



Appeal Decision

Site visit made on 9 June 2022

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th July 2022

Appeal Ref: APP/N1540/W/21/3284202

1 Nicholls Field, Harlow CM18 6DY

- 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 David Ward against the decision of Harlow Council.
 - The application Ref HW/FUL/21/00389, dated 3 July 2021, was refused by notice dated 8 September 2021.
 - The development proposed is change of use of adjoining strip of land from public to private land for extension of the rear garden of 1 Nicholls Field.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of adjoining strip of land from public to private land for extension of the rear garden of 1 Nicholls Field at 1 Nicholls Field, Harlow CM18 6DY in accordance with the terms of the application, HW/FUL/21/00389, dated 3 July 2021, and the plans submitted with it, subject to the following 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 plan: Land adjacent to 1 Nicholls Field, Harlow – drawing number GIM4609-059.

Procedural Matter

2. The description of development in the banner heading above has been taken from the Council's decision notice because it is a more succinct description of the proposal before me than the one provided in part 5 of the planning application form. It is also the description used by the appellant in part E of the appeal form.

Main Issues

3. The main issue is the effect of the proposed change of use on the character and appearance of the area, and local public amenity space provision.

Reasons

4. No.1 Nicholls Field (No.1) is a two-storey semi-detached dwelling which fronts Tumbler Road. Between the existing southern (side) boundary of No.1 and Manor Hatch Close is a reasonably large area of open space that is currently laid to lawn and publicly accessible. The existing close boarded timber fence

along the southern boundary of No.1 runs parallel to the dwelling, but tapers slightly to the rear to avoid a tree. It is proposed to change the use of a strip of land adjoining No.1 from public to private land, straightening up this boundary fence line and essentially widening the plot and garden.

5. The Council identify the site as 'other open space,' namely land outside the curtilage of an existing building that is not a 'green finger' or 'green wedge.' It is recognised that the original design of Sir Frederick Gibberd's master plan for Harlow included a series of neighbourhoods dissected by areas of such green open spaces. The appeal site is on the edge of Nicholls Field and forms part of an area of incidental open space integral to the original new town development, linking to green fingers or wedges. Together with the larger area of public open space opposite, on the corner of Tumbler Road and Purford Green, it has high visual amenity value providing a sense of space and green relief in the built form, particularly when viewed on Tumbler Road toward the north.
6. It is proposed to change the use of a modest strip of land around 33m in length and between 1.8m and 3m wide. This strip essentially runs the length and broadly parallel to the existing boundary fence of No.1. Because of this modest width and relationship to No.1 there would be no marked change in appearance from Tumbler Road towards the north. The existing front building line of No.1 also means the appeal site is not visible at all from the south. Consequently, the important visual corridor across the street lines and open aspect afforded by the two areas of open space would not be compromised to any degree. Nor would the change of use undermine the principle embedded in the design of the wider Nicholls Field estate of incidental open spaces linking to green fingers or wedges.
7. Although not being used at the time of my visit and located on a fairly busy road, the open space could be used by local residents for informal recreation, particularly those with small gardens. The proposed change of use relates to the strip of land closest to the boundary fence of No.1 which is fairly overgrown with trees and shrubs along its length. This part of the open space is likely to be used by local residents very infrequently at best, and I am not persuaded the change of use would '*significantly reduce*' the undeveloped space or have a material effect on overall amenity space provision in the area. Further, the loss of a small part of the area of public open space would in no way cause an imbalance visually or functionally with the public open space opposite on the Purford Green corner.
8. My attention is drawn by the Council to a recent appeal decision at No.22 Bowhill Way, Harlow (APP/N1540/D/21/3275836) (No.22). I have not been provided with full details of the planning application, but I note from the Inspector's decision that No.22 directly fronts a pedestrian/cycle route and it was proposed to erect a close boarded wooden fence right on the back edge of this. This differs to the appeal proposal before me which is for a change of use of a strip of land adjacent a fairly wide area of open space. I therefore find that the appeal at No.22 Bowhill Way adds no weight to the Council's argument in this case. In any event, I am mindful each case should be considered on its own merits and site characteristics.
9. Consequently, I find that the proposed change of use would accord with Policy PL1 of the Harlow Local Development Plan (December 2020) (LP) because it protects local character and context, including patterns of development and

landscape character. It would further accord with LP Policy PL6 because the proposal would not compromise the openness or urban design principles of the area, nor would it remove access to an area of open space that has a particular recreation value.

Conditions

10. The Council has suggested 3 conditions. I have considered these in light of the Planning Practice Guidance (PPG) and the tests of the National Planning Policy Framework (the Framework). In addition to the standard implementation condition, it is necessary, for the avoidance of doubt, to define the plan with which the scheme should accord.
11. The Council has also suggested a condition that would remove the permitted development rights associated with the construction of outbuildings, hard surfaces, gates, fences, walls or other means of enclosure. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity. The Council have provided limited explanation of the reason for this suggested condition, save to protect local amenity and the living conditions of neighbouring residents.
12. Given my conclusion above regarding the absence of harm to the appearance of the area, and the modest strip of land to which the change of use relates, I do not find a condition restricting permitted development rights to be necessary and I do not have sufficient justification before me for its imposition.

Conclusions

13. For the reasons given above, I conclude that the appeal should be allowed.

R. Jones

INSPECTOR