

ATLAS

PLANNING GROUP

PLANNING STATEMENT

251 Long Lane, Uxbridge, UB10 9JP

September 2021

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INTRODUCTION

- 1.1 This Statement has been produced by Atlas Planning Group in support of a full planning application relating to the subdivision of the plot at 251 Long Lane and the erection of a new dwelling, together with access, landscaping and associated works.
- 1.2 This Statement will assess the development proposal in the context of national and local planning policy, found within the National Planning Policy Framework, London Plan and Hillingdon's Development Plan documents.

SITE DESCRIPTION

- 2.1 The application site comprises the existing residential curtilage of 251 Long Lane, a semi-detached dwelling. The front of the existing house has a vehicular access from Long Lane and driveway parking.



Figure 1: Existing dwelling, access and parking via Long Lane

- 2.2 To the rear of the house there is a long garden with an existing garage which benefits from an access directly via Parkway.

- 2.3 The surrounding area is residential and in terms of designations, the site is fully within Flood Zone 1 where there is the lowest risk of flooding. The site is not listed or within a Conservation Area (or an Area of Special Local Character), nor are there any nearby listed buildings.



Figure 2: Existing view of the Parkway access to the site.

PLANNING HISTORY

- 3.1 According to Hillingdon's online records the site has no available planning history.

THE PROPOSAL

- 4.1 The description of development can be summarised as follows:

"Subdivision of plot and erection of 1 x 2 bed dwelling (Use Class C3), landscaping, and associated works".

- 4.2 The dwelling will have a proposed GIA of 106.93sq. m., this includes the single integrated garage. The dwelling will comprise of red buff brick, a tiled roof and powder coated aluminium windows and doors. The single storey flat roof area to the rear will include a green roof. PV panels are also proposed to the southern roof pitch.
- 4.3 A dedicated bin storage area is to the side of the house. The garage can also accommodate storage space for 2 bicycles as shown on the proposed ground floor plan.



Figure 3: Visualisation of the front elevation

PLANNING CONSIDERATIONS

- 5.1 The London Borough of Hillingdon's Local Plan (Part 1 and Part 2) are the Council's primary Development Plan Document, and the starting point for determining planning decisions within the Borough, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 5.2 The National Planning Policy Framework (NPPF) (2021) provides a national tier of policy and decision-making guidance for the planning system and forms a material consideration for all planning decisions. The recently adopted London Plan (2021) is also of relevance.
- 5.3 The policies and guidance contained within the statutory DPD and all other relevant material considerations have been consulted to ensure that the proposal is an appropriate form of development for the application site.

PRINCIPLE OF DEVELOPMENT

- 5.4 The application site lies within a built-up residential area and comprises part of an existing garden.

5.5 Policy H2 'Small Sites' of the London Plan (2021) states how Boroughs should pro-actively support well-designed new homes on small sites (below 0.25 ha) to significantly increase the contribution of small sites to meeting London's housing needs.

5.6 Policy DMH6: 'Garden and Backland Development' states, "there is a presumption against the loss of gardens due to the need to maintain local character, amenity space and biodiversity. In exceptional cases a limited scale of backland development may be acceptable, subject to the following criteria:

- i) Neighbouring residential amenity and privacy of existing homes and gardens must be maintained and unacceptable light spillage avoided;
- ii) Vehicular access or car parking should not have an adverse impact on neighbours in terms of noise or light. Access roads between dwellings and unnecessarily long access roads will not normally be acceptable;
- iii) Development on backland sites must be more intimate in mass and scale and lower than frontage properties; and
- iv) Features such as trees, shrubs and wildlife habitat must be retained or re-provided".

5.7 Although the site does relate to part of an existing garden, it is not backland development given it adjoins and will directly front a highway (Parkway). Although the existing house will lose part of their garden, given the proposed development will maintain and enhance local character (as demonstrated in subsequent sections of this Statement), maintains an acceptable level of amenity space for the existing dwelling (circa 70 sq.m) and will not adversely impact biodiversity, an exception is justifiable in this case.



Figure 4: Location Plan extract showing site context and Parkway frontage

- 5.8 Indeed, there are several appeals that confirm the wording of the Policy suggests exceptions to the general presumption against back land/garden land development is possible. Firstly, 5-6 Firs Walk¹ (Appendix A) concerned an allowed appeal for 3 dwellings. At paragraph 18 of the Inspector's decision it states,

*"In conclusion, the proposal would conflict with the presumption against the loss of gardens under DMP Policy DMH 6 but would comply with above referenced DMP and LP policies. However, the explanatory text to the DMP Policy DMH 6 states in general, that development will not be permitted on garden **land which indicates an exception can be made in some circumstances under the plan**. There would be no conflict with DMP Policy DMH 6's need for development to maintain local character, amenity space and biodiversity. For all these reasons, the loss of garden land would be acceptable and accordingly, the proposal's compliance with the identified DMP DMHB and LP Policies would outweigh any conflict with DMP Policy DMH 6". (Our emphasis added in bold)*

- 5.9 In a further appeal in Northwood², which allowed the development of two houses, paragraph 37 of the Inspector's decision states,

*"Policy DMH6 of the LPP2 does not define what constitutes an 'exceptional case' where a limited scale of backland development may be acceptable, nor does the supporting text direct the reader to a definition for this term anywhere else within the development plan. At the Hearing, **the Council explained that the term was intentionally undefined to allow the decision maker to use their planning judgement to determine whether or not a proposal represented an 'exceptional case'**. Consequently, this is a matter to be determined on a case-by-case basis". (Our emphasis added in bold).*

- 5.10 It is therefore considered that although the site relates to existing garden land, it is not backland and benefits from a direct access fronting Parkway. The development is therefore judged to represent an exceptional case.

