



Appeal Decision

Site visit made on 8 March 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th May 2023

Appeal Ref: APP/N1920/W/22/3300938

Spylaw House, Newlands Avenue, Radlett WD7 8EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John McGowan against the decision of Hertsmere Borough Council.
 - The application Ref 21/1180/VOC, dated 3 June 2021, was refused by notice dated 14 December 2021.
 - The application sought planning permission for demolition of existing 2 storey dwelling and erection of replacement detached 7 bed house to include lower ground floor level with pool and accommodation in the roof space (revised application from 17/1896/FUL) without complying with a condition attached to planning permission Ref 20/1265/FUL, dated 18 December 2020.
 - The condition in dispute is No 9 which states that: 'The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to the conditions of this planning permission.
5346 A106 - Location Plan
5346/ A105 - Site and Block Plan
5346/ A100 - Proposed floor plans
5346 A107 - Proposed roof plan
DKM/FG/JT - Cross Section
NL.17.01 rev M - Landscaping plan
160123-PD-11c Arboricultural Report
Topographical Survey
Design and Access Statement'
 - The reason given for the condition is: 'For the avoidance of doubt and in the interests of proper planning'.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing 2 storey dwelling and erection of replacement detached 7 bed house to include lower ground floor level with pool and accommodation in the roof space at Spylaw House, Newlands Avenue, Radlett WD7 8EL in accordance with the application Ref 21/1180/VOC dated 3 June 2021 subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appellant's statement of case confirms that drawing nos NL.17.21 Rev L (Garage boundary cross section), NL.17.1 Rev I (Retention and root growth zone) and NL.17.2 Rev L (Site plan and cross section) show the alignment of the dwelling as per a previously refused scheme. Therefore, I have considered

these particular drawings on the basis that they are illustrative only for the purposes of my assessment of the proposed garage.

3. In addition to the policies referred to in its decision, the Council has also provided additional policies of the development plan including those which specifically relate to heritage matters. Having regard to the main issue and given that I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Radlett North Conservation Area, I have taken these policies into account in my assessment.
4. I have removed the reference to 'revised application from 17/1896/FUL' for the description of the proposal in my decision as this is not a description of development.

Background and Main Issue

5. Planning permission has previously been granted on the appeal site for the demolition of the existing house and the erection of a replacement house¹. The application which led to this appeal sought to vary condition 9 of that planning permission in order to substitute the previously approved drawings. The principle of the replacement dwelling is established and remains extant. This represents a significant fallback position. The revised proposals do not materially alter the size, footprint or external appearance of the dwelling. Therefore, having regard to the reason for refusal on the Council's decision notice, my assessment primarily relates to the alterations to the drawings relating to the provision of a detached garage to serve the replacement dwelling.
6. Therefore, the main issue is whether the proposed variation to the approved plans to provide a detached garage would preserve or enhance the character and appearance of the Radlett North Conservation Area.

Reasons

7. The appeal site relates to a residential property located at the edge of the Radlett North Conservation Area (CA). The neighbouring property at No 2 Newlands Avenue and Malt Lane which sits next to the northern boundary of the appeal site are also located within the CA, although the remainder of Newlands Avenue is not. The CA is primarily characterised by dwellings of varying size and design, more often occupying spacious plots.
8. My attention has been drawn to a previously refused appeal on the site² (the previous appeal) which acknowledged that Malt Lane is identified in the Radlett North Conservation Area Appraisal as being of significant value and special interest to the CA as it is a surviving rural country lane that follows an ancient land boundary and historic route in the area. This sunken footpath provides views across neighbouring properties within the CA and is lined with mature trees that contribute to the character of the CA. I also accept the positive contribution these aspects of Malt Lane make to the significance of the CA.
9. In dismissing the previous appeal, the Inspector in that instance noted that landscape planting along the shared boundary would provide some screening from Malt Lane, but that the house by reason of its size and proximity to this

¹ LPA Ref 20/1265/FUL

² Appeal Ref APP/N1920/W/22/3300938

boundary would have been overly dominant. From what I have seen the dwelling that has subsequently been approved by the Council would be set further away from this boundary and the amended plans before me do not propose to alter the size, scale or footprint of the approved dwelling.

10. The previous appeal also included a garage of a very similar scale, form and position to that now before me. As was the case in that instance, the garage would lie forwards of the house and that the front of the site would be mainly laid to hardstanding. Even so, the previous Inspector noted, this arrangement occurs elsewhere on Newlands Avenue and that the garage in that case would have been clearly subordinate structure within the site. I also find that would be the case with the garage proposal before me. Having regard to its scale, hipped roof design and the relative levels on Newlands Avenue and Malt Lane, I am satisfied that the garage would have an understated presence from public vantage points. It would not be an obtrusive or dominant feature and would preserve the character and appearance of the CA.
11. The proposed landscape drawing shows that a pleached tree screen would be provided to supplement a close boarded fence and hedge to the length of the boundary with Malt Lane. This plan also indicates that a hedgerow and tree planting would sit between the garage and Newlands Avenue. The illustrative drawings referred to under the preliminary matter above, demonstrate how such landscape planting would assist in further assimilating a garage of the scale, position and hipped roof design proposed into its immediate surroundings. This further persuades me that the proposal would not harm the CA.
12. I conclude, the proposals would preserve the character and appearance of the CA. In that regard it would comply with the design, character and conservation requirements of Policies SADM29 (Heritage Assets) and SADM30 (Design Principles) of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan (2016), Policies CS14 (Protection or enhancement of heritage assets) and CS22 (Securing a high quality and accessible environment) of the Hertsmere Local Plan Core Strategy (2013) and Policy HD3 (Respecting and Enhancing Local Townscape and Landscape Character Patterns) of the Radlett Neighbourhood Plan (made 2021).
13. I have not been provided with a copy of the Radlett Neighbourhood Plan Design Code (2021). However, I am not aware that this document precludes garages being provided to the front of dwellings. In any case, compliance or not with this supplementary guidance would not override my finding that the proposal complies with the policies of the development plan which take precedence.

