



Appeal Decision

Site visit made on 21 February 2023

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2023

Appeal Ref: APP/T5150/W/22/3295343

Land rear of 19-25 Dyne Road, London NW6 7XG

- 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 Applecroft Properties against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/0680, dated 25 February 2021, was refused by notice dated 2 December 2021.
 - The development proposed is the erection of a single storey, detached single family dwelling house (4 bedroom, 6 person) together with associated external amenity space, cycle storage and refuse & recycling facilities.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey, detached single family dwelling house (4 bedroom, 6 person) together with associated external amenity space, cycle storage and refuse & recycling facilities at land rear of 19-25 Dyne Road, London NW6 7XG, in accordance with the terms of the application, Ref 21/0680, dated 25 February 2021, and the plans submitted with it, subject to the conditions in the schedule at the end of the decision.

Preliminary Matters

2. The Brent Local Plan (BLP) was adopted in February 2022, after the determination of the application that is the subject of this appeal. The Brent Core Strategy and Brent Development Management Policies Document were superseded by the BLP. Consequently, I have based my decision on the policies in the BLP.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on trees.

Reasons

4. The appeal site is situated behind two pairs of semi-detached houses, which have been sub-divided into flats. The flats have ground floor gardens. There are two points of access to the site from Dyne Road, between the existing buildings. The site backs onto a railway embankment, which is a Site of Importance for Nature Conservation and includes several mature trees.
5. The site is currently occupied by approximately 30 trees. Close to the western boundary are 3 mature ash trees, protected by a group Tree Preservation Order (TPO), and one mature Category A sycamore tree. The rest are mainly

semi-mature ash and sycamore. Several of these are in groups that have self-seeded amongst rubble. The trees can be seen mainly from the rear windows and gardens of the flats on Dyne Road. Glimpses of trees can also be seen from the footway on Dyne Road through the gaps between buildings. However, some of the visible trees are within residential gardens and on the railway embankment rather than the appeal site itself.

6. The proposed development would involve the removal of some 21 trees or groups of trees within the appeal site. Of these, the majority are of low or moderate quality. The TPO group and the Category A tree would remain, as would a cluster of semi-mature trees on the eastern side of the site.
7. The removal of trees would reduce the level of canopy cover on the appeal site. Its appearance would therefore change, mainly from the rear of Nos 19-25 Dyne Road. However, the trees to be removed are not those of highest value. Remaining mature and semi-mature trees would still provide near continuous canopy cover around three sides of the site. The tall trees on the embankment would continue to screen the railway line, including for future occupants. The proposed house would be low-rise with a flat, green roof, surrounded by soft landscaping and new tree planting. In time, this would blend into its verdant surroundings. Trees would still be glimpsed from Dyne Road.
8. Many of the other benefits associated with the trees on the appeal site would also continue to be provided by the remaining trees and the new planting. This includes trapping of air pollutants, provision of shade, absorption of rainwater, filtering of noise and habitat for wildlife. The approach to site clearance to mitigate risks to existing wildlife could be secured by condition. Whilst the number of trees would reduce, there would be an opportunity to increase the diversity and resilience of the species. In combination with other new planting, including on the green roof, this could have potential to enhance local biodiversity over time. The number and location of new trees and type of soft and hard landscaping could also be secured by condition.
9. I note the appellant has put forward a Unilateral Undertaking for a planning obligation that would pay for additional compensatory tree provision in a nearby park. It is not clear on what basis the proposed sum has been calculated and there is no mechanism to require the proposed funds to be spent on tree planting. Therefore, the Unilateral Undertaking has had no bearing on my decision.
10. There would be risks to the well-being of some retained trees. These would arise from construction activity and partial encroachment of foundations and hard surfaces into some root protection areas. However, mitigation measures would be agreed through an Arboricultural Method Statement, which could be secured by condition.
11. I note the proposal to tip-reduce and/or crown-lift the trees along the railway embankment. Given these trees are not expected to experience significant future growth, the likelihood of further pressure to reduce these trees is limited. The risk of pruning pressure on replacement trees from the future occupants of the proposed house has also been raised. However, there are few habitable room windows proposed near the area suggested for replacement planting. Any residual risk would be mitigated through agreement of an appropriate tree planting plan, secured by condition. This would also provide a

mechanism to ensure an appropriate relationship between new trees and the rear gardens of Nos 19-25 Dyne Road.

12. Taking all this together, I conclude the effect of the proposed development on trees would be acceptable. Accordingly, I find no conflict with Policies G7 and H2 of the London Plan, Policies DMP1 or BG12 of the BLP, or the National Planning Policy Framework (the Framework). These policies seek to retain green infrastructure and trees of value, providing enhancements where possible; require appropriate on-site replacement where minor development results in the loss of trees; require works to trees to accord with relevant British Standards; and support well-designed new homes on small sites.