- 5.11 Accordingly, it then must be assessed as to whether the proposal meets criteria i-iv of Policy DMH6. An assessment against the 4 criteria is summarised in the table below, although some matters are discussed in more detail at subsequent sections of this Statement:

¹ Appeal Ref: APP/R5510/W/20/3253781

² Appeal Ref: APP/R5510/W/20/3244256

Criteria	Assessment
i) <i>Neighbouring residential amenity and privacy of existing homes and gardens must be maintained and unacceptable light spillage avoided;</i>	Residential amenity will be maintained and further detail on this is set at later in this Statement.
ii) <i>Vehicular access or car parking should not have an adverse impact on neighbours in terms of noise or light. Access roads between dwellings and unnecessarily long access roads will not normally be acceptable;</i>	The access is existing and parking will be inside a garage, which is the same arrangement at the rear of the site.
iii) <i>Development on backland sites must be more intimate in mass and scale and lower than frontage properties; and</i>	As shown by the proposed section, the proposed house is shorter than the existing house, however as mentioned, the site is not backland and will adjoin other properties on Parkway that are a similar arrangement.
iv) <i>Features such as trees, shrubs and wildlife habitat must be retained or re-provided”.</i>	A hedgerow is proposed adjacent to the garage.

5.12 Overall, the above assessment has demonstrated why the development is an exception to Policy DMH6 and has further demonstrated acceptability against the 4 criteria where garden or backland development could be acceptable.

5.13 As the principle of a single dwelling in this location is acceptable, the remainder of this Statement will consider the following:

- Impact upon the character of the area;
- Impact upon residential amenity; and
- Highways.

CHARACTER AND APPEARANCE OF THE AREA

5.14 Paragraph 126 of the NPPF, which states, *“the creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*

5.15 The character of the area (Parkway) is residential with varying architectural styles and sizes of dwellings as shown by the photos below:



Figure 5: Adjoining properties on Parkway



Figure 6: Properties on the opposite side of Parkway



Figure 7: Existing view towards the site

5.16 It is clear from the surrounding area that the adjoining properties to the south follow the same pattern of development to that of the proposed dwelling, whereby their gardens adjoin the gardens of other existing properties fronting Long Lane.

5.17 As shown in the street elevation comparison below, the additional dwelling integrates well into the street scene and is the same height and general massing of the adjoining properties.



Figure 8: Existing and proposed street elevation plan extract

5.18 The proposed materials are buff brick and a clay tile roof. The windows and doors will be PPC aluminium.

5.19 As shown by the proposed photomontage shows below, the dwelling would appear a natural addition to the streetscene.



Figure 9: proposed photomontage



Figure 11: DAS Extract showing view along Parkway



Figure 10: Photomontage showing the proposed streetscene

5.20 Overall, the proposed development is of high-quality design and will be a modern but sympathetic addition to the area. Indeed, the existing site comprises a low quality and dilapidated garage which detracts from the appearance of the street when compared to the large dwellings in the immediate vicinity.

RESIDENTIAL AMENITY

5.21 Paragraph 119 of the NPPF states that planning decisions should promote an effective use of land in meeting the need for homes, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

5.22 Policy D6 '*Housing quality and standards*' requires housing development to be of high-quality design and provide adequately sized rooms with comfortable and functional layouts.

5.23 The size of the unit is 2 bed 4p. the minimum standard is therefore 79sq. m for a 2-storey dwelling. The proposal provides 86.51 sq. m (excluding the garage), thereby exceeding the required standard.

Table 3.1 - Minimum internal space standards for new dwellings^a

Type of dwelling		Minimum gross internal floor areas* and storage (square metres)			
Number of bedrooms (b)	Number of bed spaces (persons(p))	1 storey dwellings	2 storey dwellings	3 storey dwellings	Built-in storage
1b	1p	39 (37) *	N/A	N/A	1
	2p	50	58	N/A	1.5
2b	3p	61	70	N/A	2
	4p	70	79	N/A	2
3b	4p	74	84	90	2.5
	5p	86	93	99	2.5
	6p	95	102	108	2.5
	7p	100	107	113	2

Figure 12: Minimum space standards extract from the London Plan

5.24 Policy DMHB 18 of the LPP2: '*Private Outdoor Amenity Space*' stipulates all new residential development must provide good quality and useable outdoor private amenity space in accordance with the standards. For 2 and 3 bedroom dwellings, the standard is 60 sq. m. The proposed garden for the existing dwelling will be circa 70sqm (which is policy compliant as the existing dwelling is 3 bedrooms).

