



Appeal Decisions

Site visit made on 4 July 2022

by Julie Dale Clark BA (Hons) DipTP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022.

Appeal A Ref: APP/W1905/W/22/3291918 17 Greenbank, Cheshunt EN8 0QQ

- 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 Antony Osborne against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/1087/F, dated 20 August 2021, was refused by notice dated 21 October 2021.
 - The development proposed is erection of two storey side extension to serve a new 3 bedroom dwelling.
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Appeal B Ref: APP/W1905/W/22/3296825 17 Greenbank, Cheshunt EN8 0QQ

- 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 Antony Osborne against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/1455/F, dated 15 December 2021, was refused by notice dated 24 January 2022.
 - The development proposed is erection of two storey side extension to serve a new 3 bedroom dwelling which submitted under application number PP-10150238 this was refused. We are resubmitting with the changes.
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Decisions

Appeal A Ref: APP/W1905/W/22/3291918

1. The appeal is dismissed.

Appeal B Ref: APP/W1905/W/22/3296825

2. The appeal is dismissed.

Procedural Matter

3. Both appeals refer to the proposed development as an extension to No 17 Greenbank but both are referred to on their respective decision notices as the erection of 1no. 3 bedroom detached dwelling. The plans indicate a detached dwelling rather than an extension to create a dwelling and so I have based my decision on the descriptions on the decision notices.

Main Issues

4. I consider that the main issues for both Appeal A and Appeal B is the effect of the proposed dwelling on: -
- the character and appearance of the area;
 - an Ash Tree protected by a Tree Preservation Order (TPO); and
 - for Appeal A, the living conditions of the occupiers of neighbouring properties, Lakeside and Thistledown, Brookfield Lane West; and for Appeal B, the living conditions of future occupiers of the proposed dwelling.

Reasons

Character & Appearance

5. The appeal site is a detached two-storey dwelling located at the end of a cul-de-sac, Greenbank. The houses at the head of the cul-de-sac are fairly wide and well-spaced and the general character of the area is one of spaciousness. No 17 has a large detached garage to the side and the house and garage are set back from the road with a spacious front garden which incorporates an Ash tree. To the south of No 17 there is a stream on the other side of which there are houses including Lakeside and Thistledown in Brookfield Lane West, partly screened from the appeal site by mature vegetation.
6. The proposed house would be located alongside No 17. Appeal A would locate the house approximately in line with the front of No 17 whilst for Appeal B, it would be set slightly further back. For each appeal the internal layout differs but the general form, character, size and appearance of the dwelling would be similar.
7. Local Plan¹ Policy DSC1 sets out general design principles and establishes the Council's expectation for a high standard of design that, amongst other things, enhances local character and distinctiveness, taking into account matters such as existing patterns of development, urban form, building typology and details and building lines. Policy DSC2 relates to extensions and alterations to existing buildings but although the appellant has described the proposal as an extension, it would in fact be a separate detached dwelling. This policy is not therefore relevant. The Council's Borough-Wide Supplementary Planning Guidance² provides further guidance for development. Good design is also a significant objective of the National Planning Policy Framework³.
8. The proposed house would be sited very close to the existing one. It would be on a smaller plot and be narrower in scale and appearance than No 17 and the neighbouring houses. Its position, scale and overall appearance would not reflect the character of the existing dwellings at the end of the cul-de-sac. Its proximity to No 17 would give a cramped appearance to the detriment of the existing openness and pattern of development. I consider that it would be out

¹ Borough of Broxbourne – Local Plan 2018 – 2033 – The Broxbourne Local Plan – A Framework for the Future Development of the Borough, June 2020.

² Borough of Broxbourne Borough-Wide Supplementary Planning Guidance, Adopted – August 2004 (updated 2013) (SPG).

³ Ministry of Housing, Communities and Local Government, National Planning Policy Framework, 2021 (the Framework).

of keeping with the general character and appearance of the area and therefore conflict with Local Plan Policy DSC1.