Other Matters

13. The North Kilburn Conservation Area comprises several streets of mainly terraced housing dating predominantly from the nineteenth century. Its significance derives principally from the uniformity of architectural details, the 'grid' road layout, the houses' common building line and their mature, verdant gardens. The appeal site makes a modest contribution to this significance through its green appearance. Given the proposal would both retain and replace trees and include a green roof, I consider its effect on the significance of the Conservation Area would be neutral. The character and appearance of the Conservation Area would therefore be preserved and the proposal would not harm its significance. This is notwithstanding that there are few other infill developments of this nature in the Conservation Area.
14. I note the concern that the proposed house could be occupied by multiple households, which would result in noise. However, there is no greater risk of this happening in the proposed house than in any other dwelling in the local area. The description of development refers to the proposal being a family dwelling house. In any case, it would be located a sufficient distance from other dwellings to reduce the likelihood of serious noise disturbance.
15. There is little evidence the proposal would give rise to an increase in crime or anti-social behaviour in the area. At present, the site potentially allows intruders access to the rear gardens of the neighbouring houses. The side access routes and gates are in poor condition. The development would provide greater natural surveillance over the area, including of the side access routes and gates, which would be renewed. Appropriate arrangements for the storage and collection of refuse/recycling could be secured by condition. In terms of access for the emergency services, the Council has not identified an issue and there is little evidence to lead me to a different conclusion.
16. There is some evidence of existing parking stress on Dyne Road and the site is close to a station used for commuting. In these circumstances, it would be necessary to restrict access to parking permits for the future occupants of the proposed house. This could be secured by condition. One additional house would have little effect on traffic congestion in the area.
17. Concerns have been raised about disturbance during construction, including noise, dust, air pollution, effects on health and parking pressure. Construction would cause some disturbance, but this would be temporary and would be mitigated by a Construction Method Statement secured by condition. I also note the concern that construction could result in damage to the foundations of

existing buildings. This is a private matter between the relevant parties and not within my jurisdiction.

18. The issue of impact on property values and rental income has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.

Conditions

19. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
20. A pre-commencement condition requiring a Construction Method Statement is necessary for the reasons set out above and to ensure appropriate mitigation measures are agreed before development starts. The appellant has provided written agreement to a pre-commencement condition of this nature. The condition requiring site clearance in accordance with the Preliminary Ecological Assessment is necessary to mitigate risks to existing wildlife.
21. The conditions relating to trees are necessary to mitigate risks to retained trees and to ensure appropriate replacement planting is provided and maintained. I note that an Arboricultural Impact Assessment Method Statement & Tree Protection Plan has been submitted. Nevertheless, updated details are required prior to development commencing. The condition requiring approval of details of the external surfaces, and of hard and soft landscaping, is necessary to integrate the development into its surroundings. The condition requiring approval of refuse/recycling storage details is necessary to provide effective refuse management arrangements.
22. The proposed blanket removal of permitted development rights is not precisely enough defined to meet the tests of necessity and reasonableness. Such rights should be removed only in instances of specific and precise justification. I find no exceptional circumstances in this case to warrant the wholesale removal of these rights.
23. The condition removing rights of future occupants to parking permits is necessary because of the exceptional circumstances in this case. These are the existing parking stress on Dyne Road and the site's proximity to a station used for commuting. However, a condition relating to removal of vehicle crossovers, reinstatement of the footway and extension of on-street parking bays along Dyne Road is not necessary. There is little evidence harm to highway safety would arise from the proposal without these measures.

Conclusion

24. For the above reasons, having had regard to the development plan as a whole, the Framework and all other matters raised, I conclude that the appeal should be allowed.

C Carpenter

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: 000XX-A-01-002 Block plans; 000XX-A-03-101 Proposed Ground Floor; 000XX-A-03-103 Proposed Roof Plan; 000XX-A-05-101 Proposed Section; 000XX-A-06-101 Proposed Elevation; and 000XX-A-06-102 Proposed Elevation.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) Site clearance shall take place in accordance with the recommendations in Preliminary Ecological Appraisal Report Ref:19-5563 June 2019.
- 5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 6) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted, in accordance with condition 4, at such time as may be specified in writing by the local planning authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 7) No development above ground shall take place until arrangements shall have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have been approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:

no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and

any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.

- 8) Notwithstanding condition 2, no development above ground shall take place until details of the arrangements for refuse/recycling storage and collection have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) Notwithstanding condition 2, no development above ground shall take place until details of the external surfaces of the development, hard surfacing materials and soft landscaped areas have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development above ground shall commence until a full specification of all proposed tree planting has been submitted to and approved in writing by the local planning authority. The specification shall include the quantity, size, species, and positions or density of all trees to be planted, how they will be planted and protected and the proposed time of planting. The tree planting shall be carried out in accordance with the approved specification.
- 11) If, within a period of 5 years from the date of planting, a tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.