



Appeal Decision

Site visit made on 14 May 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2024

Appeal Ref: APP/B5480/W/23/3335257

Hall Lane Miniature Golf Course, Hall Lane, Upminster, Havering RM14 1AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions imposed on the approval of reserved matters or details pursuant to a previous planning permission.
 - The appeal is made by Mr Iskander of Abbey Developments Ltd against the decision of the Council of the London Borough of Havering.
 - The application Ref is P0552.23.
 - The application sought reserved matters approval of appearance, landscaping, layout and scale for the demolition of all buildings and structures on site, and redevelopment of the site providing up to 37 residential dwellings, creation of a new highway access, public open space and landscaping and related infrastructure, without complying with a condition attached to reserved matters approval Ref P0112.22 dated 19 October 2022.
 - The condition in dispute is No 1 which states that: *The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans (as set out on page one of this decision notice).*
 - The reasons given for the condition are: *For the avoidance of doubt and to ensure that the development is carried out as approved.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Decision Notice for the approval of Reserved Matters¹ does not list all of the currently consented drawings. The appellant has explained this is due to various plans being updated to address a non-material amendment to the layout for visitor car parking spaces or to discharge conditions.
3. The appellant has provided a list of the currently consented drawings and the Council has not disputed the appellant's explanation or list. I have, where relevant, considered the updated approved plans in determining this appeal.
4. In their Statement of Case the appellant refers to two development plan policies² that are not mentioned by the Council. I have seen these two policies, which are relevant to the proposal, and have considered them in reaching my decision.

¹ LPA Ref. P0112.22

² Policy D3 (optimising site capacity through the design-led Approach) of the Spatial Development Strategy for Greater London 2021 (LP) and Policy 10 (garden and backland development) of the Havering Local Plan 2021 (HLP)

Background and Main Issues

5. Following the grant of outline planning permission for up to 37 dwellings and associated works at the appeal site on 16 September 2021, reserved matters approval was granted for appearance, landscaping, layout and scale on 19 October 2022.
6. The appellant is seeking to vary condition 1 of the reserved matters approval in order to amend the boundaries of plots 32, 34 and 35 so as to create a new plot 36. This would be to the rear of plots 33, 34 and 35 and to the side of plot 32.
7. A Tree Preservation Order (TPO) protected Fastigate Hornbeam tree (T15), on what was public land next to the cul-de-sac serving the development, would be subsumed within the new plot 36, which would have its own access onto the cul-de-sac.
8. A single storey summer house, in the rear garden of plot 35 and to the rear of tree T15, was part of the reserved matters approval. This would be omitted as part of the proposal, with a larger, single storey dwellinghouse, located in a generally similar position to the approved summer house, provided as part of the new, plot 36. There would also be consequent amendments to boundary treatments and hard and soft landscaping.
9. The Council is content with the approved layout of the site but has refused permission to vary condition 1 and so increase the number of dwellings and alter the layout. From the evidence the main issues would be the effect of the proposal on:
 - The character and appearance of the area;
 - The living conditions of nearby future occupiers, with particular regard to outlook and privacy; and,
 - The biological diversity of the area, including with regard to the health and value of the TPO protected tree T15.

Reasons

Character and appearance

10. The construction of the approved scheme was underway at the appeal site at the time of my visit. The site is said to be some 3.5 hectares in size and is located to the east of Hall Lane, which forms its western boundary. It is roughly rectangular in shape and was previously used as a miniature golf course before construction commenced. The site contains various TPO protected trees, including on its northern, southern and eastern boundaries. The terrain of the appeal site slopes gently downhill in a general north-to-south direction.
11. This is a residential area just north of the centre of Upminster. The streets surrounding the appeal site contain detached and semi-detached dwellings set within generous sized and often maturely landscaped plots. These dwellings are generally two storeys in height and constructed in a traditional 'Arts and Crafts' style, including with brickwork, render and tiled pitched roofs.

