



Appeal Decision

Site visit made on 16 November 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal Ref: APP/M5450/W/22/3299024

Land adjacent to Shandon, Poplar Close, Pinner, HA5 3PZ

- 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 Anjali Kumar against the decision of the Council of the London Borough of Harrow.
 - The application Ref: P/4433/21, dated 4 November 2021, was refused by notice dated 1 April 2022.
 - The development proposed is described as: Erection of bungalow with habitable rooms in roof space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the appeal site is an appropriate location for new residential development having regard to the development plan;
 - The effect of the proposed development on the character and appearance of the area; and
 - The effect of the proposed development on the living conditions of the occupiers of the neighbouring residential property, Shandon, with particular regard to sunlight, daylight, and outlook.

Reasons

Whether the appeal site is an appropriate location for new residential development

3. The appeal site is an area of approximately 600m² that currently forms part of the garden area of a bungalow property known as Shandon. Shandon is located at the head of a short cul-de-sac, adjacent to a bungalow known as Gaycroft. The appeal site lies within a predominantly residential area located to each side of Uxbridge Road, a main thoroughfare across this part of London.
4. Core Policy CS1 the Harrow Core Strategy 2012 (the Core Strategy) sets out at part A the growth strategy for the Borough and seeks to focus development in the Harrow and Wealdstone Intensification Area, in town centres and on strategic, previously developed, sites. The appeal site is not within any of these identified areas.

5. Policy CS1.B states that garden development will be resisted, although it does not preclude all development within garden areas. Further guidance in respect of when limited development within garden areas may be acceptable is set out in the Harrow Supplementary Planning Document: Garden Land Development, 2013 (SPD). The SPD states that the spatial strategy set out in Core Strategy Policy CS1 of concentration upon identified, previously developed sites would be undermined by additional windfall development on garden land and sets out a presumption against such development. The SPD defines garden land as “any land within the curtilage of a building the principal use of which is residential” and also makes it clear that no distinction is made between front, side, and rear gardens.
6. The appellant contends that the development does not fall within any of the categories identified as examples in the SPD. Whilst paragraph 3.5 gives typical examples as including, backland, corner site, or outbuilding dwelling development, there is nothing in the SPD that would suggest that this is a closed list, or that other scenarios do not exist given the broad definition of garden land in the SPD. The SPD is also specific in defining what is not garden land development. The exclusions listed in paragraph 3.6 of the SPD are in the form of a closed list. Consequently, any relevant development which is not specifically excluded must realistically come within the scope of garden land development for the purposes of Policy CS1 and the SPD.
7. In addition to the exceptions set out in paragraph 3.6 of the SPD, an exception is made for gap sites within a built-up street frontage. The SPD sets out that gap sites are usually obvious vacant plots, of dimensions consistent with those prevailing in the street, within an otherwise built-up street frontage. The SPD does, however, qualify this by stating that side gardens in spacious residential areas do not constitute the kind of gaps to which this exception applies. It was apparent from the site visit that the appeal site forms the side garden area to Shandon. Moreover, as Shandon sits alongside Gaycroft, is set back from the main line of Poplar Close and is reached by a right of access across the frontage of Gaycroft, it is not perceived as part of the built up street frontage. The proposed development, therefore, does not fall within any of the exclusions identified in the SPD.
8. I am mindful that Core Strategy Policy CS1 and the SPD were drawn up under the auspices of a previous version of the London Plan which made provision for Policies to restrict development on garden land. Nonetheless, these remain adopted policies.
9. Although the Core Strategy pre-dates the National Planning Policy Framework (the Framework) and the SPD is now some ten years old, the Framework does allow local planning authorities to set out policies to restrict inappropriate development of residential gardens. In this respect the Core Strategy and SPD are consistent with the Framework. Although the appellant suggests that inappropriate development is development which would harm the local area, there is nothing in the wording of Paragraph 71 of the Framework which would indicate that this is the only context in which development of garden land would be inappropriate. In addition, the definition of previously developed land in the Framework specifically excludes land in built up areas that is used as residential gardens.