- 5.25 For the proposed new dwelling the outdoor space amounts to circa 47sq.m. which falls short of the required standard. However, owing to the proximity to Hillingdon Court Park and the quality of outdoor space being provided, it is considered to be adequate in the overall planning balance. It will also be landscaped and usable, including a grassed area and patio area.
- 5.26 Policy 18 also requires the design, materials and height of any front boundary to be in keeping with the character of the area to ensure harmonisation with the existing street scene. Accordingly, the front boundary will include a hedgerow adjacent to the garage door.
- 5.27 The LPP2 stipulates a minimum separation distance of 21m. This is more stringent than the Mayoral Housing SPG which stipulates 18-21m is acceptable.
- 5.28 The proposed development has a separation distance of 19m at first floor level, although one of the two windows facing east is a bathroom so would include obscured glazing (the Applicant will accept an appropriately worded condition to ensure this is provided). The other window serves a bedroom, which is considered acceptable given its use will predominantly be during the night.
- 5.29 Although it is less, at 15m on the ground floor, owing to the boundary vegetation and fencing, this would not give rise to unacceptable amenity impacts (such as overlooking or loss of privacy) to either the existing dwelling or the proposed.

HIGHWAYS

- 5.30 Paragraph 111 of the NPPF states that development should only be prevented or resisted if the residual or cumulative impacts on the highway would be severe.
- 5.31 The LPP2 Appendix C sets out the car parking requirements for new developments. For a 2-bed unit, 1 car parking space is required. Accordingly, this requirement is provided within the garage. The garage also provides space for secure cycle storage (for two bicycles).
- 5.32 Taking the above into account, the proposals are considered acceptable with regard to highway safety.

CONCLUSIONS

- 6.1 The proposal seeks full planning permission for the subdivision of the plot and the erection of a new 2 bed dwelling, together with associated access, landscaping and associated works.

6.2 The proposal has been carefully designed to ensure that:

- ✓ It complies with local and national planning policies;
- ✓ It will respect the existing character and appearance of the area;
- ✓ It will not cause harm to the residential amenity of neighbouring properties;
- ✓ It provides safe access and sufficient on-site parking for occupiers of the property.

6.3 We therefore commend the proposals to you and respectfully request that the application is approved without delay.

A

Appeal Decision

Site visit made on 1 December 2020

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st February 2021

Appeal Ref: APP/R5510/W/20/3253781

5-6 Firs Walk, Northwood HA6 2BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 J Gavacan (Gavacan Homes) against the Council of the London Borough of Hillingdon.
 - The application Ref 30837/APP/2019/3096, is dated 18 September 2019.
 - The development proposed is the demolition of a property at 5 Firs Walk and amendments to the plot boundary of 6 Firs Walk. The erection of 3 detached 4 bedroom dwellings with parking and associated external works/landscaping. 2 houses to be accessed off Foxdell. 1 house to be accessed off Firs Walk.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of a property at 5 Firs Walk and amendments to the plot boundary of 6 Firs Walk. The erection of 3 detached 4 bedroom dwellings with parking and associated external works/landscaping. 2 houses to be accessed off Foxdell. 1 house to be accessed off Firs Walk at 5-6 Firs Walk, Northwood HA6 2BZ in accordance with the terms of the application, Reference 30837/APP/2019/3096, dated 18 September 2019, subject to the following conditions in the attached Schedule A.

Procedural Matters

2. The application is in outline form with access to be determined at this stage, and all other matters reserved for future consideration. There is a site layout plan showing access for 2 dwellings off Foxdell and 1 dwelling off Firs Walk. A plan with details and measurements of a cross-over into Foxdell has also been submitted for consideration.
3. Additionally, the site layout plan shows the siting of the 3 dwellings, their footprints and roof forms, and landscaping. During the consideration of the planning application, the forward projecting integral garage on plot 1 on this plan was deleted and is considered under this appeal. Nevertheless, these details have been treated as indicative of how development could be laid out, designed and landscaped given the outline nature of the application.
4. The appeal is against the non-determination of a planning application by the Council. Had it been in a position to do so, the Council would have refused the planning application for the following reasons:-