12. The appearance, landscaping, layout and scale of the development approved under reserved matters is generally in keeping with the predominant character and appearance of the surrounding residential area.
13. The dwellings approved would be substantial buildings with accommodation over three storeys and set within generous plots, with a reasonable variety of dwelling types. Accommodation would be provided in the pitched roof space, where rooms would be served by dormer and flush rooflight windows. The traditional design and materials of the dwellings would be sympathetic to 'Arts and Crafts' architecture.
14. The approved Plot Width and Areas plan³ shows the width of each of the 35 plots, most of which face onto the cul-de-sac and have quite a narrow width - between 10 metres and 16.6 metres. Plot 32 has a stated width of 13.9 metres at the front of the plot, and clearly excludes tree T15 and the land around it.
15. With regard to the land containing tree T15, to the west of Plot 32, the approved Landscape plan⁴ shows this would be an area to be seeded with grass and wildflower seed mix. There is no substantive evidence to support the appellant's claims that this land was always intended to be in the demise of Plot 32, or that standard lawn grass, not wildflower meadow would be planted around tree T15. I have considered it as a separate space containing wild flower grassland, as per the approved drawings.
16. The land containing tree T15 would be separated from the cul-de-sac by a 1.2 metre high metal estate railing; from the front driveway of Plot 32 by an 'instant hedgerow' up to 1.5 metres in height; and, from the rear gardens of plots 32 – 35 by a brick wall some 1.8 metres high with climbing plants attached⁵, and would not be generally accessible.
17. This landscaped area would have a natural, verdant character, somewhat distinct from the more maintained front gardens of the dwellings along most of the cul-de-sac. Parts of the approved summer house would be visible in views from the cul-de-sac across this land. However, the limited scale and massing of the approved summer house, together with its position set back from the cul-de-sac behind railings, tree T15 and boundary walls means it would not be visually obtrusive.
18. Given the location of this land towards the entrance to the site, it would be visually prominent within the streetscene, with most of the future occupiers of the dwellings on the site having to pass it on journeys to and from Hall Lane. In my view, this largely natural space would make a positive contribution to the character and appearance of the area.
19. The creation and development of Plot 36 would represent a significant change. The height, width and area of the proposed dwelling would be significantly greater than that of the summer house. Together with the removal of the boundary walls by plots 32 – 35 and the provision of a driveway, it would be much more visually conspicuous than the summer house in the streetscene.

³ Ref. 2065 / P / 10.04 D

⁴ Ref. ABBEY23369-11D Rev E Sheet 2 of 3 - Landscape Proposals

⁵ Ref. 2065 / P / 10.03 C and Ref. ABBEY23369-11D Rev E Sheet 2 of 3 - Landscape Proposals

20. The sloping terrain and the vertical slat timber privacy screen along part of the front boundary of Plot 36 would limit its visual impact to some extent. However, the proposed dwelling would still be visible through and over the timber screen and clearly visible through the driveway and would detract from the character and appearance of the area, including the setting of tree T15.
21. The proposed dwelling, with its own driveway, would be clearly recognisable as such, rather than an ancillary outbuilding like the summer house. Whilst substantially larger and more prominent than the summer house, the proposed single storey dwelling would be considerably smaller than the approved 3-storey dwellings on the remainder of the cul-de-sac. Together with the very different design and materials and its set back position, it would be a visually incongruous and obtrusive feature in the streetscene and would be out of keeping with the wider area. The visually prominent position of proposed Plot 36 on the access cul-de-sac means this would detract from the development overall.
22. Whilst the streets surrounding the appeal site do contain the occasional dwelling of a different design to the prevailing 'Arts and Crafts' style, I do not consider these make a positive contribution to the character and appearance of the area. Furthermore, whilst I note the design approach adopted by the appellant, the elements of the proposal that accord with the approved design code, and the context of proposed Plot 36, I do not consider this justifies the harm that would be caused.
23. I deal with the effects on biological diversity later, including whether the proposal would be likely to cause harm to tree T15. In dealing with character and appearance, the reduction in the wild flower grassland around tree T15 and the loss or significant works to tree T15 itself, arising from any conflicts with future occupiers, would be harmful.
24. For these reasons, the proposed development would adversely affect the character and appearance of the area. It would, therefore, conflict with Policy D3 of the LP and with Policy L26 (urban design) of the HLP and with the National Planning Policy Framework December 2023 (the Framework) in this regard.

