outlook, light, ceiling heights and outdoor space.
9. The appellant has suggested that a condition could address issues around outdoor amenity space. However, as this relates fundamentally to the issue of suitable space standards for the development, I do not consider it would be appropriate to address this by condition.
10. I therefore find that on balance, the proposal would not provide suitable living conditions for future occupiers having regard to the quality and quantity of internal and external space. It would therefore be contrary to policies in the London Plan 2021, Policies CP4 and CP30 of the Enfield Core Strategy 2010-2025 (the Core Strategy), and policies DMD6, DMD8, and DMD9 of the Enfield Development Management Document 2014 (the DMD). These policies seek, amongst other things, to ensure that development delivers housing development of high quality, which meets the required standards for quality and quantity of internal and external space.

Character and appearance

11. The appeal site lies on the corner of Churchbury Lane, close to junctions with Fyfield Road and Orchard Way. The site effectively turns the corner of the lane. Given the corner and junction context to the site, there is a very mixed character and appearance to the immediate surroundings of the site. Houses adjacent to and opposite the front of the site are of varying styles, ages, materials, forms, heights, masses, volumes, character and appearance. Similarly, houses to the side, to the south along Fyfield Road, St Andrew's Road and indeed further along Churchbury Lane are very different.
12. As a result, I find that as there is no single, defining, dominant character and appearance at the site and around it, neither the existing buildings, nor the proposal are wholly consistent with the established character and appearance of the surroundings.
13. I accept the Council's position, that buildings turning the corner are atypical in this area, but do not accept that this is therefore harmful to the character and appearance of the area. As I have noted, the area around the site is very mixed lacking the consistency and rhythm of other nearby streets such as Fyfield Road and St Andrew's Road. Indeed, one does not have to travel far from the site to see at the Civic Centre, buildings which are quite unlike anything else in the area, and which can be seen in the same views as the appeal site without harming the overall character and appearance of the area.
14. Similarly, I accept that the proposal would be a departure from the existing buildings in terms of design, form, and overall site coverage. However, as set out above, I do not consider that harmful. The overall scale and form of the proposal, whilst slightly taller than existing, is appropriate for the scale and location of the site, particularly its corner location.
15. I therefore find that in this mixed location, on a corner and surrounded by development of differing form, height, depth, bulk, massing and detailed design, the appeal proposal would not appear visually intrusive, overly dominant or out of keeping with the character and appearance of the area. In that respect, it would not conflict with policies in the London Plan 2021, Policy CP30 of the Core Strategy or Policies DMD8 and DMD37 of the DMD. These policies seek, amongst other things, to ensure that development is of suitable, high-quality design, appropriate for the established character and appearance of its surroundings.

Living conditions for occupiers of surrounding properties

16. At present, both the existing building on the site, and the neighbour at 28 Churchbury Lane (No 28) have closely-related, side-facing windows at various levels. The proposal would introduce nine such windows into the elevation facing No 28. Whilst I acknowledge that some of these windows could be obscurely-glazed given the rooms they serve, this would not be appropriate for all of them, notably the bedroom, kitchen and living/dining spaces.

17. Although I cannot be certain over the use of the rooms served by the windows at No 28, I do not consider that the proposed increase in the number of directly opposed, closely-related windows, serving a development which would be much more intensively used than the existing, would be appropriate. As a result, whilst I am satisfied that the proposal would not cause harmful overlooking or loss of privacy to the gardens of No 28, as the relationship would be fundamentally the same as existing, I do find that the side facing windows would give rise to an unacceptable loss of privacy and perceived loss of privacy to the occupiers of No 28.
18. I turn now to the effect of the proposal on the living conditions of the occupiers of 1 and 3 Fir Tree Walk (Nos 1 and 3). Although the proposal would result in windows closer to the rear of those properties, I also note the contents of Policy DM10 of the DMD, which sets out separation distances.
19. The windows in that facing elevation would be more than the 11m required between windows and side boundaries. Accepting that the boundary relationship in this case is not typical of that likely envisaged by the policy, a substantial distance would still remain between the proposed elevation and the rear of Nos 1 and 3, particularly given the length of their gardens.
20. As a result, I do not find that the proposed windows in this elevation would give rise to harm to or unacceptable living conditions for the occupiers of Nos 1 and 3 having regard to any loss of privacy through overlooking.
21. However, as I have found that the proposal would have unacceptable effects on the living conditions of the occupiers of No 28, the proposal as a whole is unacceptable in this regard. It would therefore conflict with policies in the London Plan 2021, Policies CP4 and CP30 of the Core Strategy, Policies DMD8 and DMD10 of the DMD, which seek, amongst other things, to ensure that development provides appropriate living conditions, standards and privacy.

Transport effects

22. Despite the objections from third parties, that the proposal would provide insufficient parking spaces on site, in an area of parking stress and otherwise controlled parking on the streets nearby, the reason for refusal, and the harm alleged by the Council relates to an over-provision of parking, and a degree of concern over wider transport effects.
23. Taking that into account, as well as the proposal-specific parking requirements (for staff only, not for residents), the good public transport accessibility of the site, and its location within a controlled parking zone, I am satisfied that the over-provision of parking spaces within the site is not in itself, likely to be harmful to the free flow and safety of vehicular traffic. I am also satisfied that this over-provision would not harm the attractiveness of more sustainable, non private-car means of transport.
24. However, I do share the concerns of the Council over the accessibility of the parking spaces on the site, particularly to the rear. Whilst I note that the swept-path analysis in the Transport Statement shows all of the proposed spaces can be used, it does also show that several of them would require, or have been modelled to show, users reversing into Churchbury Lane to leave the site. Despite the relatively quiet nature of the road, given the location of

the site on a bend and close to several other junctions, I am concerned over the safety and suitability of this approach.