- 1) The proposed development, by reason of its siting and the significant loss of existing gardens would appear at odds with the prevailing character of the surrounding area and would be a cramped form of development which would have a detrimental impact on the visual amenity and character and appearance of the area. The harm would be further exacerbated by the loss of mature soft landscaping and proposed layout of the built footprint. The development would be contrary to Policies DMH 6, DMHB 11, DMHB 12 and DMHB 14 of the Local Plan: Part Two - Development Management Policies (2020), Policies 3.5, 7.1 and 7.4 of the London Plan and the NPPF (2019).
 - 2) The proposed development, in the absence of a Section 106 legal agreement fails to provide contributions towards the improvement of services and facilities as a consequence of demands created by the proposed development (in respect of highways works and Project Management and Monitoring). The scheme therefore conflicts with Policy DMCI 7 of the Hillingdon Local Plan: Part Two Development Management Policies (2020), the London Borough of Hillingdon Supplementary Planning Document on Planning Obligations, Policy DF1 of the London Plan Intend to Publish Version (2019), Policy 8.2 of the London Plan (2016) and paras 54-57 of the NPPF 2019.
5. A Unilateral Undertaking (UU) dated 4 December 2020 is concerned with the owners/developer entering into a highway agreement and the carrying out of highways works to enable access of Foxdell. It also details a monitoring fee to be paid to the Council. Parties refer to 'Foxdell' and 'Foxdell Close'. In this decision, "Foxdell" has been used but both terms relate to the same road.

Main Issues

6. The main issues are the effects of the proposal on (a) the character and appearance of the area and (b) the safety of pedestrians, cyclists and drivers using the proposed accesses adjacent to Foxdell and Firs Walk.

Reasons

Character and appearance

7. The appeal site comprises a dwelling at 5 Firs Walk and much of the frontage, including garden, of the dwelling at 6 Firs Walk. Both dwellings are of substantial size set in spacious and landscaped plots. They are located at the end of Firs Walk and adjacent to the end of a residential street at Foxdell. To the north, there are the rear gardens of properties on Dene Road.
8. Dwellings along Firs Walk and Foxdell are substantial in size and set in generous sized plots. However, the degree of plot spaciousness varies with those in Firs Walk generally greater than those within Foxdell. Dwellings in Foxdell are generally smaller and more closely sited to one another in a more regimented pattern. The dwellings within Firs Walk also have more varied individualistic designs. The appeal site lies on Firs Walk but it also relates to the residential development at Foxdell by reason of its adjacent location.
9. Policy DMH 6 of the Hillingdon Local Plan: Part Two - Development Management Policies (DMP) 2020 indicates a presumption against the loss of gardens due to the need to maintain local character, amenity space and biodiversity. The proposal would result in the loss of gardens.

10. The indicative site layout plan shows 3 substantial sized dwellings, with accommodation with the roof. Prominent single storey projections are shown on 2 of the dwellings which would be well set forward of the existing building lines along Firs Walk and Foxdell. Together with hard surfacing for vehicle parking and manoeuvring, this would leave little opportunity for any meaningful frontage landscaping. As a result, such a development, as indicated, would be excessively dominant within the street and would not harmonise with the context of the area.
11. However, the dwellings and hard surfacing are indicative only because layout is not a matter to be considered under the application. Matters of layout, appearance, landscaping and scale are reserved for further consideration under any subsequent reserved matters planning application(s). The indicated layout represents only one possible way of developing the site. Means of access is the only matter fixed in terms of developing this site under the proposal.
12. Given this, the principle of development for 3 four-bedroomed dwellings, with accesses as proposed, on the site has to be considered. In this regard, the site could be developed with 3 similar sized plots matching the pattern of development in Foxdell. Such plot sizes would not be significantly smaller than those adjacent in Foxdell and plot widths would be approximately 16m, which would be well within the range that prevail in Foxdell based on what I saw on my site visit. The appellant indicates a range of approximately 14-18m which has not been disputed.
13. Significantly, there would be scope for smaller four-bedroom dwellings with greater space about them on the plots. In this regard, the indicated dwelling footprints and details show substantial sized dwellings. Therefore, a scheme could be devised for 3 smaller sized dwellings on the site within generous sized and landscaped plots which would be in keeping with the character and appearance of the area, taking into account the more spacious nature of Firs Walk compared to Foxdell.
14. Dene Road Area of Special Local Character is situated to the north of the site and is characterised by substantial dwellings set in greater sized and landscaped plots than dwellings and plots outside of it, including the appeal plots. Nevertheless, the siting of the development would not directly relate to this area by reason of its separation and siting beyond the retained dwelling at 6 Firs Walk. Unlike the previous dismissed appeal proposal on the site, no part of a neighbouring property at Dene Road is included within the proposals.
15. The dismissed appeal concerned the demolition of the dwellings at 5 and 6 Firs Walk with six dwellings where the Inspector found the development to be cramped, an adverse effect reinforced by the regularity and uniform spacing of the plot frontages. However, this appeal scheme considered 4 rather than 3 dwellings in the area around the demolished dwelling at No 5. Furthermore, the previous Inspector considered the position and footprint of the 4 dwellings because layout was a matter considered under the outline proposal. In contrast, layout is not considered under the current outline proposal. Therefore, there are material differences between the two appeal schemes which distinguish one from the other. In any case, every proposal has to be considered on its particular planning merits as has been undertaken here.
16. In summary, a development of 3 dwellings would not harm the character and appearance of the area as it could be designed to the highest standards for all

the above reasons. Similarly, it could harmonise with the local context by taking into account the surroundings, plot coverage and established street patterns, building lines and setbacks, streetscape rhythm and be well integrated with the surrounding area, having regard to landscaping treatment. Accordingly, the proposal would comply with DMP Policies DMHB 11, DMHB 12 and DMHB 14.