10. My attention has been drawn to the fact that the London Plan 2021 (the London Plan), unlike previous iterations, makes no reference to garden land. Policy H2 of the London Plan seeks to encourage well-designed new homes on small sites and the appellant posits that this lack of reference to garden land in the London Plan indicates that the Policy H2 expects much of the development on small sites to occur on garden land. There is nothing in the text of Policy H2 or the supporting text that would confirm this supposition. The supporting text does, however, refer to incremental intensification of existing residential areas where these have a Public Transport Accessibility Level (PTAL) of 3-6, or are within 800m distance of a station, or a town centre boundary.
11. I saw when I visited the site that it is not in proximity to either a station or a town centre and the Planning Officer's report sets out that the site has a PTAL rating of 1b, indicating poor accessibility to public transport. Consequently, whilst Policy H2 may offer some support for the development of residential gardens under the umbrella of small sites, the appeal site does not meet the criteria for intensification in existing residential areas.
12. The Planning Officer's report also sets out that the Council has a sufficient deliverable supply of appropriate land to meet its housing targets. This is not challenged by the appellant and there is no evidence that the Council is not meeting its housing targets. Within this context, the provisions of London Plan Policy H2 would not carry greater weight or override the provisions of Core Strategy Policy CS1 and the SPD.
13. Given the above, I do not find the arguments that the Council's position with regard to the development of garden land is far more restrictive than the guidance provided at the national level and in the London Plan, or that the Framework only expects the development of garden land to be resisted where it would cause harm to the local area, to be compelling.
14. It was evident from the site visit that the appeal site is within the curtilage of Shandon and is used for the purposes of a residential garden. The development proposed does not fall within one of the categories defined in the SPD as not being garden land development. Nor does it meet the criteria in the supporting text to London Plan Policy H2 for incremental intensification in residential areas. The appeal site has poor accessibility to public transport, and I saw that whilst there are some shops and services at Hatch End and a greater range of these in Pinner town centre, these are located at some distance from the site. There is no evidence that the Council has either a shortfall of housing land supply or is failing to meet its housing targets.
15. I therefore conclude that the appeal site is not an appropriate location for new residential development having regard to the provisions of the development plan. It would not comply with the relevant requirements of Core Strategy Policy CS1.A and CS1.B, the SPD, or the Framework.

Character and appearance

16. The appeal site forms part of the garden of a bungalow located at the head of Poplar Close. From the submitted evidence, comparing the 1936 Ordnance Survey map in the Heritage Statement and the 1968 Ordnance Survey Map in the Design and Access Statement, and having regard to the planning history set out in the Planning Officer's report, the street was formed by carving land out of the garden areas of large houses fronting Uxbridge Road, primarily that

of number 542, with the two bungalows at the head of the cul-de-sac, Gaycroft and Shandon, being built first within the large garden of number 542 and the other dwellings following later, as further garden land was developed.