25. Turning to deliveries and servicing of the site, I note the concerns of the Council in their report, but also that this concern did not find expression in their ultimate decision on the application. Whilst the Transport Statement suggests that the site could be serviced in much the same way as it is at present, I am concerned at the lack of clarity on this point, given the likely increase in intensity of deliveries and servicing, given the increase in the intensity of the use of the site.
26. As a result, whilst I am satisfied that the overall level of parking provided on the site would not necessarily cause the harm alleged by the Council, I am concerned that a combination of the particular layout and access to those spaces and the uncertainty over deliveries and servicing would give rise to harm to the free flow of vehicular traffic and the safety of all other road users.
27. As a result, I find that the proposal would conflict with policies in the London Plan 2021, Policies CP24 and CP25 of the Core Strategy and Policies DMD45, DMD47 and DMD48 of the DMD. These all seek, amongst other things, to ensure that development proposals provide suitable levels and means of parking, access, and manoeuvring for cars, as well as ensuring that standards, routes and safety for non-car modes of transport are protected and provided for.
28. I note that the National Planning Policy Framework (the Framework) requires that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. Given my concerns over access to the parking spaces and the lack of detail around deliveries and servicing, I cannot be certain that the proposal would not have such an unacceptable impact, and I therefore consider my conclusion compatible with the guidance in the Framework.

Construction effects

29. Despite the Council's concern over the enforceability of a condition requiring a construction and demolition management plan, I am satisfied, given their widespread use elsewhere, that a suitable pre-commencement condition could be drafted. In addition, works to and effects on the highway are controlled by separate legislation, the controls within which should not be duplicated through planning conditions.
30. I therefore find that, subject to the imposition of an appropriate condition, the implementation of the proposal would not be likely to give rise to conflicts with other road users and be detrimental to the amenity of the area. As a result, the proposal would not conflict with policies in the London Plan 2021, the Core Strategy and the DMD which seek to control construction effects and disturbance.

Trees

31. There are a number of mature, attractive trees within the appeal site which make a positive contribution to the character and appearance of the area. One of those trees is also subject to a Tree Preservation Order. In addition to the proposed development of the site itself and the works to its access, subject to my Procedural Matter above, the development also proposes parking spaces close to these trees.
32. Despite that, no arboricultural report or detailed information has been produced which assesses or measures the likely effects of the proposal on those trees. Nor has any information been submitted on mitigating those effects. Whilst I note the Council has suggested a condition which would require details of means of protecting trees on site, I do not consider that this is an appropriate replacement for proper consideration of likely effects in advance of granting planning permission, particularly given the positive contribution which the trees make to the character and appearance of the area, and the importance which specific development plan policies place on the retention of trees in the area.
33. As a result, despite the proposed condition, and the guidance in the Framework around making otherwise unacceptable development acceptable through the use of conditions, I find that it has not been appropriately demonstrated that the proposal would retain and protect the trees on the site. As a result, the proposal conflicts with policies in the London Plan 2021, Policy CP30 of the Core Strategy and Policies DMD37 and DMD80 of the DMD. These seek, amongst other things, to ensure that development achieves high quality of design, which retains and protects trees of amenity value.

Flooding and drainage

34. Whilst I note that the appellant suggests this matter could be addressed and controlled by condition, given it is fundamental to the acceptability of the proposal against the London Plan, the Core Strategy and the DMD, and relies on the assessment of information which has not been produced (namely a SUDS Calculation and Strategy required by policy) I do not consider that it would be appropriate to defer such an important detail to condition.
35. As a result, I find that the proposal would be contrary to the requirements of policies in the London Plan 2021, Policies CP21 and CP28 of the Core Strategy, and Policies DMD59, DMD60, DMD61 and DMD62 of the DMD, all of which seek, amongst other things, to ensure that development proposals appropriately manage surface water drainage and any associated flood risk.

Conclusion

36. I have found that the proposal would be acceptable with regard to its effect on the character and appearance of the area and construction effects. I have also found that limited elements of it would be acceptable with regard to its effect on the living conditions of occupiers of adjoining properties. However, I have found that the proposal would cause significant, unacceptable harm with regard to the living conditions for future occupiers, the living conditions of occupiers of other adjoining properties, trees, flooding and drainage.

37. I note the suggestion in the Framework that it should be considered whether unacceptable development could be made acceptable through the use of planning conditions. However, given the breadth of issues with which I have found harm and development plan conflict on the basis of the evidence before me, I do not consider that conditions would be an appropriate mechanism to resolve these issues. The fundamental nature of some of these issues, and the level of engagement of third-parties with them adds to my concerns over the potential use of conditions to make otherwise unacceptable development acceptable.
38. Also, there is an unresolved issue before me around conditions controlling and limiting the use of the proposal which the appellant considers could address concerns of the Council, but which the Council has not commented on, and the appellant has not provided suggested wording for.
39. I therefore conclude that on balance, as a result of the specific harm I have identified and the lack of information on other specific effects, the proposal as a whole would conflict with the development plan and there are no material considerations, including the established need for development of this nature in this area, which indicate that a decision be taken other than in accordance with it.
40. The appeal should therefore be dismissed.

S Dean

INSPECTOR