17. Similarly, it would comply with Policies 3.5, 7.1 and 7.4 of the London Plan (LP) (2016), which collectively and amongst other matters, requires housing design to enhance the quality of local places, taking into account physical context, local character and density, to be of highest quality in relation to their context and the wider environment, and new buildings to reinforce or enhance character.
18. In conclusion, the proposal would conflict with the presumption against the loss of gardens under DMP Policy DMH 6 but would comply with above referenced DMP and LP policies. However, the explanatory text to the DMP Policy DMH 6 states in general, that development will not be permitted on garden land which indicates an exception can be made in some circumstances under the plan. There would be no conflict with DMP Policy DMH 6's need for development to maintain local character, amenity space and biodiversity. For all these reasons, the loss of garden land would be acceptable and accordingly, the proposal's compliance with the identified DMP DMHB and LP Policies would outweigh any conflict with DMP Policy DMH 6.

Access

19. DMP Policy DMT 2 requires proposals to ensure safe and efficient access to the highway network and that there are suitable mitigation measures to address any traffic impacts in terms of capacity and function of existing roads. Under DMP Policy DMCI 7 and LP Intend to Publish Version (IPV) (2019) Policy DF1, it must be demonstrated that there will be sufficient infrastructure to support development and that development should address strategic as well as local priorities in planning obligations respectively.
20. The UU indicates that a highway agreement should be entered into with the Council which would ensure the carrying out of the highway works for access of Foxdell, prior to the commencement of development. These works would be carried out at as cost in accordance with the provisions of the highway agreement. A monitoring fee is also required to be paid prior to the commencement of development. In respect of the monitoring fee, this would be justified given the Council's monitoring requirements as set out in its Planning Obligation Supplementary Planning Document July 2014. With the obligation, acceptable access into Foxdell would be provided in accordance with DMP Policies DMT 2 and DMCI 7, LP Policy 8.2 and LIPV Policy DF1.
21. Accordingly, the obligation would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Accordingly, the proposal would comply with the tests of paragraph 57 of the National Planning Policy Framework (the Framework) and the statutory tests within the Community Infrastructure Levy Regulations (CIL) 2010 (as amended).
22. The Council has confirmed Foxdell to be an adopted public highway but this is disputed by third parties. However, this would not be a reason to withhold

planning permission as this is a separate legal matter between parties. In planning land use terms, the access is acceptable on highway grounds and the obligation requires the developer/landowners to enter into a highway agreement with the Council to secure access as part of the permission.

Other matters

23. With a net increase of two dwellings, the additional traffic generation along Foxdell would be small. For Firs Walk, there would be a negligible increase in traffic generation because there would be no increase in dwellings accessing this Road. Parking provision would be detailed under subsequent reserved matters and there is no reason why it could not be provided given the size of the site. There is no evidence that increased traffic movements would have an unacceptable impact on highway safety.
24. The Highway Authority has raised no objection on traffic congestion, parking stress and highway safety grounds to the proposal. There would be no requirement for significant vehicle turning facilities because the roads concerned are not significant traffic thoroughfares and nor has the Highway Authority highlighted any need. For all these reasons, the development would not result in an unacceptable impact on highway safety of road users and the residual cumulative impact would not be severe.
25. Matters of appearance, scale and layout are reserved for future consideration where the effect on the development on the living conditions of neighbours, having regard to light and privacy would be fully considered. At this outline stage, there are no fundamental living condition issues affecting the acceptability of development. The indicative plan shows that three dwellings could be sited a significant distance from neighbouring properties and there would be scope to obscure glaze any windows above the ground floor, flanking neighbouring properties, to prevent overlooking.
26. For the neighbouring dwelling at Foxdell, the indicative siting would result in overshadowing during the early evening, but this property would receive light, including sunlight, at other times of the day. Therefore, the living conditions of these neighbouring occupiers would not be significantly affected and the principle of development of this site would be acceptable, taking into account the residents' living conditions. Nevertheless, such a matter requires further Human Rights assessment, a matter raised by third parties.
27. There is no policy requirement for affordable housing or community provision on this site. Residents of the development would use local services, such as doctors' surgeries and schools, but there is no evidence from providers that this proposed development would significantly hinder service provision for local people. Similarly, statutory undertakers have not objected in respect of sewage disposal.
28. The remaining part of the property at No 6 could come forward for redevelopment. However, any such proposal must be determined on its individual planning merits, having regard to site circumstances, planning policy and material considerations. Therefore, such a concern of precedent does not justify withholding permission in this instance.
29. For the reasons indicated, the development would create high quality buildings and places which is fundamental to what the planning and development

process should achieve under the Framework. In this regard, the site is large enough to ensure any development could be visually attractive as a result of good architecture, layout, appropriate and effective landscaping, and sympathetic to local character.

