

Appeal Decision

Site visit made on 6 August 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Appeal Ref: APP/M5450/W/23/3335829

14A Station Parade, Kenton Lane, Harrow, HA3 8SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr G Grealis against the Council of the London Borough of Harrow.
 - The application Ref is P/4409/21.
 - The development proposed is the construction of four storey building with basement level to provide retail unit at ground floor level; 1 x 1 bed at first floor and 1 x 2 bed at second and third floor; 4 car parking spaces, secure bin/cycle store and secure access.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr G Grealis against the Council of the London Borough of Harrow and is the subject of a separate decision.

Preliminary Matters and Main Issue

3. The appeal has been made against the failure of the Council to determine the application within the prescribed period. As such, it did not issue a decision notice or accompanying reasons for refusal. The Council has not provided a Statement of Case, nor identified the matters which it considers need to be addressed had they determined the application.
4. However, I have been provided with copies of relevant development plan policies and the evidence provided by the appellant includes copies of email correspondence between the appellant and the Council, which indicates that the effect of the proposed development on local biodiversity and protected species was the subject of ongoing dialogue between the parties, which also reflects the findings of a previous appeal decision¹ on the site.
5. I have drawn the main issue of this appeal from this information. Therefore, the main issue is the effect of the proposed development on biodiversity and protected species.

¹ Appeal Ref: APP/M5450/W/19/3226045

Reasons

6. The appeal site comprises a small parcel of vacant land, situated at the end of a row of properties, which form a small shopping parade on Station Parade, close to the Belmont Circle roundabout. The site, although vacant has some existing hardstanding and also comprises some scrub land. The immediate surrounding area is characterised by mixed uses, typically with ground floor retail uses and upper floor residential uses.
7. The appeal site is located adjacent to the Belmont Trail (the Rattler), a Site of (Local) Importance for Nature Conservation (SINC). It comprises a disused railway containing linear secondary woodland and other semi-natural habitats forming a wildlife corridor. The SINC contains a number of locally important features including, Semi-Improved Natural Grassland and Tall Herbs, Secondary Woodland and Scrub, Dead Wood, Ivy Clad Trees and Birds.
8. The proposed development would involve the erection of a four-storey building with a retail unit to ground floor and two residential units to upper floors (1 X 1 bed and 1 X 2 bed) with associated parking, refuse and cycle stores. The landscaping proposals would include a biodiverse green roof, rain garden, biodiverse lawn, a green wall, and tree planting, as well as replacement tree planting within the SINC.
9. The appeal is supported by a Preliminary Ecological Assessment (PEA)², Aboricultural Report³, Biodiversity Net Gain Assessment⁴ (BNG) and a Landscape and Ecological Management Plan⁵ (LEMP).

Effect of the Proposed Development on the SINC and Local Biodiversity

10. Policy G6 of the London Plan 2021 states that states that SINCS should be protected. It also states that where harm to a SINC is unavoidable, and where the benefits of the development proposal clearly outweigh the impacts on biodiversity, the following mitigation hierarchy should be applied to minimise development impacts:
 - avoid damaging the significant ecological features of the site;
 - minimise the overall spatial impact and mitigate it by improving the quality or management of the rest of the site
 - deliver off-site compensation of better biodiversity value.
11. The Aboricultural Report identifies a number of trees, located on adjoining third-party land which have canopies overhanging the appeal site. Some of these trees have been identified for removal, with further works including crown reduction and lifting of low canopies also required to other trees within the SINC that would be retained. These works would affect approximately 35m² of woodland and lead to the loss of biodiversity within the adjacent SINC.

² Prepared by Temple Group Ltd – dated 14 October 2022

³ Prepared by Tim Moya Associates – dated November 2022

⁴ Prepared by Temple Group Ltd – dated 14 October 2022

⁵ Prepared by Temple Group Ltd – dated July 2021.

12. Policy DM22 of the Harrow Development Management Policies Plan, adopted 2013 (DMP) states that the Council will require trees to be replaced where necessary following the completion of the development. The replacement trees would be planted on third party land, and there is little substantive evidence before me that an agreement has been reached with the third-party landowner. Therefore, whilst I accept that the appellant has put forward proposals to plant replacement trees, which if delivered would accord with the requirements of Policy DM22, I cannot be satisfied this can be adequately secured by condition or other suitable mechanism.
13. The proposed development would also be sited within the root protection area of a prominent mature Sycamore tree (T6). The Arboricultural Report states that as the proposed building would be located in the outer area of the RPA, but subject to the preparation of a detailed Arboricultural Method Statement (AMS) and adherence to its recommendations, there will be a low risk of harm to this tree. Therefore, based on the evidence before me and low level of risk of harm to the retained tree I am satisfied that this could be secured by imposition of a suitably worded planning condition.
14. Whilst I am satisfied that the retained trees could be adequately protected, there would nevertheless be adverse harm to the SINC through the removal of existing trees and loss of biodiversity. The PEA and Arboricultural Report indicate that this harm could be mitigated through planting of new trees within the SINC. However, for the reasons outlined above, I am not satisfied that there is a likelihood of an agreement being forthcoming to ensure the mitigation could be secured.
15. Therefore, I find that it has not been demonstrated that the proposal would not cause harm to local biodiversity and would thus be contrary to Policy G6 of the London Plan 2021 and Policies DM20 and DM21 of the DMP. These policies seek, amongst other things, to protect biodiversity by securing appropriate mitigation to offset any harm caused. It would also be contrary to Policy DM22 of the DMP, in so far as it has not been demonstrated that the trees proposed for removal will be replaced.
16. However, for the above reasons, I find that there would be no conflict with the Policy DM22 of DMP, in relation to the protection of retained trees, which states that the Council will require trees identified for retention to be protected during construction.

