



Appeal Decision

Site visit made on 16 May 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal Ref: APP/B5480/W/22/3309899

Land adjacent to 5 Magnum Close, Havering, Rainham RM13 9PU

- 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 R Gilbert against the decision of the Council for the London Borough of Havering.
 - The application Ref P1070.22, dated 28 June 2022, was refused by notice dated 26 August 2022.
 - The development proposed is the construction of a terrace of 3-bed houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on i) the character and appearance of the surrounding area including the effect on trees; ii) whether future occupiers would have acceptable living conditions with specific regard to outlook and daylight; iii) biodiversity and wildlife habitats; and iv) highway safety.

Reasons

Character and appearance

3. The appeal site is located in a modest underutilised plot adjoining a small terrace of 2 storey dwellinghouses in Magnum Close. The site abuts a linear row of single storey garages to the east, and the car park of the bowls green to the south which includes a line of large and well-established evergreen trees along the boundary. The site currently consists of a vacant piece of land which appears self-seeded and unkempt, and I am informed has been subject to fly tipping and anti-social behaviour. The surrounding area is mainly residential with a regular rhythm and form to the terrace dwellinghouses providing a pleasant residential estate.
4. The proposal would provide a similar small linear two-storey terrace development consisting of 3 x 3-bedroom dwellings and associated car parking. The existing site has a linear arrangement, with the appeal site tucked in alongside which limits the scope for development.
5. The provision of 3 small family dwellinghouses in a similar alinement would be appropriate in the streetscene, and the two-storey dwellings with pitched roofs would sit comfortably in the area in respect to height and scale. The proposal would provide a low-density form of development similar to the surrounding

dwellinghouses, with the layout and the overall plot sizes of the proposal comparable to the neighbouring properties.

6. However, the restrictions of the site mean that the front gardens would provide an extremely tight layout at odds with the character of neighbouring dwellings in the immediate area. Furthermore, this elevation would be located in close proximity to the evergreen trees located outside the control of the appellant. These trees are not afforded any special protection, and the appellant highlights the specimens are of poor quality. The appellant further contends that they are likely to be removed although there is no substantive evidence of such a likelihood. Nevertheless, they do provide an effective soft green screen in an otherwise mainly developed hard landscape and thus provide a degree of amenity value for the surrounding area.
7. No details have been supplied with the appeal in respect to any foundation works for the proposed development, nor an arboricultural impact assessment (AIA) in respect to potential impacts on these trees. Given the proximity of the proposal to the existing trees outside the appellant's ownership, there would be potential for their root protection areas to be impacted. Furthermore, no evidence has been submitted with the appeal to indicate whether the retention and protection of these trees during construction would be possible.
8. In the absence of any evidence highlighting that the trees could be protected and retained or any information to the contrary, I must adopt a precautionary approach. As no suitable evidence has been presented, I find that it has not been demonstrated that the development could proceed without harm to the surrounding trees which contribute to the character and visual amenity of the area.
9. The appellant considers that the use of appropriate conditions could protect and retain trees, or alternative trees could be planted on the site to mitigate any harm. However, given the close proximity of the proposal to the trees this could create the need for more extensive and regular pruning which would diminish the contribution the existing trees or any new trees could make to the character and appearance of the area and, in combination with the reduced space for roots, is likely to decrease their life expectancy. As such, I am not persuaded that the imposition of a condition would mitigate the likelihood of further harm to the character and appearance of the area arising from the development's effect on trees in the long term.
10. Taken in isolation, the design, scale, height and layout would respect the domestic character and appearance of the area. However, given the restricted nature at the front of the appeal site and the relationship of the proposal with the adjoining trees, this part of the site would appear cramped, potentially impacting negatively on the evergreen trees reducing their natural screening qualities.
11. For the reasons above, the proposal would significantly harm the character and appearance of the surrounding area including the effect on trees. Accordingly, the proposal would not accord with Policies G6 and G7 of the London Plan (LP) 2021 and Policies 10, 26 and 27 of the Havering Local Plan 2016-2031 (HLP), adopted November 2021 which collectively seek to secure high quality development in the Borough without compromising local character, the green environment or the local appearance, amongst other things. The proposal would also conflict with the National Planning Policy Framework (the

Framework) insofar as it requires development to be sympathetic to local character and seeks to safeguard significant trees due to their contribution to character and quality of urban environments.