Development Plan balance and Human Rights

30. There would be no harm to the character and appearance of the area and the development would not result in an unacceptable impact on highway safety nor would the residual cumulative impacts on the road network be severe. The proposal would comply with the development plan taken as a whole. There are no considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan.
31. Under the Convention of Human Rights, there would be interference with a residents' home and family life for the neighbouring Foxdell property under Article 8 and the peaceful enjoyment of their possessions under Article 1 of the First Protocol. These are qualified rights whereby interference may be justified in the public interest, but the concept of proportionality is crucial. Legitimate and well-founded planning policy requires the planning system to provide living accommodation for future generations and for all the previous reasons, the impact on living conditions of the residents would not be significant. In the circumstances, the interference is therefore necessary and proportionate, and there would not be a violation of the residents' human rights. For all these reasons, planning permission should be granted for the development.

Conditions

32. Suggested conditions have been considered in light of the advice contained in Planning Practice Guidance. Some have been amended and shortened in the interests of clarity and precision taking into account the guidance. Instead of the suggested full permission commencement condition, conditions setting out requirements for reserved matters and commencement of development following the approval of the last reserved matters are set out.
33. For the avoidance of uncertainty and to allow for applications for minor material amendments, a condition is necessary specifying the approved drawings in respect of means of access. In the interests of highway safety, a condition is necessary setting out pedestrian visibility splays for the accesses. LP Policy 3.8 requires accessible and adaptable, and wheelchair user dwellings. However, the policy also requires Councils to identify the needs for these requirements. In the absence of any need justification, the condition is not necessary. Conditions relating to materials, refuse storage screening, cycle storage, boundary treatments, landscaping and levels are not necessary at this stage. They relate to matters of appearance, landscaping, layout and scale which are reserved for subsequent consideration.

Conclusion

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted.

Jonathon Parsons

INSPECTOR

Schedule A

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 19-2752-LP01 Rev A, 19-2752-03 Rev A and 19-2752-100 Rev B (only in respect of means of access to the surrounding highways).
- 5) The Firs Walk and Foxdell accesses shall be provided with those parts of 2.4m x 2.4m pedestrian visibility splays which can be accommodated within the site in both directions and shall be maintained free of all obstacles to the visibility between heights of 0.6m and 2.0m above the level of the adjoining highway.

B



Appeal Decision

Hearing Held on 27 January 2021

Site visit made on 28 January 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2021

Appeal Ref: APP/R5510/W/20/3244256

Land forming part of 43 The Drive, adjacent to 68 and 113 Knoll Crescent, Northwood HA6 1HW

- 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 Mick Malski against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 70975/APP/2019/1984, dated 11 June 2019, was refused by notice dated 24 September 2019.
 - The development proposed is erection of two semi-detached houses with associated parking involving demolition of existing buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two semi-detached houses with associated parking involving demolition of existing buildings at land forming part of 43 The Drive, adjacent to 68 and 113 Knoll Crescent, Northwood HA6 1HW in accordance with the terms of application, Ref: 70975/APP/2019/1984, dated 11 June 2019, subject to the schedule of conditions attached to this decision.

Application for costs

2. At the hearing an application for costs was made by the Council of the London Borough of Hillingdon against Mr Mick Malski. This application is the subject of a separate Decision.

Procedural Matters

3. As part of the appeal, the appellant has submitted amended plans and updated arboricultural documentation¹, which propose to alter the parking layout to avoid development within the root protection area of a Grand Fir Tree located within the appeal site. In addition, the amended plans clarify the position of external steps to the side of the proposed development.
4. As the proposed changes are minor amendments, and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I were to determine the appeal in accordance with the amended plans and supporting arboricultural documents. For the avoidance of doubt, I have determined this appeal on the basis of the amended plans.

¹ Tree Survey, Arboricultural Impact Assessment and Method Statement (Submitted 9 March 2020)

5. Following the submission of the amended plans and arboricultural documentation, the Council have advised that they no longer wished to defend the third reason for refusal which relates to the effect of the development on trees. I agree with the views of the Council in respect of this matter and hence it does not fall to be considered as a main issue.
6. The submitted plans show that there were previously two existing buildings located at the appeal site. However, following the determination of the planning application, the buildings were demolished by the appellant to comply with an enforcement notice² which took effect on 9 September 2020.
7. At the Hearing, the appellant explained that the land forming the appeal site was now in separate ownership from No 43. This was not disputed by the Council. As such, the land shown within the blue line on the submitted location plan no longer falls within the appellant's control. Despite this, owing to the site's former use as part of the rear garden of No 43, and, given that no evidence has been provided to demonstrate that the site's lawful use has changed, as a matter of fact and degree, for the purposes Policy DMH6 of the London Borough of Hillingdon Local Plan: Part 2 Development Management Policies and Site Allocations and Designations (the 'LPP2'), I consider that the appeal site is garden land.