TPO Ash Tree

9. The protection of the Tree by a Tree Preservation Order is not disputed by either the appellant or the Council. A copy of the Order has been submitted although I am not entirely clear which tree is the Ash in question. Nevertheless, I saw the tree in the front garden of the appeal site and noted that it has been heavily pruned in the past. Much of its canopy has been reduced. However, no assessment has been submitted about the tree at all.
10. Local Plan Policy NEB5 indicates that applicants who wish to fell, top or lop protected trees should demonstrate that the tree is dead, diseased or dangerous and in need of work on public safety or environmental grounds; and/or removal is essential for the development of a site. Should felling of a protected tree be acceptable then replacement planting will be required. On this matter, the appellant indicates that a condition requiring replacement planting would be acceptable.
11. On the basis of the information submitted and in the absence of a tree assessment that includes identification of the tree's exact location in relation to the proposed development, for both Appeal A and Appeal B, the presumption is that the Ash tree would have to be felled. Whilst NEB5 indicates that the removal of a protected tree may be acceptable where it is essential for the development of a site, I am not convinced that this development justifies the removal of this tree. A specific condition requiring replacement planting has not been submitted and in any case I am not prepared to impose a condition requiring its replacement without justification for its removal.
12. I find that the proposals in both Appeal A and Appeal B could have a harmful effect on a protected tree. It would conflict with Policy NED5 and therefore, on this issue is unacceptable.

Living Conditions

13. Local Plan Policy EQ1 seeks to avoid development that would have a detrimental impact on the amenities of the occupiers of adjoining properties in terms of daylight, sunlight, outlook and overlooking. The Council's SPG provides guidance regarding the separation distances between dwellings and recommends a minimum distance of 25 metres between windows to habitable rooms. The main window of concern with Appeal A is a bedroom window in the side gable. The nearest property would be Thistledown which would be slightly below this standard but angled slightly away from the proposed house. Lakeside would be angled further away.
14. Although the distance between the bedroom and the rear of Thistledown and Lakeside would be slightly below the SPG guideline, the off-set in angle and the presence of mature vegetation lessen any actual overlooking. Garden areas in particular would be unlikely to suffer undue overlooking especially given the presence of the stream and existing vegetation. In terms of Appeal A I find no harm arising from this issue and no conflict with policy EQ1.
15. The proposal in Appeal B attempts to overcome the potential overlooking of neighbouring properties but would create a bedroom with no natural light at all. This would be unacceptable and result in harmful living conditions for the

future occupiers of the proposed dwelling. The lack of any natural light may be an error and the appellant suggests that this could be overcome by a condition but does not indicate how the internal layout would be adjusted to overcome this. I do not therefore consider that a condition would be appropriate. In terms of Appeal B therefore, I find that the living conditions of future occupiers of the proposed dwelling would be harmed. This would conflict with Policy EQ1.

Other Matters

16. The Housing Delivery Test (HDT)⁴ indicates that the Council only delivered 72% of its assessed housing need. In accordance with the National Planning Policy Framework there is therefore a presumption in favour of allowing new residential development.
17. The Council do not dispute that there is a shortfall between the delivery of new housing and that required within the Borough. However, it explains that this situation has been affected to some degree by the relatively recent adoption of the Local Plan (2020) and the effects of the covid pandemic on the disruption to the construction industry. The Council is therefore positive in its attitude that performance will improve.
18. Whilst the HDT and the Framework clearly indicates a presumption in favour of new residential development, I do not consider that the contribution that this dwelling would have to the Council's provision of new housing justifies allowing the harm I have identified.
19. I have considered all other matters raised but none alter my conclusion.

Conclusion

20. I have found that Appeal A would not have a harmful effect on the living conditions of the occupiers of neighbouring properties, Lakeside and Thistledown, but Appeal B would create unacceptable living conditions for the occupiers of the proposed dwelling due to the lack of any natural light to a bedroom. The effect of the proposal would therefore conflict with Policy EQ1 in the case of Appeal B but would not in the case of Appeal A.
21. I have found that both Appeal A and Appeal B could have a harmful effect on the protected Ash tree and in the absence of an appropriate assessment, this carries significant weight. Furthermore, I have found that the dwelling proposed in Appeal A and Appeal B would have a harmful effect on the character and appearance of the area. The proposals would therefore conflict with Local Plan policies NEB5 and DSC1.
22. Therefore, I conclude that Appeal A and Appeal B should both be dismissed.

J D Clark

INSPECTOR

⁴ Housing Delivery Test: 2021 measurement.