



Appeal Decision

Site visit made on 12 April 2024

by A. Graham BA(Hons) MAued IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/J1535/D/24/3337131
10 Pump Hill, Loughton IG10 1RU

- 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 and Mrs J Gell against the decision of Epping Forest District Council.
 - The application Ref: EPF/1203/23 dated 24 May 2023 was refused by notice dated 30 October 2023.
 - The application is described as 'retrospective planning application for the part re levelling of the garden and installation of a retaining wall to enable the construction of an open air swimming pool. The proposed works are being undertaken to facilitate the pool confirmed as permitted development under ref: EPF/2580/21. Given the steep topography of the existing site and position of the dwelling house, it is essential to level out part of the garden to implement the permission granted'.
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Decision

1. The appeal is allowed and planning permission is granted for the part releveling of the garden and installation of a retaining wall to enable the construction of an open air swimming pool in accordance with application reference number EPF/120/23 dated 24 May 2023 subject to the conditions as outlined in the Schedule below.

Preliminary Matters

2. The description of the development in the heading above is taken from the planning application form. However, I have used a slightly amended version of the description specified on the Council's decision notice for the decision in paragraph 1, as it more effectively describes the development proposed.
3. Since the determination of this application a revised National Planning Policy Framework (The Framework) was published in December 2023. I have therefore determined this appeal having regard to the revised Framework. However, the changes to the Framework are not directly relevant to the issues in dispute and as such the views of the parties regarding the matter have not been sought on this occasion.
4. During my site visit I saw the site from 12-18 Pump Hill and from 78 Queens Road as requested by the Council and the residents of these properties. The appellant was invited to accompany me on these visits but chose not to.
5. The appeal is concerned with the construction of structures necessary to enable the completion of an outdoor swimming pool and associated landscaping to the

rear garden of the existing house. I saw on my visit that the base of a swimming pool had been constructed and that a retaining wall had been erected at the lower end of the site alongside the garden of 78 Queens Road although works had not been completed and construction had seemingly been halted half way through.

6. Within the context of an appeal under section 78 of the abovementioned Act it is not within my remit to formally determine whether development requires planning permission. I am obliged therefore to make the decision based upon the acceptability of the proposed levelling groundworks and retaining wall to enable the construction of the outdoor swimming pool and not to determine whether the development, or any part of it, is permitted development. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether development would be lawful, they may make an application under section 191 of the Act.
7. Further plans were submitted with the appeal showing structural details relating to the retaining wall and indicative landscape proposals. These have been put forward as an example of how certain aspects of the scheme could be controlled by conditions and so changes to the proposal are not sought directly. I have therefore taken these plans into account on an illustrative basis and am satisfied that no prejudice would arise in doing so.

Main Issues

8. The main issues are: a) the effect of the proposal upon the living conditions of neighbours with particular reference to noise and overlooking; b) the effect of the proposal upon the character or appearance of the York Hill Conservation Area and upon the setting of nearby Grade II listed buildings; and c) whether the proposal would result in any adverse impact upon the structural stability and geological conditions of the site.

Reasons

Effect of the Proposal Upon the Living Conditions of Neighbours

9. The plot of the site is very irregular and encompasses an area of garden directly to the rear of the neighbouring property at 12-18 Pump Hill. This house, presumably as a result of the later subdivision of some plots historically, has a relatively small garden with principal living rooms whose windows are located within close proximity to the boundary fence with the site. Despite this, the boundary here consists of a fence with laurel type hedging growing over it along much of its length.
10. I have evidence before me¹ that although the site previously sloped more than it currently does, the area immediately to the rear of 12-18 Pump Hill was relatively level with this shared boundary, at least for the first few metres. The bottom of the pool appears to have been installed slightly lower than the bottom of the existing boundary fence with 12-18 Pump Hill, but otherwise much of the rest of the site would be raised so as to create a level surface across a much larger portion of the garden.

¹ Planning Officers report - image showing the site on 5th May 2021.