Other Matters

14. In terms of matters referred to by third-parties which are not covered under the main issue, it is alleged that trees were felled on the site without prior consent. This would be a separate matter for the Council to investigate and the evidence before me indicates that the Council has already issued a Tree Replacement Notice.

Conditions

15. I have included the Council's suggested time limit for implementation as this ties in with the date of expiry of the planning permission being varied.

16. Given my conclusion under the main issue, Condition 9 is varied to include the appellant's revised drawings. I have removed the Council's suggested references to the illustrative drawings referred to in the above preliminary matter for the reasons already given. These drawings are also not necessary as the plans listed in the condition include sufficient detail including, layout, building height form and appearance as well as levels and planting details. I have also not included drawing 'NL.17.16 I (Front Elevation)' given that this is a CGI Street scene image and not a detailed drawing that can be worked from.
17. Other than condition 9, none of the other conditions attached to the existing planning permission are being contested. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
18. The evidence before me indicates that several of the other conditions on the original planning permission have previously been discharged. The Council's suggested conditions include conditions seeking continued compliance with the previously approved details. These conditions include building materials, hard surfacing materials and hard boundary treatments. I have therefore attached the Council's suggested conditions referencing the respective discharge of condition applications. However, I have amended the suggested wording for Condition 4 relating to walls, fences, gates or other means of enclosure as on one hand the Council's suggested text requires these elements to be completed in accordance with details previously submitted, but on the other requires such details to be submitted and approved in writing. Given the clear indication these elements are already discharged, I have removed the text requiring further details as this is superfluous.
19. The suggested landscaping condition is attached which references the approved drawing as well as requirements for implementation and where necessary replacement. This is reasonable and necessary in the interests of further assimilating the proposal into its surroundings. I have included the Council's condition relating to retained trees in addition to referencing the approved arboricultural report under condition 9 in the interests of protecting the character and appearance of the area.
20. The conditions on the existing planning permission relating to the provision of a construction method statement and the provision of obscure glazing to windows in the first-floor side elevations of the dwelling are also carried over. These conditions have not been contested by the appellant and it is reasonable and necessary to include them on the varied planning permission.

Conclusion

21. For the reasons given, the appeal is allowed and condition 9 is varied.

M Russell

INSPECTOR

Schedule of Conditions

- (1) The development hereby permitted shall be begun 3 years from the date of the original permission 21/1265/FUL which was granted on 18.12.2020

- (2) The development hereby approved shall be carried out in accordance with the materials submitted and discharged under application 20/1370/DOC.
- (3) The development hereby approved shall be carried out in accordance with the hard surfacing materials submitted and discharged under application 20/1291/DOC.
- (4) The development hereby permitted shall be carried out in accordance with the details submitted under application 20/1519/DOC relating to walls (including retaining walls), fences, gates or other means of enclosure to be erected in or around the development. Prior to first occupation or use of the development the walls (including retaining walls), fences, gates or other means of enclosure shall be erected as approved and shall thereafter be retained and maintained in perpetuity.
- (5) The development hereby permitted shall be carried out in accordance with Proposed Landscape Drawing A112 unless otherwise agreed in writing by the Local Planning Authority. The scheme shall be carried out in the first planting season following the completion of the development. Any trees, shrubs or plants that die within a period of five years from the completion of each development phase, or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation.
- (6) "Retained tree" means an existing tree that is to be retained in accordance with the approved plans and particulars under condition 9 of this permission; and paragraphs 1. and 2. below shall have effect until the expiration of 3 years from the date of the first occupation of the building for its permitted use.
 1. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard BS 3998 (Tree Work).
 2. If any retained tree is removed, 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 at such time, as may be specified in writing by the local planning authority.
 3. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
- (7) No development shall take place before a method statement for construction of the development hereby approved has been submitted to, and approved in writing by, the Local Planning Authority. The

construction works shall be carried out in accordance with the approved method statement.

- (8) The window(s) to be created in the first-floor side elevations shall be in obscure glass (to Pilkington Level 3 or equivalent) and non-opening below a height of 1.7 metres measured from the internal finished floor level. The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.
- (9) The development hereby permitted shall be carried out in complete accordance with the following approved plans and drawings, other than where those details are altered pursuant to the conditions of this planning permission: Drawing Nos A105 H (Site Plan and Block Plan), A100 K (Proposed Floor Plans), A103 L (Proposed Elevations), A111 (Proposed Garage Drawing), A112 (Proposed Landscape Drawing) and the recommendations and appended plans, schedules and ground protection details in the Arboricultural report Ref 160123_PD_11A by Tim Moya Associates dated July 2021.