17. Poplar Close now comprises 6 bungalows and a two storey house and also provides vehicular access to numbers 540 and 542 Uxbridge Road. As a result of its ad hoc development on garden land, the street does not have a cohesive street scene with much of one side comprising the side garden boundaries to number 540 Uxbridge Road and the two storey house to the rear of this. The opposite side of the street consists of three bungalows, two of which have gables facing the street and the third with the roof ridge parallel to the highway. At the end of this group of three bungalows is an access to a fourth, Southwood, which is only partially visible from the public domain. Gaycroft and Shandon are located at the head of the cul-de-sac, with the latter also largely hidden from the street by a tall set of gates and planting within the curtilage of Gaycroft.
18. The Council has not raised any fundamental objections regarding the design and appearance of the proposed new dwelling apart from a concern in respect of the overall height. In order to fit living accommodation into the roof space of the proposed new dwelling, the ridge height would be approximately 0.7 metres taller than the adjacent bungalows, which are of a similar height to each other.
19. Although the proposed new dwelling would be taller than the adjacent bungalows, as set out above, the donor property, Shandon is not readily visible from Poplar Close. The proposed new dwelling would be set beyond Shandon and would have equally limited visibility from the street. From this perspective, the slightly higher ridgeline would not be readily perceptible. Similarly, whilst it can be seen in plan view that there is a degree of symmetry between the dwellings and plots of Gaycroft and Shandon, I saw when I visited the site that, due to the configuration on the ground, this symmetry is not discernible from the street.
20. Whilst the appeal proposal would lead to a small change to the character of the street, change is not necessarily synonymous with harm. There would be very restricted public views of the proposed new dwelling. Although it may be visible from the rear of surrounding properties which adjoin the site, from these viewpoints, the new dwelling would only be seen in context with Shandon and Gaycroft and not within the wider context of Poplar Close. Given the above, the proposal would have an overall visual neutral effect.
21. I therefore conclude that the proposed development would not cause harm to the character and appearance of the area. It would comply with the relevant requirements of Policy D3 of the London Plan, Core Strategy Policy CS1, Policy DM1 of the Harrow Development Management Policies Local Plan 2013 (DMP), and the Harrow Residential Design Guide Supplementary Planning Document 2010 (RDG) which, when read together, seek a high standard of design in new developments that has regard to its context and local character.

Living conditions of the of the neighbouring occupiers

22. London Plan Policy D3 and Policy DM1 of the DMP seek, amongst other matters, to ensure that new development does not have an adverse impact on neighbouring occupiers. With regard to the effect on sunlight, daylight, and

outlook, the RDG seeks to apply a "45 degree code" to determine whether there may be an effect on "protected windows" in a neighbouring property. Protected windows are defined as main or primary windows to habitable rooms and kitchens that provide the principal source of light and outlook to a room.

23. The 45 degree code sets out that if a proposed new building or extension intersects with a line drawn in the horizontal plane at 45 degrees from the closest corner of a neighbouring building, then there is likely to be an effect on any protected windows. This is, however, caveated that the Code should not simply be applied on a mechanical basis, and the application of the code is subject to different criteria depending on the proposal being assessed and the nature of the neighbouring building.
24. In respect of single storey development, the RDG sets out that for the purposes of the horizontal plane, developments will be assessed having regard to site considerations and, when considering existing neighbouring dwellings, the need to achieve consistency with guidance in the RDG on householder extensions. On this latter point, whilst the guidance in that section of the RDG seeks to apply the 45degree Code in respect of extensions, in relation to the horizontal plane, which is the point in dispute in this case, the RDG indicates that this applies to front corners of the building where the neighbouring building is two storey or higher. In the case of single storey buildings, the 45 degree rule is to be applied only from the rear corner of the building and if the rear elevation contains a protected window.
25. The neighbouring property, Shandon, has an L-shaped floorplan, with that part of the building closest to the appeal site effectively recessed behind a forward projecting element. The side wall of the proposed new dwelling would be located approximately 2.5 metres from the side wall of Shandon and would project beyond the recessed part of the house.
26. The evidence indicates that the room closest to the proposed new dwelling is a living room which runs the full depth of this part the building. This room has a window on both the front and rear elevation and there are also two smaller windows in the side elevation of the house. The RDG indicates that generally only one window in a room with multiple aspects will be considered protected. The Planning Officer's report implies that it is the window on the front elevation which is the protected window. However, the paragraph of the RDG referenced in the Officer's report as being contravened by the proposal, Paragraph 4.69, relates to the application of the 45 degree code to the vertical plane. It is clear from the submitted drawings that the proposed new dwelling would not intersect with a 45 degree line drawn vertically from the bottom of the closest window.
27. It is reasonable to assume that the paragraph reference in the Officer's report is a typing error, and it is equally clear that a small part of the proposed dwelling would be within a 45 degree line drawn from the front corner of Shandon. Nonetheless, working through the guidance on the application of the 45 degree code in paragraphs 4.67 to 4.70 and 6.28 to 6.32, in the case of a single storey development proposed adjacent to an existing single storey building, it would appear that the guidance in the RDG would only be contravened where the projection was beyond the rear elevation of the neighbouring building.