11. The proposed levelling of so much of the garden would likely encourage occupants to spend significantly more time within the garden. The use of the pool would also inevitably lead to more intensive use of the garden near the shared boundary with 12-18 Pump Hill.
12. However, although people could stand alongside the swimming pool next to the boundary of 12-18 Pump Hill, the ledge alongside the pool would also be to the lower end of the boundary fence. Moreover, this ledge would be so narrow as to make any use of this space for any amount of time impractical. Even were a person to stand here it would still be very difficult for one to see directly over the boundary fence and the associated planting behind it and into the neighbour's garden or rooms. As a result, the opportunity for overlooking of those residents at 12-18 Pump Hill would be less than that which could have occurred previously.
13. Coming to the effect upon other neighbours, the proposed retaining structure would present a tall and robust structure near to the boundary to those residents at 78 Queens Road. Currently, this property has a large and long rear garden that sits much lower than the level of properties along Pump Hill. Despite this, I saw on my site visit that very tall coniferous trees effectively shield any direct visibility or overlooking between much of the gardens here and the lay of the land already presents a noticeable change in topography which would allow such views in any case. These factors lead me to conclude that there would not be a significant adverse impact upon the amenity of residents here through overlooking that could not be further protected through landscape conditions ensuring the establishment and maintenance of such boundary planting in the future.
14. Similarly, the proximity of this scheme to those living at 95 and 97 York Hill is such that there would only be negligible effects upon the living conditions of neighbours here from which already exists. As such, any further potential impact would be minimal and would be mitigated through the positioning of plots whereby the plot of the Gardeners Arms PH intervenes between the properties here. I do not therefore consider that the development would result in any adverse effect upon the living conditions of those at 78 Queens Road or 95 and 97 York Hill subject to appropriate landscape conditions being implemented that would further reinforce visual shielding here.
15. I therefore find that the development would not give rise to significantly harmful impacts to the living conditions of neighbouring properties. Consequently, the proposal would be in conformity with Epping Forest Local Plan 2023 (LP) Policy DM9, which seeks to protect the living conditions of neighbours.

Effect of the Proposal Upon the York Hill Conservation Area and Upon the Setting and Significance of Nearby Listed Buildings

16. The appeal property is a light rendered, two storey cottage that likely dates to the early part of the 20th century. The appeal site was included within the most recent review of the York Hill Conservation Area in 2014. Within the York Hill Conservation Area Appraisal and Management Plan (CAA) 10 Pump Hill is recognised as an attractive early 20th-century detached house set on a prominent corner plot. The CAA further states that the property forms an important element in the entrance to the conservation area and, in addition, its inclusion rationalises this section of the conservation area boundary.

17. Currently the appeal site remains upon its corner plot just uphill from the junction of Pump Hill and Queens Road. Its plot accommodates a gravelled driveway and garden to the front with a small parking area to the side at the top end of Queens Road. What is perhaps most notable about the site is the steep topography of this area but this is not readily perceivable from the streetscene here.
18. In assessing whether to grant planning permission for this development I am required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The site is also near to several Grade II listed buildings including 20, 22 and 24 Pump Hill as well as The Gardeners Arms Public House, that is also Grade II listed. I am also therefore required by Section 66(1) of the same Act to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
19. These requirements are reflected in Policies DM7 and DM9 of the LP in ensuring proposals respond well to the character and appearance of an area through good design and in preserving or enhancing the character or appearance of a conservation area or listed building.
20. The conservation area as a whole obtains much of its significance from its survival as an historic settlement related around the lanes, village greens and the surrounding open landscape that was largely retained through notable resistance to 19th century enclosure. Further to this the area contains several examples of significant vernacular buildings, some dating to the 17th century, most of which are listed. The area later expanded with its role as both a desirable place to live as well as something of a visitor attraction largely spurred on by the extension of the railway network. As such several areas exhibit Arts and Crafts style architecture, all of which contribute to the strong sense of place and historic character of the conservation area.
21. In terms of the site's contribution to the conservation area as a whole, although the property has been significantly altered since its inclusion within the conservation area, it still marks the corner of Pump Hill and Queens Road and has its origins at a certain point in the history of the area, which is of some relevance to the area as a whole. Additionally, the topography here has obviously historically dictated much of the pattern of the built development. As such the junction offers long distance views over the townscape towards the city of London and Canary Wharf. However, the significance of the topography is mainly attributable to the way in which the buildings, paths and roads respond to it, and the views offered to and from it, rather than the lay of the land itself. Furthermore, the rear garden is not readily visible from the street. As such, although the rear garden manifests itself as a steep slope, it only makes a minimal contribution to the overall significance of the conservation area as a whole.
22. In assessing the proposal therefore, the main impact would be through the levelling of the ground and the associated retaining structures well away from the edge of Queens Road. As such I consider that any visual impact would be minimal and would not represent a harmful effect. Therefore, I find no harm would be caused to the character or appearance of the conservation area as a result of this proposal.

23. The Framework states that the surroundings in which a heritage asset is experienced is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
24. The Gardeners Arms is a much modified late 17th century building likely of a timber framed construction that has seen considerable extensions both to the front and rear. The building has its principal focus upon the junction of York Hill, Woodbury Hill and Pump Hill and is a focal point within this junction space. To the rear the building appears to have been extended with several linear additions which protrude in the direction of the appeal site. As a result of these protrusions these structures appeared somewhat built up onto their site so as to compensate for the topography.
25. Although it has been subject to alterations the pub currently presents a flat roof structure with first and ground windows facing directly into the site, only partially shielded by a timber boundary fence. This extension appears to be of a more modern nature to that of the historic core of the building and as such I consider it exhibits less significance than the rest of the building.
26. The Gardeners Arms therefore exhibits heritage values through both its vernacular architectural appearance, its prominent location within the conservation area and its role as a pub building used by members of the public. As such it is of high heritage significance.
27. Although the appeal site is adjacent to the rear boundary of The Gardeners Arms there appears to be no direct relationship either physically or historically between the two sites and the main contribution of the appeal site to the significance of the Gardeners Arms is due to it being unbuilt and retaining openness to the rear of the public house itself.
28. The cottages of 20, 22 and 24 Pump Hill form a short terrace of vernacular buildings that group nicely with The Gardeners Arms along Pump Hill and York Hill. These cottages also date to the 17th/18th century and are weatherboarded and contain many original features externally which, in turn, enhances their contribution to the local distinctiveness of the area. They stand some distance away from the appeal site and although they are visible, their focus is much more upon the corner plot that they define along Pump Hill and York Hill. As such the contribution that the appeal site gives to these buildings is primarily due to the open aspect it maintains from the rear of these houses.
29. In assessing the effect of this scheme upon the listed buildings I consider that the main effect would be upon the raising of the ground and the associated retaining structures. In this respect the proposal would bring the level to around a similar height to that upon which the Gardeners Arms currently sits but it would be slightly lower than that of the other listed buildings on Pump Hill. The site would then fall away in a similar manner to how it currently does as one approaches the Queens Road end of the plot. As such the appearance of openness from the listed buildings would be preserved and there would be little noticeable visual or other impact upon the listed buildings and as such their setting and significance would remain unaffected.
30. In light of my findings above, there would be no harm to the historic environment and indeed the proposed scheme would result in the likely tidying

of the site as it currently stands. As such the proposal before me would preserve the character and appearance of the York Hill Conservation Area and setting and significance of the nearby listed buildings. As such the scheme would conform to Policy guidance DM7 and DM9 of the LP that is intended to protect the historic environment and would likewise reflect the overriding policy direction as contained within the Framework itself.

Whether the proposal would result in any adverse impact upon the structural stability and geological conditions of the site.

31. The Council has raised concerns that the application was not supported by structural stability or geological conditions assessments albeit with reference to LP Policy DM9H(iv) which does not exist. The appellant states that the Council intended to refer to LP Policy DM9I(v), which relates to issues of vibration, noise, fumes, odour, light pollution and microclimatic conditions. However, the Council has not put forward any substantive reasons for its concerns, and I see no reason to conclude that the appeal should fail on these grounds. I therefore find no conflict with LP Policy DM9 in respect of this matter.

Other Matters

32. Other issues have been raised by neighbours with regards the potential for increased noise and other disturbance caused by this proposal. Although the existing garden slopes and currently makes the use of this land difficult, nevertheless it could still be used for any such domestic purposes, some of which may cause noise and disturbance at times. In light of this, the use of the garden through this proposal would not result in more demonstrably harmful effects over and above the existing situation.
33. In terms of potential overshadowing through this scheme the orientation of the retaining structure with relation to the adjoining gardens could result in some marginal shade in close proximity to the boundary in the early hours of the day in summer. However, any such shade would be largely negated due to the topography in the area and would be further minimised through the presence of the existing trees along this boundary. As such although there may be some marginal loss of sunlight as it filters over the proposed retaining structure and through the lower branches this would be minimal in its effect upon living conditions.
34. Issues around drainage have also been raised. I have no evidence before me that issues of drainage or potential flood would constitute a particularly pertinent issue here, however I recognise that the proposed pool structure would be required to withhold significant amounts of water. As such I consider that details of such drainage could be encompassed within Condition 4 below.

Conditions

35. Condition 1 is imposed to ensure that works are undertaken in accordance with the approved plans and to avoid impacts upon existing trees. Conditions 2,3 and 4 are imposed to ensure that details of hard and soft landscaping and tree planting are submitted, approved and implemented so as to make the development acceptable in planning terms and to further mitigate and prevent unacceptable overlooking. This condition also requires details of drainage so as to ensure compliance with requirements in this regard as raised by neighbours.

Condition 5 is concerned with ensuring acceptable materials are used for the external surfaces of the development.

36. There is a strict timetable for compliance for conditions 4 and 5 because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the scheme before the development takes place. As such these conditions have been altered so as to ensure adequate enforcement could take place if necessary.

Conclusion

37. In light of the evidence before me therefore I consider that the scheme would not cause harm to the historic environment or result in unacceptable harm to the living conditions of neighbouring residents. In addition, there is no evidence to suggest that this proposal would adversely impact structural stability or geological conditions. As such I conclude that the proposal accords with the development plan as a whole and that material considerations do not indicate that a decision should be taken otherwise than in accordance with the development plan. Accordingly, the appeal is allowed subject to the conditions identified in the schedule below.

A Graham

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 23010_101 Proposed Plan and Sections, and 'Tree Constraints Plan' drawing number SG/10PH/01 (dated 19th January 2023).
2. The development shall be carried out in accordance with the details as set out in Moore Partners Ltd Tree Consultancy 'Tree Constraints Plan' drawing number SG/10PH/01 (dated 19th January 2023) Tree protection shall be installed as shown on drawing and shall be undertaken in accordance with the submitted details.
3. If any tree, shrub or hedge shown to be retained in the submitted plans is removed, uprooted or destroyed, dies, or becomes severely damaged or diseased during development activities or within 3 years of the completion of the development, another tree, shrub or hedge of the same size and species shall be planted within 3 months at the same place. If within a period of five years from the date of planting any replacement tree, shrub or hedge is removed, uprooted or destroyed, or dies or becomes seriously damaged or defective another tree, shrub or hedge of the same species and size as that originally planted shall, within 3 months, be planted at the same place.
4. Unless within 5 months of the date of this decision a scheme for the hard and soft landscape works (including tree planting and details of proposed drainage) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 12 months of the local planning authority's approval, the use of the swimming pool and associated terrace areas shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. The hard landscaping details shall include details of existing features to be retained: proposed finished levels or contours; means of enclosure or other minor artefacts and structures, including lighting and functional services above and below ground including drainage associated with the pool structure. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities.
5. Unless within 5 months of the date of this decision a scheme details of all materials proposed for the swimming pool (including the lining, paving surround, fixtures etc) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 12 months of the local planning authority's approval, the use of the swimming pool and associated terrace areas shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

END OF SCHEDULE