



Appeal Decision

Site visit made on 30 August 2024

by O S Woodward MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2025

Appeal Ref: APP/R5510/W/24/3345878

Land At Corner of Fore Street and High Road, Eastcote HA5 2ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Watervale Property Ltd against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref is 73450/APP/2023/431.
 - The development proposed is the erection of a new nursery (childcare) building and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have amended the description of development to include reference to the works associated with the proposed building, which would include for example the proposed landscaping and car parking.
3. The appellant submitted revised and additional information, including with regard to flooding and air quality. The Council had the opportunity to comment on the revised and additional information through the appeal process. There therefore is no reason why accepting these documents should prejudice the Council's position, or that of any other party. I have therefore had regard to the revised documents throughout my Decision.
4. Because the appeal site lies in the Eastcote Village Conservation Area (the CA) and also because the proposed development would affect the settings of Grade II listed buildings, I have had special regard to Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. A revised National Planning Policy Framework (the Framework) was released in December 2024, and further amended in February 2025. I provided the main parties with the opportunity to comment and have based my Decision on the revised document.

Main Issues

6. The main issues are:
 - whether or not the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of national and local planning policy;
 - the effect of the proposed development on highway safety and the efficient operation of the highway network in the vicinity of the appeal site,

particularly with regard to the provision of on-site car parking and drop-off facilities;

- whether or not the proposed development would preserve or enhance the character or appearance of the area, including to the CA, with regard to the proposed building, landscaping and loss of trees;
- the effect of the proposed development on the special architectural or historic interest of the Grade II listed buildings, 'New Cottages'¹ and 'Flag Cottage'² in terms of how the buildings are experienced in their settings;
- the effect of the proposed development on biodiversity;
- the effect of the proposed development on air quality;
- the effect of the proposed development on the provision of open space; and,
- the effect of the proposed development on local infrastructure.

Reasons

Flooding

7. The appeal site is located near to the River Pinn. The majority of the site, including where the proposed building and virtually all of the proposed car park and outside space would be, is in Flood Zone (FZ) 2 (ie a medium probability of flooding from the river). The north west corner is in FZ3a (ie a high probability of flooding), which includes a small part of the proposed open space and potentially part of the proposed car parking and access point.
8. The appeal site is vacant land. The proposal is for a childcare nursery building and associated outside amenity space, parking and access. The existing site is defined as 'water-compatible development' in Annex 3 to the Framework. The proposed nursery building and associated works could not be split into their component parts because the outside space and car parking are directly associated with the nursery use of the proposed building. They must therefore be assessed as one development using the highest vulnerability category, which is 'more vulnerable' as set out in Annex 3.
9. Paragraph 174 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Paragraph 175 states that the sequential test should include access routes as they are a potentially vulnerable element. In other words, a sequential test is required for the proposal to ascertain whether or not there are reasonably available alternative sites at lower risk of flooding than FZ3a, ie in FZ1 (low risk) or FZ2. Caselaw³ has emphasised the need for realism and flexibility when considering reasonably available sites.
10. The appellant has submitted a Sequential Test, dated May 2024. The search area is the entire Borough, which is acceptable. The search is limited to sites with an area of 0.31 hectares (ha) to 0.47 ha. This is a range either side of the appeal site's area of 0.39 ha, and any site smaller would not be able to accommodate the development, and much larger would be excessively large. This is therefore a reasonable assumption. Extending existing nurseries is not a viable alternative because the appellant does not own such properties. The

¹ List entry number 1193970

² List entry number 1080225

³ Tesco Stores Limited v Dundee City Council, Ref: AC-2023-LON-002327

proposal is for a new nursery which needs to be on one site for practical purposes and to provide appropriate facilities. For example, moving children between different site's would likely create logistical and safety challenges. It is not, therefore, reasonable to expect the proposal to use more than one site.

