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## Appeal Decision

Site visit made on 16 January 2024

**by D J Barnes MBA BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 01.02.2024**

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**Appeal Ref: APP/R5510/W/23/3324873**

**37 The Drive, Ickenham, Uxbridge UB10 8AF**

- 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 Stephen Albert Finbar O'Leary against the decision of the Council of the London Borough of Hillingdon.
  - The application Ref 24043/APP/2022/3604, dated 25 November 2022, was refused by notice dated 24 January 2023.
  - The development proposed is the construction of two five bedroom houses.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The amendments of the National Planning Policy Framework were published in December 2023. These amendments do not alter the basis upon which this appeal has been assessed.
3. The Council's reasons for refusal include reference to the lack of information associated about whether the proposed development would be constructed to the standards set out in M4(2) of the approved Document M to the Building Regulations. As part of the appeal, the appellant has provided amended drawings for the proposed dwellings demonstrating that the Council's concerns about accessibility standards could be addressed. Although the Council has not commented on these amended drawings, they do not raise any wider considerations which would affect third parties. If this appeal succeeds then a suitable condition could be imposed to secure the construction of the proposed dwellings in accordance with the amended drawings.

### Main Issues

4. It is considered that the main issues are the effects of the proposed development on (a) the character and appearance of the surrounding area; (b) the living conditions of the occupiers of 35A The Drive; (c) protected species and (d) surface water drainage.

### Reasons

#### *Character and Appearance*

5. The appeal site comprises part of the rear garden of a detached property located on a large plot within a spacious and verdant residential area. The surrounding area comprise detached dwellings of varying designs and heights

- with their front elevations being set back from the road to the rear of landscaped gardens that are also used for parking.
6. An exception to this pattern of development is 35A The Drive which is sited adjacent to the boundary fence of the appeal property's rear garden and, as such, is set well back from the road. From what could be observed from the site visit, this is the only dwelling set well away from the road and does not make a contribution to the street scene. No. 39 is a larger property set back a similar distance from the road as No. 35A but its design, front garden and orientation respect the general character and appearance of the streetscene.
  7. The proposed development includes the erection of 2 detached dwellings with the rear garden of the property. Policy DMH 6 of the Hillingdon Local Plan (HLP) includes a presumption against the loss of gardens due to the need to, amongst other matters, maintain character. This aim is echoed in HLP Policy BE1 whereby inappropriate development in gardens should not erode the character of suburban areas.
  8. By reason of siting, the appeal scheme would fail to respect the predominant character and pattern of housing development within the surrounding area. Indeed, the proposed dwellings would be sited further rearward than Nos. 35A and 39. In addition, because of the number of proposed dwellings and associated area of hardstanding the appeal scheme would introduce a more intensive form of residential development within the curtilage of the property. This would also fail to reflect the spacious and verdant character and appearance of the surrounding suburban area.
  9. Adjacent to the site is Uxbridge Golf Club which is within the Green Belt and is a Nature Conservation Site. Although the proposed dwellings would be visible from the from the Golf Course, because of their siting there would only be limited harm to the visual amenity of the Green Belt which alone would not be a reason for this appeal to fail.
  10. Reference has been made by the appellant to a previous scheme approved on 10 June 2020 which involved the demolition of the property and the erection of a 3-storey building, with a basement level, containing 8 flats (Ref 24043/APP/2020/879). It appears from the evidence available that the approved scheme may not have been implemented prior to the expiry of the consent. However, the approved scheme is still capable of being a material consideration in the assessment of this appeal.
  11. By reason of siting and scale, the appellant claims that the approved scheme would potentially have a greater effect on the visual amenity of the Green Belt. The evidence provided does not enable a comparison to be made concerning the overall extent of built forms of development. However, it appears from the available drawings that the combined footprints of the proposed and retained dwellings would be greater than the approved scheme. Further, the siting of the approved apartment building between Nos. 35A and 39, with its front elevation and garden facing towards the road, would better respect the character and appearance of the surrounding area when compared to the proposed development. For these reasons, only limited weight is given to the approved scheme in the determination of this appeal.
  12. On this issue, it is concluded that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area

and, as such, it would conflict with HLP Policies BE1, DMH 6 and DMHB 11 concerning development of garden land and failing to be of a high quality design which would harmonise with the local context. HLP Policy DMHB 12 is not considered to be of direct relevance to this issue because it concerns streets and public realm.

#### *Living Conditions*

13. Although there is a timber boundary fence, there are openings within the flank wall of No. 35A which would face towards a vehicle manoeuvring area and parking spaces of the proposed dwelling referred to as Plot A. From what could be observed, at least one of these openings is a window serving a habitable room. At the rear of No. 35A there is a patio window with an elevated seating area.
14. The proposed dwelling which would be erected on Plot A would be sited close to the shared boundary with No. 35A. However, the outlook from the flank windows of No. 35A would predominantly be towards the manoeuvring and parking area which would have an open character. The side elevation of Plot A would be sited sufficiently distant from the shared boundary to avoid an unacceptable sense of enclosure or loss of outlook for the occupiers of No. 35A, including when sitting on the elevated seating area.
15. Within the side elevation of the dwelling proposed to be erected on Plot A would be 2 openings at first floor level. These windows are not proposed to serve habitable rooms and could be the subject of a suitable condition to require the erection of obscure glazing and to limit how far any window could be opened. The outlook from the windows within the front elevation of this proposed dwelling would be oblique rather than directly looking into the openings within the flank wall of No. 35A. Accordingly, actual or perceived overlooking of No. 35A would not be a reason for this appeal to fail.
16. As identified by the appellant, during the morning site visit, which occurred during the peak period, background traffic noise from the M40 motorway/A40 could be heard. However, the proximity of the windows within the flank wall of No. 35A to the proposed manoeuvring and parking area would be a potential source of noise and disturbance for the occupiers of this neighbouring property. There would be vehicle doors closing, engines starting and the general manoeuvring of vehicles, including headlights at night time. The number of vehicles associated with the proposed development may be low but such noise and disturbance would be introduced into a back garden environment and could occur both during the daytime and night time.
17. Although the effects on outlook, sense of enclosure and privacy would not be reasons for this appeal to fail, the proximity of the parking and manoeuvring area to the openings within the flank wall of No. 35A would have an adverse impact in terms of noise and disturbance to the occupiers of this neighbouring property. Accordingly, it is concluded that the proposed development would cause unacceptable harm to the living conditions of the occupiers of 35A The Drive and, as such, it would conflict with HLP Policies BE1 and DMH 6 which refer to proposals not adversely impacting on neighbouring residential amenity, including in terms of noise and light. There does not appear to be a HLP Policy DMHD 11 referred to in the second reason for refusal and HLP Policy DMHB 1 is concerned with heritage matters and no such assets have been identified.

### *Ecological Interests*

18. The appellant has provided a Preliminary Ecological Appraisal and Preliminary Roost Assessment for the proposed development. Although the Appraisal does not raise concerns associated with the erection of the proposed dwellings, the Assessment does identify that further bat activity surveys are required for the buildings and the gateway arch proposed to be demolished to provide access.
19. Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System* refers to it being essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before planning permission is granted to establish whether the development, if carried out, would be likely to result in harm to the species or its habitat. Paragraph 99 of Circular 06/2005 also advises against using planning conditions to require surveys, except in exceptional circumstances. The Circular does not provide any clarification regarding exceptional circumstances.
20. Although no other ecological concerns are identified in the Appraisal and there is scope for biodiversity enhancement, the absence of the required bat surveys means that the necessary information to demonstrate that no harm would be caused to a protected species is unavailable. For this reason, it is concluded that the proposed development would cause harm to a protected species and, as such, it would be contrary to HLP Policy DMEI 7. This policy refers to proposals that result in significant harm to biodiversity which cannot be avoided, mitigated, or, as a last resort, compensated for, will normally be refused. HLP Policies BE1, DMH 6 and DMHB 14 do not specifically address protected species and Policy G6 of the London Plan (LP) is primarily concerned with designated sites.

### *Surface Water Drainage*

21. The approved scheme included conditions to address surface water drainage but it is unclear whether this proposal was assessed against the current development plan policies. These policies include HLP Policy DMEI 10 whereby applications for all new build developments are required to include a drainage assessment demonstrating that appropriate sustainable drainage systems have been incorporated in accordance with the approach set out in LP Policy SI 13. No such information has been provided. In the absence of the relevant information, it is concluded that the proposed development would not provide for appropriate surface water drainage and, as such, it would conflict with HLP Policy DMEI 10 and LP Policy SI 13.
22. Accordingly, for the reasons given it is concluded that this appeal should be dismissed.

*D J Barnes*

INSPECTOR