



Appeal Decision

Site visit made on 26 March 2023

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2023

Appeal Ref: APP/B5480/D/23/3315387

46 Nelmes Way, Hornchurch RM11 2QZ

- 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 P Burge against the decision of the Council of the London Borough of Havering.
 - The application Ref P2354.21 dated 14 December 2021, was refused by notice dated 23 December 2022.
 - The development proposed is basement car parking facility under existing front forecourt area. New glazed front extension enclosure and plant installation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council changed the description of development from that stated on the application form in the interests of clarity. I consider that the amended description accurately describes the appeal scheme and accordingly I have adopted the amended description in the heading above.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on (i) structural stability; (ii) the living conditions of occupiers of No's 44 and 48 Nelmes Way; and (iii) trees.

Reasons

Structural Stability

4. The site is within a predominantly residential area comprising large, detached properties. The proposed development would create a basement to the front of the plot.
5. Reason for refusal No. 1 contends there would be conflict with Policy D10 of the London Plan (2021) due to the lack of an adequate basement impact assessment the Council are unable to conclude that the construction can be satisfactorily carried out. However, I disagree Policy D10 specifies that Boroughs should establish policies in their Development Plans to address the negative impact of large-scale basement development beneath existing buildings, where this is identified as an issue locally. I have not provided with substantive evidence by the Council to suggest that there is a Policy in the

Development Plan which addresses large scale basement developments or that there is an issue locally with regard to basements.

6. Whilst the supporting text to Policy D10 highlights that basement development can cause significant noise and vibration disturbance if this issue is not considered and managed during its design and construction. The text goes on to advise that impact assessments prior to construction should consider the effects on the ground-borne vibration environment and propose appropriate mitigation, especially for surrounding residents. Notwithstanding this, no evidence has been provided to confirm that there is a requirement to provide an impact assessment to comply with Policy D10 if there are no policies contained within the relevant Council's Development Plan, nor for the Council to consider structural stability at this stage rather than during Building Regulation stage.
7. I find that there is no conflict with Policy D10 of the London Plan.

Living Conditions

8. The proposed development has the potential to negatively impact on the amenities of occupiers of neighbouring properties, particularly No's. 44 and 48 Nelmes Way.
9. The construction method statement is limited, notwithstanding this a suitably worded planning condition could be attached to any approval requiring further information.
10. The Appellant provided a Noise Report however this document is limited in terms of detail. The Noise Report does not provide an adequate assessment of the existing baseline levels in comparison to the noise levels associated with the proposed air conditioning units and plant for the proposed basement lift. I am therefore not persuaded that the proposed development would not cause noise and disturbance issues to occupiers of neighbouring properties.
11. I conclude that Appellant has failed to demonstrate that the proposed development would not harm the living conditions of occupiers of No's 44 and 48 Nelmes Way. There is conflict with Policy 7 of the Havering Local Plan 2016-2031 (2021) (the Local Plan) and D10 of the London Plan which amongst other things seeks to protect the amenity of existing and future residents.

Trees

12. The site lies within the Emerson Park area which is one of the most mature and pleasant residential districts in the Borough. It has a distinctive character of varied and well-maintained single family detached dwellings in spacious and well landscaped grounds. I observed during my site visit that Nelmes Way is a pleasant tree lined street.
13. The Council's Senior Arboricultural Officer confirms that the proposed development would require considerable root pruning of the mature horse chestnut tree which is within the highway adjacent the appeal site and that this would likely result in the trees decline.
14. Whilst the Appellant provided an Arboricultural Report, Method Statement this is limited in terms of detail. The Appellant has not provided substantive

evidence to demonstrate that the proposed development would not affect the horse chestnut tree, which contributes positively to the verdant streetscene.

15. I conclude that Appellant has failed to demonstrate that the proposed development would not harm trees. There is conflict with Policies 26 and 27 of the Local Plan and the Emerson Park Policy Area Supplementary Planning Document (2009) which seek amongst other things to protect and retain existing landscape features.

Other Matters

16. The Appellant has raised several matters relating to the procedural issues, including the timescale for determining the application, that the Council did not highlight any issues or concerns with the supporting evidence and that the Council required a Structural Engineer to assess the details provided to support the application.
17. The Appellant had a right to appeal to the Secretary of State against non-determination where a valid application has not been determined within the relevant statutory period. The Council are under no obligation to engage with an Applicant once an application is being consideration.
18. In terms of the instruction of a Structural Engineer it is not unusual for a Council to require the professional opinion of a qualified person should they not have any 'in-house' professional to provide such opinion. Whilst I note the Council may have incurred some costs in respect of seeking structural engineering advice, I consider such costs incurred by the Council would be part and parcel of their statutory functions. Unless the Council have an adopted procedure/policy in relation to seeking fees from Applicants.

Conclusion

19. I have found that the structural stability of the proposed development is not a justified reason to refuse the application in this case, however this does not outweigh the harm I have identified in terms of the living condition of occupiers of neighbouring properties and trees.
20. For the above reasons I conclude that this appeal should be dismissed.

C Pipe

INSPECTOR