Living conditions for future occupiers

12. The south elevation of the proposed scheme is located very close to the boundary with the large, well-established evergreen trees mentioned above. The plans highlight that the dining room at ground floor level and bedrooms 2 and 3 at upper floor level are all single aspect rooms. As such, these rooms would rely solely on these windows as a light source to provide natural light for the potential residential units.
13. The appellant questions the longevity of these trees, suggesting that they are damaging the car park at the adjoining bowls club and could be removed in the immediate future. However, these trees are outside the control of the appellant, and I have been presented with no evidence in respect to their health or an AIA indicating any impacts on these trees. As such, I have determined the appeal on the basis of the current position and condition of the site.
14. I also have no details before me in respect to any daylight analysis to demonstrate whether acceptable levels of daylight can be achieved. Notwithstanding the southern aspect, the amount of natural light that could enter these rooms would be significantly restricted by the existing trees, leading to poor living conditions. Furthermore, given the proximity to the trees and evergreen foliage any outlook from these units would also be limited, as the trees would have a dominating and overbearing impact from the proposed windows. This would lead to a poor outlook for future occupiers.
15. For the above reasons, the scheme would provide future occupiers with unacceptable living conditions with specific regard to outlook and daylight. The proposal is therefore contrary to the relevant provisions of HLP Policy 7 and LP Policy D6, which amongst other things, seek to provide high quality design and living conditions whilst providing sufficient daylight to existing and future residents. It would also be contrary to the Framework which, amongst other things, also seeks a high standard of amenity for all existing and future occupants of buildings.

Biodiversity and wildlife habitats

16. In addition to the trees, the appeal site also contains a substantial area of self-seeded vegetation. From my site observations much of this area has grassed over, however the provision of a fenced boundary provides a relatively quiet, undisturbed, and secluded location. There is no information in the form of a preliminary ecological appraisal or other similar ecological assessment to establish the biodiversity value of the site, or indeed if any protected species, priority species or priority habitats are present on site.
17. From the evidence before me, the appellant has not provided up-to-date information upon which an assessment of any green infrastructure and biodiversity could be reasonably assessed. Without robust evidence, I cannot be confident that development could be carried out in this location without adversely affecting species and habitats that may be present on site, or whether any suitable mitigation measures could be provided. Given this

uncertainty, I am not satisfied that it would in this case, be appropriate to defer consideration of this matter to a planning condition.

18. Accordingly, I am unable to conclude that the proposed development would not result in adverse impacts on green infrastructure and biodiversity. Therefore, I find that the proposal would conflict with HLP Policies 10 and 27 and Policy G6 of the LP, which seek to manage impacts on biodiversity and natural habitats and aim to secure net biodiversity gain. I find it would also conflict with the Framework, which sets out the principles for the determination of planning applications to protect and enhance biodiversity.

Highway safety

19. The Council raise concerns in respect to highway safety and the provision of the off-street parking for the new dwellings being located in an area not served by adequate, safe and inclusive access. The proposed off-street parking for six vehicles on the forecourt would be large enough for this purpose, however visibility at this access with respect to vehicles approaching from Magnum Close behind the existing garages would be limited. I have no evidence in respect to the provision of sightlines or swept path analysis. Consequently, given that insufficient information has been presented, I must adopt a precautionary approach in respect to highway safety, and find that it has not been demonstrated that vehicles could be manoeuvred on site and access or exit the property without detrimental effects to pedestrian and highway safety.
20. During my site observations the area at the rear was lightly trafficked, and there was a distinct lack of pedestrian activity. The accessway adjoining the garages is not illuminated and is a narrow route which does not benefit from a pavement. Nevertheless, the proposed layout would require pedestrians to venture into the road to negotiate the access to the site given the absence of a pavement. This would result in conflict between vehicle and pedestrian users, albeit limited, along the accessway at the rear of the existing garages effecting the pedestrian safety of future occupiers.
21. As a result, I must conclude that the proposed dwelling would be likely to pose a risk to highway safety. This would be contrary to HLP Policies 10 and 26 and LP Policies T4 and D11 which among other things seek new development to ensure good access, improve road safety and emergency safety measures. The proposal would also be contrary to Paragraphs 110 b) and 111 of the Framework as it has not been adequately demonstrated that there would not be an unacceptable impact on highway safety. However, I do not find conflict with HLP Policies 7, 23 and 24 or Policies T2, D5 and D6 of the LP which are more strategic in nature and amongst other things, seek to promote healthy streets, provide appropriate parking standards, provide sustainable forms of transport and provide high housing standards and thereby are not directly relevant to my consideration of this main issue.

Other matters

22. I have no substantive evidence about the likelihood of any decrease in anti-social behaviour that would occur as a result of the proposal. As such, this matter is a neutral factor neither weighing in favour nor against the proposal.

Planning Balance and conclusion

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
24. I have found the proposed development would harm character and appearance with specific regard to trees, biodiversity and habitats, living conditions for future occupiers and highway safety, which attract substantial weight against the scheme.
25. The scheme would provide a windfall of three new units towards the Council's existing housing stock. The Housing Delivery Test (HDT) provides a figure of 46% for the London Borough of Havering based on the 2021 HDT results, however the parties acknowledge that a revised figure of 78% has been sought and obtained by the Council. Nevertheless, the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied.
26. As such, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme. I have found the development would offer potential benefits in terms of providing three new dwellings to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have environmental, economic and social benefits, through potential energy efficiency measures, employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have also considered that the proposal would allow for family accommodation. I have attached significant weight to these factors in favour of the proposal.
27. Taking all of the above into account, in applying paragraph 11 d) (ii) of the Framework, the extent to which there would be adverse impacts of granting planning permission, relating to my findings on the main issues above, would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.
28. For the reasons outlined above and having regard to the development plan as a whole, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

Robert Naylor

INSPECTOR