Living conditions

25. The proposed dwelling would be of a flat roofed design and around 4 metres in height, with a small terrace to its rear. Whilst occupying a generally similar position to the approved summer house, it would be a considerably larger building in terms of scale and massing. The boundary of Plot 36 would be marked by a close boarded timber fence some 1.8 metres high, which would follow the sloping terrain downwards towards the rear gardens of the dwellings on Ingrebourne Gardens.
26. The proposed dwelling would be readily visible from the rear elevations of the approved dwellings on the neighbouring plots and from their rear gardens, above the boundary fencing. The design, scale, massing and materials would mean the proposed dwelling would be considerably more prominent than the previously approved summer house. This would detract from the outlook of the occupiers of these dwellings to some extent.

27. However, I do not consider this would cause unacceptable harm to nearby future occupiers. It is also likely that the adverse effect caused would be reduced somewhat over time, as planting becomes established.
28. The finished floor levels of the proposed dwelling are said to be slightly below the finished floor levels of the dwellings on the next door plots. Boundary fencing some 1.8 metres in height would separate proposed Plot 36 from its neighbours. However, the proposed section drawings⁶ show the finished floor level of the proposed dwelling, and the terrace to the rear, would be at a somewhat higher elevation than the ground level at either side, and the boundary fencing would not be a uniform 1.8 metres in height.
29. There would be some scope for limited overlooking of parts of the rear gardens of the next door plots as shown. However, were the appeal to be allowed I am satisfied this could be dealt with by way of a suitably worded planning condition.
30. For these reasons, the proposed development would have an acceptable effect on the living conditions of nearby future occupiers with particular regard to outlook and privacy. It would, therefore, accord with Policy 7 (residential design and amenity) and Policy 10 of the HLP and with the Framework, in this regard.

Biological diversity

31. The land to the west of Plot 32 and north of the rear garden of Plot 35, which contains tree T15, was to have been planted with a grass and wildflower mix, according to the approved landscape plan⁷. The appellant has provided no substantive evidence to support their repeated statements that this land was to be planted with lawn grass seed only, which would directly conflict with what is shown on the approved landscape plan. The wildflower grassland around the base of tree T15 would be significantly reduced to facilitate access to the proposed dwelling and to allow the parking of two cars.
32. Tree T15 was originally located on 'public', albeit not generally accessible land, separate to the 35 identified development plots shown on the approved Plot Width and Areas plan⁸. The appellant has provided no compelling evidence that their intention was always for tree T15 to be in the demise of Plot 32 and the approved drawings do not show this.
33. The approved position of tree T15 on public land where access would be restricted, is very different to being located in the front garden of a dwelling, where it would be affected by people to a much greater extent. Tree T15 is to the north of the proposed dwelling and so would be unlikely to affect sunlight reaching the building. Nevertheless, its substantial canopy would be positioned a short distance from the proposed entrance and to windows to habitable rooms at the front of the proposed house. It is, therefore, likely that the tree would limit natural light to the front of the dwelling. As the tree continues to grow, it is very likely this situation would worsen.
34. Notwithstanding the separate TPO legislation, I consider the close proximity of tree T15 to the proposed dwelling, together with the dwelling's design, would mean there was a very significant likelihood of works harmful to the health or

⁶ Including Ref. 0046 - P0121A, P0122A, P0123A, P0124A, P0142A

⁷ Ref. ABBEY23369-11D Rev E Sheet 2 of 3 - Landscape Proposals

⁸ Ref. 2065 / P / 10.04 D

appearance of the tree, such as pruning or even removal, being sought in the future.