Planning Policy

8. The LPP2 was adopted on 16 January 2020. The LLP2 supersedes the Hillingdon Local Plan: Part 2 – Saved UDP Policies (November 2012). It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.
9. On 21 December 2020 the Mayor of London sent to the Secretary of State the text of the Emerging Draft London Plan that he intends to publish, known as the 'Publication London Plan' (the 'PLP'). On 29 January 2021 the Secretary of State wrote to the Mayor to confirm that he is content for the new London Plan to be published, with no further changes. The London Plan will become operative on the date that it is published by the Mayor.
10. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework.
11. Given that the Secretary of State has confirmed that he is content for the plan to be published with no further changes, the PLP is the version of the London Plan which will become part of the development plan once published by the Mayor. For this reason, I attribute the policies contained within the PLP great weight as a material planning consideration.

Main Issue

12. The main issue is the effect of the development upon the character and appearance of the area.

² Council Ref: HS/ENF/017180

Reasons

13. The appeal site comprises of a rectangular parcel of land to the rear of Nos 41 and 43 The Drive. The site is physically separated from Nos 41 and 43 by timber fencing with vehicular access provided by an existing crossover located off the turning head at the end of the southern arm of Knoll Crescent³.
14. The topography of the appeal site slopes downwards from a plateau area adjacent to the boundary with Nos 41 and 43 down to the eastern site boundary where the site adjoins a large wooded area. There are a large number of trees located within the site, many of which are mature specimens that are protected by a Tree Preservation Order (TPO)⁴.
15. It is proposed to erect a pair of semi-detached dwellings with associated parking and landscaping. The dwellings would be of a split-level design with accommodation over two floors. To facilitate the development, the existing ground level would be lowered at the western section of the site nearest to the boundary with Nos 41 and 43.
16. The southern arm of Knoll Crescent is a small residential cul-de-sac accessed from The Drive. The existing properties are located either side of the road and are of a two-storey design and appearance with consistent gabled roof forms which creates architectural balance and symmetry. The dwellings are set back from the highway between large front gardens, most of which provide off-street parking set amongst established landscaping and mature trees. Overall, Knoll Crescent has a suburban verdant character which contributes positively to the local distinctiveness of the area.
17. The appeal site forms the terminus of the southern arm of Knoll Crescent and its open nature allows for views of the site's landscape features, which includes several mature trees, in addition to the surrounding trees beyond the site boundaries, to be viewed from Knoll Crescent and from the rear aspects of the adjoining properties on The Drive. This provides an attractive verdant backdrop to the overall benefit of the visual amenity of the local area.
18. The appeal site has a lengthy planning history and there have been several applications for various forms of residential development dating back over the past ten years⁵, all of which have been unsuccessful.
19. The current proposal follows on from the previous planning application⁶ and appeal⁷, which sought permission for the erection of a pair of two-storey semi-detached dwellings. As part of the previous proposal, significant excavations were proposed at the appeal site, which included lowering the ground level of the existing embankment to the front of the dwellings. In addition, the proposed site plan showed the removal of two mature Ash trees.
20. In dismissing the appeal in May 2019, the Inspector concluded that the proposal would cause substantial harm to the open and verdant character of

³ Knoll Crescent features a northern arm and southern arm, which are physical separated by intervening garden land and a copse. The respective arms of Knoll Crescent form separate streets accessed from The Drive.

⁴ TPO No. 124 – The TPO covers land at 35-49 The Drive and includes several individual and a group of trees located within the appeal site.

⁵ Section 4 of the Statement of Common Ground

⁶ Council Ref: 70975/APP/2018/1295

⁷ PINS Ref: APP/R5510/W/18/3212491

the area through the impact upon protected trees and the harm to the contribution that the site makes to the character of the area.

21. In assessing the previous proposal, the Inspector stated that the Ash trees “form a fundamental aspect to the positive and natural appearance of the site and area”⁸. I share this view, and, on my site visit I observed that the trees, along with the other mature specimens at the site, which are to be retained, contributed positively to the verdant character of the local area.
22. In reaching their overall conclusion, the Inspector found that the harm to the open character of the site would be most obvious through the potential impact upon trees and the removal of substantial amounts of earth from the plot of the proposed houses in order to reduce their height⁹.
23. The appeal was determined before the adoption of the LPP2, which introduced the policy presumption against development upon residential gardens. Nevertheless, the Inspector’s conclusions in respect of the effect of the proposed development upon the character and appearance of the area are a material consideration in this case.
24. The proposed semi-detached dwellings would be sited in a similar position to the previous proposal. However, the current proposal would retain the existing embankment at the site and the ground level to the front of the proposed dwellings would be unaltered. Consequently, the excavations to the rear of the proposed dwellings would not be readily visible from the street.
25. Furthermore, the proposed development would retain the vast majority of the existing trees at the appeal site, including the mature Ash trees, which were previously shown for removal, with a site exclusion zone specified on the tree protection plan to safeguard the Ash trees during construction. The retention of the trees would safeguard the site’s verdant character.
26. The introduction of built development at the appeal site would alter the view of the existing trees when viewed from Knoll Crescent and the rear aspects of the adjoining properties on The Drive. However, the proposed dwellings would be of a split level design with a low ridge height and single storey appearance at the front of the properties. Consequently, given that most of the trees at the appeal site and those located beyond the site boundaries are mature specimens with high canopies, despite the proposed development, views of the extensive tree canopy would remain from Knoll Crescent and the rear aspects of the adjoining properties on The Drive. As such, the existing verdant backdrop and the area’s open character, which contributes positively to the visual amenity of the local area, would remain.
27. Furthermore, the proposed landscaping plan shows that ten new trees would be planted as part of the development, whilst a significant part of the appeal site to the west of the parking area would remain free from any form of built development. The new trees would be of a variety of species and most would be planted to the front of the proposed dwellings near to the car park area. In this location, the trees would be visible from the street, and, once established the trees would make a positive contribution to the area’s verdant character by increasing the stock of trees. Moreover, the large undeveloped area to the west of the parking area would retain the site’s open character.