11. The purpose of a sequential test is to establish if there are reasonably available alternative sites. An assessment of need is not necessary to undertake this assessment. Even if need were not found, this does not change the assessment of the suitability of alternative sites in flooding terms.
12. However, the search of planning permissions is insufficient. Only those sites with 'nursery' in the location are provided, rather than the description of development. It is therefore possible, and in fact likely, that the search missed potential planning permissions where 'nursery' was only used in the description of development and not the address. In addition, insufficient information has been provided of precisely how sites have been excluded where related to the overall risk of flooding. It is stated that a professional assessment has been undertaken, but specific details are not provided beyond a generic statement regarding surface water flooding needing to be severe.
13. Class E sites are assessed to a degree, using the Brownfield Land Register, SHLAA and Local Plan, as well as looking at buildings and sites for sale. I agree with this approach in principle. However, full details of the commercial land search are not provided to allow for assessment of whether or not the search parameters were appropriate. This is necessary, because Class E buildings have the potential to provide nursery accommodation. In general, a table is not provided of the long list of sites, which is required to enable assessment of whether or not the long list has been appropriately tested to arrive at the eight final sites which are examined in detail.
14. Therefore, the sequential test is not fit for purpose and I cannot, therefore, be confident that there are not reasonably available alternative sites at lower risk of flooding than the appeal site. The proposal therefore represents an unacceptable form of development having regard to its flood zone location and the provisions of national and local planning policy. It fails to comply with Policy DMEI9 of the Hillingdon Local Plan: Part 2 2020 (the Part 2 LP) and Policy EM6 of the Hillingdon Local Plan: Part 1 2012 (the Part 1 LP), which reflect the Framework. It also fails to comply with Policy SI12 of the London Plan 2021 (the LonPlan), which requires proposals to ensure that flood risk is minimised and mitigated.
15. I note that, as set out at Paragraph 177 of the Framework, the exception test only needs to be applied if the sequential test is passed. I do not, therefore, consider this matter further.

Highway safety and the efficient operation of the highway network

16. It is proposed to provide nine on-site car parking spaces. There would also be space off-street for pick-up and drop-off in the courtyard area where the car parking spaces are proposed. There would be a single access point to Fore Street.
17. The nursery would have a maximum of 64 children on any given day. There would be 25 staff. It would be open between 0800 and 1800 Monday to Friday, with staggered attendance times. The Transport Statement, dated January

2023 modelled 89 vehicle arrivals and departures over a typical day. The Appeal Note, dated May 2024 slightly amended this and provided more detail with a conclusion that there would be 42 vehicle arrivals and departures in the morning and the same in the afternoon. The maximum number of arrivals within one hour is expected to be 20 vehicles.

18. The space provided for pick-up and drop-off is relatively small and turning around within the space would have the potential for conflict with people parking in the adjacent spaces. It is possible that at peak times this would be, or at least would be perceived to be, busy, awkward and unsafe. It is therefore likely that at least some, and potentially many, of the parents dropping-off or picking-up their children would choose to do so on the surrounding roads.
19. The appeal site has a Public Transport Accessibility Level of 1b, which is very poor. With 25 staff and only nine spaces it is likely that many of the staff would drive to the site and that there would be some overflow parking on the surrounding streets.
20. The surrounding roads are not within a controlled parking zone. A parking survey has been undertaken. The survey was based on the Lambeth Methodology, a recognised and commonly used parking survey methodology. It was undertaken when the existing educational establishments in the area were open, considers all roads within 200m walk of the appeal site, and assessed 15 minute intervals. I view this as a robust methodology. The survey confirmed that there is capacity for on-street car parking on the surrounding roads, with 41 empty spaces during the am peak including 17 spaces along Fore Street, ie the nearest road to the access to the appeal site.
21. I acknowledge that the people dropping-off and picking-up would have young children. It is therefore likely that they would seek to park as close as possible to the proposed nursery. This would have the potential to create conflicts on the highway between cars blocking, or at least impeding, the highway and general traffic. However, people with young children are also likely to be highly conscious of safety. In addition, there is sufficient capacity, as set out above, to accommodate these road movements with only limited effect on the highway.
22. Therefore, whilst there would likely be some overspill parking by staff and temporary parking for pick-up and drop-off, it has been satisfactorily demonstrated that there is sufficient capacity to accommodate this on surrounding roads, and the proposed development would have an acceptable effect on highway safety and the efficient operation of the highway network in the vicinity of the appeal site.
23. It consequently complies with Policies DMT1 and DMT2 of the Part 2 LP, which require proposals to meet their transport needs, adequately address drop-off requirements, have no significant adverse transport impacts, and ensure safe and efficient vehicular access to the highway network is provided. It also complies with Policies T2 and T4 of the LonPlan, which require proposals to not increase road danger, promote healthy streets, and to mitigate adverse transport impacts where identified. The proposal complies with Paragraph 116 of the Framework because there would be no unacceptable impact on highway safety and the residual cumulative impacts on the road network would not be severe.

24. Policy T5 of the LonPlan is also listed on the decision notice, but this relates to cycle parking, which is not a disputed issue, and is not therefore relevant to this main issue.

Character and appearance, including trees and the conservation area

Significance

25. The character of the wider area, including the CA, is largely suburban. However, there are also important areas of open space, particularly along the River Pinn. These are a mixture of fairly rural in character and appearance and more landscaped areas. Even in the more landscaped areas, the trees are spaced naturally, rather than in regimented or overly organised groups or lines. These areas of open space positively contribute to the character and appearance of the CA and the area more generally by providing an attractive relief to the suburban streets.
26. The appeal site is a largely open piece of scrubland with fairly extensive natural landscaping from trees and shrubs, mostly to the borders of the site. The open space to the centre of the site is therefore not prominent from public or private views. However, it can be glimpsed through gaps in the vegetation and it is possible to perceive the general open nature of the appeal site. This partly open, partly semi-rural character is in-keeping with the wider area, as set out above, and therefore both the open part of the site and the existing trees and vegetation positively contribute to the significance of the CA and the character and appearance of the area more generally.

Assessment

27. The proposal would introduce a relatively large building and associated hard landscaping for access and car parking. It would also introduce formal, suburban landscaping through border hedges to High Road and also internally within the site. 10 trees and a group of shrubs would be removed to facilitate the development. These are all of relatively poor quality. It is also possible that there would be future pressure to prune more trees either side of the proposed vehicular access. However, the majority of the existing trees would be retained particularly to the important border areas. Any likely pruning would likely be relatively limited.
28. Nevertheless, the proposed building, landscaping and removal of existing vegetation would urbanise the site. I acknowledge that the building would largely be screened by both existing and proposed vegetation. However, it would still be visible in glimpsed views. In addition, the proposed introduction of formalised, suburban in appearance hedgerows, whilst providing screening of the building, would in themselves be harmful to the semi-rural nature of the character and appearance of the site and the area. The proposed green roof would help to soften the appearance of the building, but would only be partial mitigation, at best, and would also be a clearly urban feature.
29. In addition, the detailed architecture of the proposed building is unsuccessful. Although the proposed larch cladding could be controlled by condition to be of relatively high quality, the combination of the relative lack of glazing on the primary elevation, the entrance ramp, and the flat roof of the building create the impression of a temporary shed structure. Overall, the building would be

overly simple, with a design, scale and footprint that are incongruous in the suburban location, and the CA.

30. The Council has raised concern regarding proposed development within the root protection area (RPA) of several trees, including the category A T13 and category B T9. These are also protected by Tree Preservation Order No 7/1964. However, the proposed development in the RPAs of these trees is for hard landscaping, not the proposed building. A variety of techniques, such as no-dig construction, could be employed in these areas. This could be controlled by condition and, subject to such control, it is likely that the trees could be suitably protected. Nevertheless, this does not mitigate the harm that I have identified above.

Conclusion

31. As set out above, the proposal would fail to preserve or enhance the character or appearance of the area, including to the CA, with regard to the proposed building, landscaping and removal of existing vegetation. The proposed development would therefore fail to satisfy the requirements of the Act, and fails to comply with Policies HC1 and G7 of the LonPlan, Policies HE1 and BE1 of the LP Part 1, and Policies DMHB1, DMHB4, DMHB11 and DMHB14 of the LP Part 2, which require high quality design and the protection of the character and appearance of the area including with regard to trees, as well as reflecting the requirements of the Act with regard to conservation areas. I assess the level of harm to the CA to be less than substantial.

Listed buildings

32. Lying on the opposite side of High Road to the appeal site is the grade II Listed building, 'New Cottages' at 1-3 High Road. Also on the opposite side of High Road, slightly further to the north east, is the grade II Listed 'Flag Cottage'. There is existing residential development behind and to the sides of both buildings. The appeal site provides a relatively verdant backdrop from the vegetation and trees that border High Road.
33. New Cottages dates from 1879 but is of Elizabethan style. Flag Cottage is an 18th century cottage with 19th century and more modern alterations. Their significance is primarily in their intrinsic architectural quality and significant retained historic fabric. Both buildings retain functionally and visually linked gardens but the appeal site is divorced from them by High Road. It has never been functionally linked to the use of any of the listed cottages. The vegetation and trees within the appeal site do not positively contribute to their settings in this context.
34. The proposed building would largely be screened from the buildings by the retained and new vegetation along High Road, albeit more formal through the introduction of the hedgerow. The listed buildings are already surrounded to three sides by a suburban setting and, as set out above, the existing vegetation to the appeal site is a neutral contributor to its setting.
35. In this context, the proposal would preserve the special architectural and historic interest of the Grade II listed buildings, in terms of how they are experienced in their settings. It would thus satisfy the requirements of the Act, and would comply with Policy HE1 of the LP Part 1, Policies DMHB1, DMHB2

and DMHB11 of the LP Part 2, and Policy HC1 of the LonPlan, all of which reflect the statutory requirements of the Act.

Biodiversity

36. The proposal includes a green roof and new planting. Information has been submitted which demonstrates that, subject to control by condition, a biodiversity net gain (BNG) could be achieved. The application was submitted before 4 February 2024 and therefore benefits from transitional arrangements which means that 'a' BNG is all that is required, and not 10% BNG. This would therefore be acceptable.
37. However, the mitigation hierarchy as set out at Paragraph 193 of the Framework is to first avoid harm, then mitigate, then compensate. In this regard, the proposal would result in the loss of some trees and shrubs, and the pruning of further trees. This has the potential to harm biodiversity. In particular, the Ecological Appraisal, dated February 2023 finds that the proposal would result in the loss of trees with bat roost potential and recommends that further surveys are required. These have not been provided. This could not be controlled by condition as without sufficient detail of the baseline position it is not possible to understand if appropriate mitigation could be provided.
38. Overall, therefore, I am unable to assess the degree of any harm to bat habitat that the proposal would give rise to. It has not, therefore, been demonstrated that the proposal would not give rise to unacceptable harms to biodiversity, and it fails to comply with Policy DMHB14 of the LP Part 2, which requires proposals to retain or enhance biodiversity.

Air quality

39. The appeal site does not lie in the Hillingdon Air Quality Management Area or a focus area as defined by the Greater London Authority⁴. However, it does lie within the Eastcote Village Air Quality Focus Area⁵. Notwithstanding its location in a focus area, Policy EM8 of the LP requires that development not cause deterioration in local air quality, and Policy DMEI14 of the LP Part 2 and Policy SI1 of the LonPlan require that proposals be air quality neutral.
40. It is common ground with the main parties, and I agree, that the proposal would give rise to harm to air quality, for example through the generation of traffic for staff and visitors. It is also common ground that it is not possible to fully mitigate the effects of the proposal on air quality through on-site measures and that a payment is required to support the implementation of off-site air quality mitigation measures. I agree with this assessment.
41. The parties are in dispute, however, with regard to the amount of harm to air quality after mitigation measures are taken into account, and therefore regarding the amount of contribution required. However, importantly, the appellant accepts that a contribution is required but has not provided a completed and signed s106 Planning Agreement to secure such a payment. Therefore, even if I were to adopt the appellant's position with regard to the size of the mitigation payment, it is not part of the proposal in front of me.

⁴ See Figure 4 in the Hillingdon Air Quality Action Plan, 2019-2024 and Figure 9.1, LonPlan

⁵ See Figure 7 in the Hillingdon Air Quality Action Plan, 2019-2024

42. Overall, therefore, proposal would have a negative effect on air quality and suitable mitigation is not proposed, contrary to Policy EM8 of the LP Part 1, DMEI14 of the LP Part 2 and Policy SI1 of the LonPlan.