35. Tanked block pavers would be installed around three sides of tree T15, encroaching a short distance into the Root Protection Area (RPA). Whilst the block pavers are said to be permeable, the *Typical Tanked Permeable Block Paved Vehicular Area Section* insert on the proposed site drainage plans⁹ shows that below the surface course, the bedding course, the running course and the sub base there would be an impermeable membrane. This would significantly reduce the area around tree T15 where rainwater could percolate into the soil, particularly given the size of the tree canopy I noted on site.
36. I do not find the appellant's statement regarding the effect of the block paving on the health of the tree to be compelling, and in the absence of substantive evidence to the contrary, I consider it is likely that a reduction in rainwater percolation would be harmful to the protected tree.
37. I note the comments of the appellant's Arboricultural consultant in this regard, including the references to *BS5837:2012*. This document is not in the evidence before me, and it is not clear how the recommended 'no-dig' surface solution in the RPA would accord with the submitted drawings, including the proposed site drainage plans.
38. I note there are substantial areas of landscaping at either end of the appeal site that would be unaffected by the appeal proposal, and that the proposed dwelling would include areas of 'green roofing'. Nevertheless, on balance, I am not satisfied the proposal would not cause significant harm to the biological diversity of the area, including to protected tree T15. Consequently, the proposal would conflict with Policies 10, 27 (landscaping), and 30 (biodiversity and geodiversity) of the HLP, and with the Framework, in this regard.
39. The Council has made reference to conflict with Chapter 8 of the London Plan on its Decision Notice, however, I find no conflict with Policy G2 (green belt), which is the only London Plan policy in Chapter 8 provided by the Council.

Planning Balance and Conclusion

40. The proposed development would not cause unacceptable harm to the living conditions of future occupiers but this would be outweighed by the significant harm to the character and appearance of the area and to biological diversity.
41. However, the Council accepts that it cannot currently demonstrate a deliverable five year housing land supply and has delivered only 1636 new homes between 2019/20 and 2021/22, against an identified requirement of 2968 new homes, just 55%. With reference to paragraph 11d) of the Framework, consideration of the presumption in favour of sustainable development is needed.
42. There would be a limited benefit in the delivery of an additional market house in a sustainable location in the London Borough of Havering, where the latest HDT figures indicate a substantial under-delivery of new homes in recent years and there is no deliverable five year housing land supply. There would also be limited, short-term social and economic benefits linked to the construction of an additional dwelling and limited longer-term benefits upon occupation.

⁹ E21-012-405 P2 and E21-012-406 P2

43. The Council and appellant have referenced a number of development plan policies in their evidence that they consider relevant to the appeal proposal. I have considered these policies, and their consistency with the Framework.
44. I am satisfied the policies are generally consistent with the Framework and that the proposal would accord with a number of development plan policies, including most importantly those in relation to the living conditions of future and nearby occupiers, the effective use of land and the delivery of sustainable new homes. With reference to paragraph 225 of the Framework I attach substantial weight to this.
45. However, the proposal would also conflict with a number of development plan policies, including most importantly those with regard to good quality design and protecting the natural environment. Again, with regard to paragraph 225 of the Framework, I attach substantial weight to this.
46. Insofar as it relates to this appeal, I find the conflict with the development plan would outweigh the accordance. Consequently, I find the proposal would conflict with the development plan as a whole.
47. There are no policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development proposed¹⁰.
48. The proposed development would be supported by parts of the Framework. In particular, policies to increase housing supply; to support economic growth; and, some policies to promote healthy communities.
49. However, there would also be conflict with parts of the Framework, including some policies to promote healthy communities; to achieve well-designed and beautiful places; and, to conserve the natural environment.
50. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.
51. Various references are made by the appellant to the appeal proposal being a small scale amendment to the existing approved development. It is not disputed that the scheme approved under reserved matters is acceptable and it would, in my view, deliver almost all of the benefits of the appeal proposal with none of the harm. Construction of the approved development is underway and I am satisfied this is a genuine fallback position to which considerable weight could be attached.
52. However, I have found the proposal would conflict with the development plan as a whole and there are no material considerations that would cause me to determine this appeal otherwise than in accordance with the development plan.
53. For the reasons given above I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

¹⁰ Paragraph 11 d) i