28. The guidance in the RDG is convoluted, and not entirely clear how it is to be applied to the situation in this case. In the event that I am wrong in my interpretation of it, it is necessary to consider the site specific circumstances.
29. As noted above, the closest room in Shandon to the appeal site is a living room which has four windows. The two windows in the side elevation would be most affected by the proximity of the proposed new dwelling. However, these are secondary windows with the main larger windows to the room being to the front and rear elevations of this part of the house. The proposed development would have no effect on outlook from the window in the rear elevation. Although part of the proposed new dwelling would intersect a 45 degree line drawn from the nearest corner of Shandon, in terms of outlook from within the property, the actual window in the front elevation is inset from the corner and as a consequence of this a much smaller part of the proposed new dwelling would be visible in oblique views from this window.
30. The proposed development would alter the outlook from this room in so far as the present open aspect to the side garden through the secondary windows in the side elevation would be lost and there would be a minor effect on the outlook from the window in the front elevation in oblique views. However, taken overall, given the configuration of the room and the multiple windows, this change in outlook would not be so great, or so overbearing, that Shandon would be a less pleasant place to live.
31. With regard to daylight and sunlight, although neither party has submitted any technical evidence in respect of this, the proximity of the proposed new dwelling and its position relative to Shandon would result in the loss of sunlight to the windows in the side elevation. Nonetheless, as the front elevation of Shandon faces generally south, the effect on the window in the front elevation of the living room would be limited. The window to the rear of the living room is a wide, full height, window and although this is broadly north facing it would still admit a substantial amount of daylight. In this context, although the proposed development would result in a loss of sunlight and daylight, the effect of this would not be so significant that it would amount to harm.
32. The Council have not raised any concerns in respect of loss of privacy, and from what I have read and from what I saw when I visited the site, I have no reason to find otherwise.
33. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of the neighbouring property, with particular regards to sunlight, daylight, and outlook. It would not conflict with the relevant requirements of London Plan Policy D3, Policy DM1 of the DMP, or the RDG. It would also be consistent with the policies in the Framework which seek to ensure a good standard of amenity for all occupiers of land and buildings.

Other Matters

34. The appeal site is adjacent to the boundary of the Pinnerwood Park Estate Conservation Area. From the evidence, the significance of the conservation area is derived from its architectural, historical, and social importance as an example of early 20th century domestic architecture and town planning, based on the garden suburb model, which sought to provide accommodation for the

artisan classes, through low density housing, tree lined streets, and houses separated by hedges.

35. There is no evidence before me in respect of the contribution that the setting of the conservation area makes to the understanding or appreciation of its significance. This notwithstanding, the appeal site is not in a prominent location, and tree screening on the property boundaries, combined with frontage development within the conservation area blocking views towards the appeal site from the public domain, results in there being restricted views from the conservation area to the appeal site and vice versa. There would be equally restricted opportunities for the proposed development to be seen in context with the conservation area. I have noted that the Council have not raised any concerns in respect of the effect of the proposal on the setting of the conservation area and from what I have read and from what I saw on the site visit, I have no reason to find differently.
36. I have also had regard to the representations made by interested parties in connection with both the original planning application and the appeal. However, there is nothing in these representations which would lead me to a different overall conclusion.

Conclusion

37. I have found that the appeal site is not an appropriate location for new residential development and as such would conflict with policies in the development plan which are most important for determining the appeal. This is an important matter and, as such, the proposal would conflict with the development plan when taken as a whole, notwithstanding that I have found no harm to character and appearance, or to the living conditions of neighbouring occupiers, and that the development may comply with other policies in the development plan. No material considerations have been identified which would indicate that a decision could be made other than in line with the development plan.
38. For the above reasons, I therefore conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR