



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:

Mr Ryszard Sokolowski

Proposal:

Erection of a two storey 3-bedroom house with amenity provisions and single off-street parking

Appeal Site:

107 Victoria Avenue, Uxbridge, UB10 9AJ

Our Ref:
Your Ref:

7828/APP/2022/3326
APP/R5510/W/23/3332290

1. Introduction

- 1.1 This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant planning permission for the erection of a two storey 3-bedroom house with amenity provisions and single off-street parking.
- 1.2 The LPA refused planning permission on 16 June 2023 for the following reason (as stated on the decision notice):
 - 1 The proposal does not make adequate provision for the protection and long-term retention of the adjacent off-site protected Oak tree which, due to its position and associated shading and dominance of the proposed house and garden, would be likely to result in requests to fell or reduce the tree, to the detriment of the amenity and character of the area. Furthermore, the layout for the front garden fails to provide for any soft landscaping. The proposal is thus contrary to Policies DMHB 11, DMHB 12, DMHB 18 and DMH 6 of the Hillingdon Local Plan Part Two (2020)
- 1.3 The LPA's case is set out in the Planning Officer's delegated report, which should be read in conjunction with this statement. A copy of the delegated report is provided at Appendix 1. Copies of relevant planning policies are included at Appendix 2.
- 1.4 This statement will not repeat the delegated report and will focus on addressing matters raised in the Appellant's statement of case.

2. LPA Comments on Appellant's Statement of Case

- 2.1 Part of the reason for refusal refers to the lack of adequate provision for the protection and long-term retention of the adjacent off-site protected Oak tree which is protected by Tree Preservation Order 698 dated 1 March 2012.
- 2.2 The Tree Survey appended to the Tree Survey, Arboricultural Implications Assessment (AIA/20374/A2, Indigo Surveys) identifies the subject Oak Tree as a Category A3 tree, referred to as T1 in the report. The Council agree with the categorisation of the oak tree which infers to its high value.
- 2.3 The tree protection plan appended to the Tree Survey, Arboricultural Implications Assessment (AIA/20374/A2, Indigo Surveys, April 2021) identifies a conflict with T1 as the footprint of the proposal expands into the RPA of T1. The annotation in the tree protection plan suggests solutions in the form of 1) suspended pile type foundation with manual installation under supervision; or 2) digging of a trial trench to establish the presence and quantity of roots, and if no significant roots are found then traditional foundations can be constructed manually.
- 2.4 The Tree Survey, Arboricultural Implications Assessment at Paragraph 4.2.1 suggests 'Proposed new house extension, is within RPA it is intended to install the foundations using manual installation using pile/pad type foundation with void underneath.

- 2.5 The Appellants Grounds of Appeal at Paragraph 5.10 suggest that the proposed dwelling would be built on pile/pad and beam foundations which reduces the impact on tree roots and also negates the need for excessive crown raising during the construction phase.
- 2.6 Both suggested methods of pile/pad or beam foundations would require extensive digging into the ground and would therefore disturb the Root Protection Area (RPA). In the first instance, it is unclear from the submission whether either method would work in practice given the purpose of the Ground Protection Area would be to ensure that the RPA is undisturbed. Given the significant overlap of the building footprint and the RPA it would appear highly likely that roots would be encountered, however the extent to which has not been established. It is therefore unclear what impact there would be on the RPA of the protected Oak tree.
- 2.7 The Tree Survey does not provide evidence of any preliminary root investigation to demonstrate that the development could be carried out using pile/pad and beam foundations. In addition, it has not been demonstrated that either form of foundations would be suitable for the erection of a two storey dwelling with regards to structural stability and complying with building regulations.
- 2.8 The Appellants Grounds of Appeal at Paragraph 5.29 suggests that 'Any future pruning or removal would first require planning consent and therefore, its retention is under council control'. Whilst works to the protected Oak tree would indeed require consent from the Local Planning Authority, it is the Council's view that a precautionary approach is warranted in this instance, given the lack of clarity, inaccuracies and inconsistencies of the submission.
- 2.9 Drawing number 107VA-201 indicates that the Oak tree would be separated by a short distance of 8metres from the rear elevation of the proposed dwelling.
- 2.10 From the tree survey it is noted that the Oak tree is 20metres in height and its canopy spread is of an irregular shape measuring 10metres to the east, 8.5metres to the west, 4metres to the north and 6metres to the south.
- 2.11 The proposed dwelling is located to the northwest of the tree. In the first instance, it is highlighted that on drawing number 107VA-201 the canopy spread is drawn as a circular shape with a 7.5metre width on all sides visible in the plan. This does not tally with the tree survey which measures the canopy to the west as being 8.5metres.
- 2.12 The protected Oak tree is therefore shown inaccurately on the submitted plan with a 1metre canopy reduction which makes the tree appear sited further away from the development than it may be. By extending the canopy spread by an additional 1metre to the west (to compensate for the inaccuracy), the canopy spread would in fact infringe upon the rear elevation of the proposed dwelling. This points to a very high probability of post-development pressures that may be difficult to resist should the appeal be allowed.
- 2.13 The tree survey however has the Oak tree plotted slightly further away from the dwelling. Notwithstanding, as the plans are inaccurately drawn and inconsistent with one another, it is considered that the submitted plans cannot be relied upon for planning purposes. The ambiguity in the submission should in itself weigh heavily

against the appeal succeeding given the high probability of plans being misinterpreted which would likely result in significant harm to the protected Oak tree.

- 2.14 The appeal submission does not provide any new information that wasn't considered during the determination of the application. It has not been suitably demonstrated that the development would not impact on health of the protected Oak tree. As discussed in the above, the development is likely to give rise to issues pertaining to the health of the protected Oak tree due to the proximity of the tree to the proposed building.
- 2.15 Further, a condition requiring a ground/root investigation to be carried out is not considered to pass the relevant tests and would put the protected tree in potential jeopardy given that the granting of planning permission would then likely necessitate works to the Oak tree that have not been considered as part of this appeal proposal. It is therefore considered that the appeal proposal fails to make adequate provision for the protection and long-term retention of the adjacent off-site protected Oak tree.
- 2.16 The second part of the reason for refusal refers to the shading and dominance of the proposed house and garden due to its proximity to the development. According to the Tree Survey, the protected Oak tree is 20metres in height and has a west to east canopy spread measuring 18.5metres.
- 2.17 Due to its juxtaposition along the south boundary, with its canopy infringing upon the rear elevation of the proposed dwelling and covering a large section of the rear garden, the tree is highly likely to result in undue shading between early morning and late afternoon which would result in a significant reduction in daylight/sunlight entering into the property. The rear garden area would also experience significant shading from the tree. This would harm the living conditions of future occupiers.
- 2.18 There has been no evidence submitted by the appellant in the form of a daylight/sunlight assessment to demonstrate that the Oak tree would not result in shading and dominance to the proposed dwelling and garden area. This points to a high probability of further post-development pressures to carry out works to the protected Oak tree that have not been assessed as part of this appeal proposal.
- 2.19 The final part of the reason for refusal refers to the lack of a proposed landscape scheme. The policy requirement under Policy DMHD 1 would necessitate 25% of the front garden to be soft landscaped. No further details have been provided with regards to any soft landscaping of the front garden area. It is noted that the appellants have suggested that this element could be covered by a condition.

3. Conclusion

- 3.1 For the reasons set out in the delegated report and this statement, the appeal proposal fails to make adequate provision for the protection and long-term retention of the adjacent off-site protected Oak tree which, due to its position and associated shading and dominance of the proposed house and garden, would be likely to result in requests to fell or reduce the tree, to the detriment of the amenity and character of the area. Furthermore, the layout for the front garden fails to provide for any soft landscaping. The proposal is thus contrary to Policies DMHB 11, DMHB 12, DMHB

18 and DMH 6 of the Hillingdon Local Plan Part Two (2020).

3.2 The Inspector is therefore respectfully requested to dismiss the appeal.

3.3 In the event that the Inspector considers the appeal should be allowed, and without prejudice to the Council's case, a list of recommended planning conditions is included at Appendix 3.

Appendices

Appendix 1 – Planning Officer's Delegated Report (already provided)

Appendix 2 – Copies of Relevant Planning Policies (already provided)

Appendix 3 – The LPA's Recommended Conditions (appended below)

Appendix 3 – The LPA’s Recommended Conditions

For the reasons set out in this appeal statement, the decision notice and the officers’ delegated report, the Inspector is respectfully requested to dismiss the appeal. In the event that the Inspector is minded to allow the appeal, the Council ask that the following conditions be considered for inclusion on any planning permission:

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990.

2 The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: 107VA-SP-100, 107VA-101, 107SF-VA-200, 107VA-201, 107VA-203, 107VA-GR-204, 107VA-205, 107VA-206, 107VA-207, and shall thereafter be retained/maintained for as long as the development remains in existence.

REASON

To ensure the development complies with the provisions of the Hillingdon Local Plan Part 1 (2012), Part 2(2020) and the London Plan (2021).

3 Notwithstanding the approved plans, no development shall take place until details of all materials and external surfaces, including details of windows and doors have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details and be retained as such. Details should include information relating to make, product/type, colour and photographs/images.

REASON

To ensure that the development presents a satisfactory appearance in accordance with Policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020).

4 Before the development is commenced, details of boundary fencing or other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The approved means of enclosure shall be erected before the development is occupied and shall be permanently retained thereafter.

REASON

To safeguard privacy to adjoining properties in accordance with Policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020).

5 Notwithstanding the approved plans, no development shall take place until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include: -

1. Details of Soft Landscaping

1.a Planting plans (at not less than a scale of 1:100),

1.b Written specification of planting and cultivation works to be undertaken,

- 1.c Schedule of plants giving species (including pollution absorbing species), plant sizes, and proposed numbers/densities where appropriate
- 1.d Soft landscaping of at least 25% of the front garden

2. Details of Hard Landscaping

- 2.a Refuse Storage
- 2.b Provision of 2 secure and accessible cycle spaces
- 2.c Means of enclosure/boundary treatments
- 2.d Car Parking Layouts (including demonstration of 1'active' electrical charging points)
- 2.e Hard Surfacing Materials

3. Details of Landscape Maintenance

- 3.a Landscape Maintenance Schedule for a minimum period of 5 years.
- 3.b Proposals for the replacement of any tree, shrub, or area of surfing/seeding within the landscaping scheme which dies or in the opinion of the Local Planning Authority becomes seriously damaged or diseased.

4. Schedule for Implementation

Thereafter the development shall be carried out and maintained in full accordance with the approved details.

REASON

To ensure that the proposed development will preserve and enhance the visual amenities of the locality and provide adequate facilities in compliance with Policies DMHB 11, DMHB 12, DMHB 14, DMHD 1, DMEI 1, DMT 1, DMT 2 and DMT 6 of the Hillingdon Local Plan Part 2 (2020) and Policy G5 of the London Plan (2021).

6 Trees, hedges and shrubs shown to be retained on the approved plan shall not be damaged, uprooted, felled, lopped or topped without the prior written consent of the Local Planning Authority. If any retained tree, hedge or shrub is removed or severely damaged during construction, or is found to be seriously diseased or dying another tree, hedge or shrub shall be planted at the same place or, if planting in the same place would leave the new tree, hedge or shrub susceptible to disease, then the planting should be in a position to be first agreed in writing with the Local Planning Authority and shall be of a size and species to be agreed in writing by the Local Planning Authority and shall be planted in the first planting season following the completion of the development or the occupation of the buildings, whichever is the earlier. Where damage is less severe, a schedule of remedial works necessary to ameliorate the effect of damage by tree surgery, feeding or groundwork shall be agreed in writing with the Local Planning Authority. New planting should comply with BS 3936 (1992) 'Nursery Stock, Part 1, Specification for Trees and Shrubs'. Remedial work should be carried out to BS 3998:2010 'Tree work - Recommendations' and BS 4428 (1989) 'Code of Practice for General Landscape Operations (Excluding Hard Surfaces)'. The agreed work shall be completed in the first planting season following the completion of the development or the occupation of the buildings, whichever is the earlier.

REASON

To ensure that the trees and other vegetation continue to make a valuable contribution to the amenity of the area in accordance with Policy DMHB 14 of the Hillingdon Local Plan Part 2 (2020) and to comply with Section 197 of the Town and Country Planning Act 1990.

7 The development hereby permitted, shall be carried out in strict accordance with the Method Statement and Tree Protection Measures detailed in the approved Tree Survey, Arboricultural Implications Assessment (AIA/20374/A2, Indigo Surveys, April 2021). The tree protection measures for the site will be monitored and supervised by an Arboricultural consultant at key stages of the development and records of the site inspections/meetings shall be submitted to the Local Planning Authority.

REASON

To ensure that retained trees and other vegetation will not be damaged during construction work and to ensure that the development conforms with Policies DMHB 11 and DMHB 14 of the Hillingdon Local Plan Part 2 (2020).

8 Prior to any works on site above damp proof course level, details of step free access via all points of entry and exit shall be submitted to, and approved in writing, by the Local Planning Authority. Such provision shall remain in place for the life of the building.

REASON

To ensure housing of an inclusive design is achieved and maintained in accordance with Policies D5 and D7 of the London Plan (2021).

9 The dwelling hereby approved shall accord with the requirements of Policy D7 of the London Plan and shall not be occupied until certification of compliance with the technical specifications for an M4(2) dwelling, as set out in Approved Document M to the Building Regulations (2010) 2015, has been submitted to, and approved in writing, by the Local Planning Authority. All such provisions must remain in place for the life of the building.

REASON

To not only allow the Building Control body to require the development to comply with the optional Building Regulations standards, but to also ensure the appropriate quantity and standard of accessible and adaptable housing is constructed and maintained in accordance with Policy D7 of the London Plan (2021).

10 Prior to development commencing, the applicant shall submit a construction management plan to the Local Planning Authority for its approval. The plan shall detail:

- (i) The phasing of development works.
- (ii) The hours during which development works will occur
- (iii) Measures to prevent mud and dirt tracking onto footways and adjoining roads (including wheel washing facilities).
- (iv) Traffic management and access arrangements (vehicular and pedestrian) and parking provisions for contractors during the development process (including measures to reduce the numbers of construction vehicles accessing the site during peak hours).
- (v) a dust risk assessment, including means to monitor and control dust, noise and vibrations, following the published guidance by The Institute of Air Quality Management (IAQM) on how to assess impacts of emissions of dust from demolition and construction sites. This must demonstrate compliance (drawn up accordance with) the GLA Control of Dust and Emissions from Construction and Demolition SPG (or any successor document).
- (vi) The storage of demolition/construction materials on site.

The approved details shall be implemented and maintained throughout the duration of the construction process.

REASON

To safeguard the amenity of surrounding areas in accordance with Policy BE1 of the Hillingdon Local Plan Part 1 (2012) and Policy DMHB 11 of the Hillingdon Local Plan Part 2: Development Management Policies (2020).

11 The new crossing should conform to the council's 'Domestic Vehicle Footway Crossover' (DVFC) 2022 Policy i.e. it should measure a maximum total of 7.4m in width at the back of footway and 8.5m at the edge of kerb.

REASON

In the interest of highway safety in compliance with Policies DMT 1 and DMT 2 of the Hillingdon Local Plan Part 2 (2020).

INFORMATIVES

1 It should also be noted that the new crossing would need to be constructed to the appropriate council standard executed under S184 of the Highways Act 1980 (or suitable alternative arrangement) at the applicant's/developer's expense.

2 Under the terms of the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended), this development is liable to pay the London Borough of Hillingdon Community Infrastructure Levy (CIL) and the Mayor of London's Community Infrastructure Levy (CIL). This will be calculated in accordance with the London Borough of Hillingdon CIL Charging Schedule 2014 and the Mayor of London's CIL Charging Schedule 2012. Before commencement of works the development parties must notify the London Borough of Hillingdon of the commencement date for the construction works (by submitting a Commencement Notice) and assume liability to pay CIL (by submitting an Assumption of Liability Notice) to the Council at planning@hillingsdon.gov.uk. The Council will then issue a Demand Notice setting out the date and the amount of CIL that is payable. Failure to submit a valid Assumption of Liability Notice and Commencement Notice prior to commencement of the development may result in surcharges being imposed. The above forms can be found on the planning portal at: www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

Pre-Commencement Conditions: These conditions are important from a CIL liability perspective as a scheme will not become CIL liable until all of the pre-commencement conditions have been discharged/complied with.