Protected Species

17. The PEA states that the trees immediately adjacent to appeal site have negligible potential for roosting bats. However, the building abutting the site has several features which could potentially support roosting bats. Furthermore, it also recognises that by virtue of the location of the site, immediately adjacent to the SINC, which connects the appeal site to green spaces in the wider area including private gardens and Stanmore Golf Course, that it could provide valuable commuting and foraging networks. As a result, the PEA states that as the proposed development is expected to impact the SINC and the building abutting the site, further surveys for bats are recommended.

18. The Conservation of Habitats and Species Regulations 2017 imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal. Bats are listed as an EPS under these regulations.
19. Natural England's (NE) standing advice indicates that survey work should be undertaken if a development proposal is likely to negatively affect bats or their roost, foraging or commuting habitats. Circular 06/2005⁶ also states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development is established before planning permission is granted. The Circular states that the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not convinced that any such circumstances exist in this case.
20. Therefore, I find that insufficient information has been provided to demonstrate that the proposed development would not have an unacceptable adverse effect on protected species. Furthermore, if protected species were affected, I cannot be certain as to what mitigation, if appropriate, may be required.
21. Thus, the proposal would conflict with Policies DM20 and DM21 of the DMP, which seek, amongst other things to ensure development will not have an adverse effect on local biodiversity and protected species. It would also conflict with Policy G6 of the London Plan 2021, which requires development proposals to manage impacts on biodiversity.
22. For the same reasons it would also fail to meet the statutory duty I have set out above.

Biodiversity Enhancement

23. As outlined above, the appeal is supported by BNG Assessment, which includes the provision of a number of biodiversity enhancements, including biodiverse green roof, rain garden, biodiverse lawn, a green wall, native species hedge and tree and shrub planting of value to wildlife within the appeal site and re-planting of woodland in the adjacent SINC which will be affected by the proposed development. Overall, it states that the proposals will achieve biodiversity net gain of approximately 10.55%.
24. The appeal is also supported by a LEMP which sets out how the biodiversity enhancements could be achieved on-site. I am satisfied that these on-site measures could be adequately secured by imposition of a suitably worded planning condition. However, as noted above, not all the measures proposed within the BNG Assessment and LEMP would be located within the appeal site. The BNG enhancements proposed also include off-site works, on third-party owned land.
25. The Planning Practice Guidance (PPG) states that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. The PPG states it may be possible to achieve a similar

⁶ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, dated 16 August 2005.

result using a condition worded in a negative form (a Grampian condition) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). However, it also states that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.

26. Therefore, taking into account the findings of the previous appeal decision, I have had regard to whether the use of a Grampian condition would be appropriate to overcome the harm which has been identified and to secure the biodiversity enhancements.

27. However, whilst I note the appellant's continuous attempts to secure an agreement to this approach, there is little substantive evidence that the third-party landowner is agreeable, which casts significant doubt as to whether the required measures could be delivered. Furthermore, I have not been presented with any alternative mechanism by which to secure these mitigation measures.

28. For these reasons, I find that without a suitable mechanism by which to secure off-site provision, the proposed development would fail to deliver the proposed biodiversity enhancements. It would thus be contrary to Policy DM20 of the DMP which states that opportunities to enhance locally important habitats and to support locally important species will be sought in accordance with the Harrow Biodiversity Action Plan.

Overall Conclusion

29. For the reasons set out above, I conclude that the appeal is not supported by sufficient evidence to demonstrate that absence of likely significant effects on biodiversity and protected species. Therefore, taking a precautionary approach, I conclude that it has not been demonstrated that the proposed development would avoid unacceptable harm to biodiversity and protected species.

30. Thus, the proposed development would be contrary to Policy G6 of the London Plan and Policies DM20, DM21 and DM22 of the DMP, which seek amongst other things to protect biodiversity by securing appropriate mitigation to offset any harm caused, and where possible to achieve enhancements to biodiversity.

Planning Balance & Conclusion

31. I have found that that the appeal is not supported by sufficient evidence to demonstrate that absence of likely significant effects on local biodiversity and protected species. These are planning harms which attract considerable weight.

32. There would be benefits arising from the proposed development including, the supply of a new retail unit, two residential flats and on-site biodiversity enhancements. However, by virtue of the scale of proposed development I can only attribute these benefits limited weight. Consequently, the benefits do not outweigh the harm I have found.

33. For the reasons given above, the proposed development would conflict with the development plan taken as a whole. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. Therefore, the appeal should be dismissed.

K Lancaster

INSPECTOR