Open space

43. The appeal site is privately owned land. It is not accessible to the public. It is undeveloped but is overgrown scrubland, with some trees and hedgerows largely to the boundaries. There is a footpath to the north west boundary. It is largely screened from public viewpoints, even the footpath, by the trees and hedgerows. I acknowledge the whole of Eastcote Ward, within which the appeal site sits, is identified as being deficient in open space, as set out in the Open Space Strategy 2011 – 2026. However, the appeal site is not identified in the LP as a protected open space and nor is it in an identified area of Open Space Deficiency.
44. Private open space is included in both the LP and LonPlan definitions of open space. However, because the appeal site is private it does not facilitate active lifestyles nor provide any recreational value. Because it is largely screened from public viewpoints it provides relatively limited visual amenity. The proposed development would therefore have an acceptable effect on the provision of open space. It therefore complies with Policy G4 of the LonPlan, which states that proposals should not result in the loss of protected open space. It also complies with Policy EM4 of the Part 1 LP, which states that the Council will safeguard the network of open spaces that meet local community needs and facilitate active lifestyles.
45. Policy DMCI3 of the LP Part 2 protects private open space where there would be a significant individual or cumulative loss of open space/open aspect and/or where there would be a significant impact on amenity, character and appearance, biodiversity, ecological connectivity, cooling effect and/or flood alleviation effect.
46. In these regards, the site is relatively small and there would not be a significant individual or cumulative loss of open space. There would be no harm to living conditions. There is no dispute with regard to the effect of the proposal on flood alleviation, which is distinct from the sequential assessment. Because of the relatively small scale of the site, the loss of open space would not have a material effect on cooling. The retained vegetation and trees to the borders of the site would maintain ecological connectivity. Although I have identified some potential harm to biodiversity with regard to bats, it is unlikely that this would be significant, and an overall BNG could be secured. The harm to character and appearance that I have identified above would not be significant, because the building would be partially screened and much of the existing landscaping would be retained.
47. Overall, therefore, the proposal would have an acceptable effect on the provision of open space and would comply with the policies as set out above.

Local infrastructure

48. A Travel Plan could be secured by condition and does not require a s106 Planning Obligation. However, a contribution is also requested towards a monitoring fee. As set out above, a contribution would be required towards air quality and this would require monitoring. The monitoring contribution would

be linked to the amount of work required. I therefore view a contribution towards monitoring to be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. Without this payment being secured I cannot be sure that the Council could effectively monitor and therefore enforce the necessary contributions towards air quality.

49. Therefore, the proposal would not have an acceptable effect on local infrastructure and it fails to comply with Policy DMCI7 of the LP Part 2 and Policy DF1 of the LonPlan.

Planning Balance

50. A childcare facility would be of benefit to the local community and to wider society. In accordance with Paragraph 100 of the Framework, I place great weight on this positive factor. There would be short term economic benefits from construction and long term economic benefits from the creation of around 25 jobs and expenditure in the local community by the future workers. I place significant positive weight on these factors. I place limited positive weight on the likelihood that a BNG could be achieved, subject to control of the detail by condition, because only 'a' BNG would be secured.
51. That the proposal would preserve the special architectural and historic interest of the Grade II listed buildings, in terms of how they are experienced in their settings, weighs neutrally in the planning balance. As does the fact that the proposed development would have an acceptable effect on highway safety and the efficient operation of the highway network in the vicinity of the appeal site.
52. It has not been adequately demonstrated that there are not reasonably available alternative sites at a lower risk of flooding than the appeal site. I place significant negative weight on this factor. Although the harm to the CA would be less than substantial I nevertheless place considerable importance and weight on the harm. Although the harm to the overall character and appearance of the area would not be significant, there would still be moderate harm upon which I place significant negative weight because of the importance of high quality design to the creation of successful developments and places. I place moderate negative weight on the harm to air quality in the absence of suitable mitigation being secured. I also place moderate negative weight on the fact that it has not been demonstrated that there would not be unacceptable harm to biodiversity, in particular to bat habitat.
53. Overall, the harms that I have identified outweigh the benefits and the proposal fails to comply with the Development Plan, when considered as a whole. The Framework is an important material consideration. In this regard the proposal would conflict with several important areas of the Framework, in particular regarding flooding, biodiversity, air quality and design. With regard to heritage, as set out at Paragraph 215 of the Framework, where there is less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case, the public benefits include the provision of a childcare facility, economic benefits and BNG. The harm to the heritage asset would only be moderate. Whilst I apply considerable importance and weight to this harm, the relatively significant public benefits would outweigh this harm.
54. However, this consideration does not overcome the conflict with the other parts of the Framework, nor does it overcome the overall failure to comply with the

Development Plan that I have identified above. Therefore, the proposal fails to comply with the Development Plan when considered as a whole and there are no material considerations that indicate a decision should be made otherwise.

Conclusion

55. For the reasons above, the appeal is dismissed.

O S Woodward
INSPECTOR