⁸ Paragraph 15 of PINS Ref: APP/R5510/W/18/3212491

⁹ Paragraph 17 of PINS Ref: APP/R5510/W/18/3212491

28. The delivery and maintenance of the new trees and landscaping can be secured by a planning condition.
29. I am cognisant that the proposed parking and turning area would be readily visible from Knoll Crescent due to its position in the centre of the site near to the existing vehicle access. However, the parking and turning area would be set amongst existing and proposed landscaping, including the existing Grand Fir Tree. This layout would respond to the local distinctiveness of Knoll Crescent whereby most of the existing dwellings feature frontage parking set amongst landscaping and mature trees.
30. The Council have expressed concern that the design and appearance of the proposed dwellings would be at odds with the existing houses on Knoll Crescent, which are of a consistent architectural design and two-storey scale. Whilst I recognise that the proposed dwellings would have a differing appearance to the existing dwellings on Knoll Crescent, which would include a lower ridge height and single storey appearance, this in and of itself does not mean that the development is unacceptable in design terms.
31. Indeed, paragraph 127(c) of the Framework explains that “planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change”.
32. In this instance, the external surfaces of the proposed dwellings would be constructed from brick and tile, which would be in keeping with the local vernacular. Moreover, the front elevation of the proposed dwellings would feature a gable roof form, which would appear well related to the existing dwellings on Knoll Crescent.
33. In terms of the wider context, when viewed from within the site and the lower reaches of Knoll Crescent near to the proposed access, the proposed development would be seen amongst the roofscape of the properties located on The Drive, which includes a variety of pitched roof forms, with many of the properties, including No 41, featuring roof dormers similar to the design of those proposed at the rear of the proposed dwellings.
34. For these reasons, I conclude that the design and appearance of the proposed development would be sympathetic to the area’s local character. Consequently, and given my other findings above, I conclude that the proposal would have an acceptable effect upon the character and appearance of the area.
35. Policy DMH6 of the LPP2 states that “there is a presumption against the loss of gardens due to the need to maintain local character, amenity space and biodiversity. In exceptional cases a limited scale of backland development may be acceptable, subject to the following criteria: i) neighbouring residential amenity and privacy of existing homes and gardens must be maintained and unacceptable light spillage avoided; ii) vehicular access or car parking should not have an adverse impact on neighbours in terms of noise or light. Access roads between dwellings and unnecessarily long access roads will not normally be acceptable; iii) development on backland sites must be more intimate in mass and scale and lower than frontage properties; and iv) features such as trees, shrubs and wildlife habitat must be retained or re-provided”.

36. The supporting text to Policy DMH6 explains that the Council's restrictive approach has been informed by the London Plan¹⁰ (the 'LP') and reflects the direct and indirect value of gardens which includes the contribution to local character. Having regard to paragraph 213 of the Framework, I consider that Policy DMH6 of the LPP2 is consistent with paragraph 70 of the Framework and the Framework's aim of achieving well-designed places.
37. Policy DMH6 of the LPP2 does not define what constitutes an 'exceptional case' where a limited scale of backland development may be acceptable, nor does the supporting text direct the reader to a definition for this term anywhere else within the development plan. At the Hearing, the Council explained that the term was intentionally undefined to allow the decision maker to use their planning judgement to determine whether or not a proposal represented an 'exceptional case'. Consequently, this is a matter to be determined on a case by case basis.
38. Based on the wording of Policy DMH6, the policy presumption against development upon residential gardens has three purposes, which are to maintain local character, amenity space and biodiversity.
39. In this instance, I have found that the proposed development would have an acceptable effect upon the character and appearance of the area. Consequently, the proposal would accord with the first purpose of the policy, which is to maintain local character. In respect of the second purpose, the Council have raised no concerns about the maintenance of amenity space. Indeed, the parties agree that the site no longer forms part of the garden of No 43, and, thus it does not form amenity space associated with any existing property. Finally, in respect of the third purpose, the Council have raised no concerns about the effect of the proposal on biodiversity.
40. Therefore, whilst the proposal would be contrary to the policy presumption against development of residential gardens, the proposal would not conflict with the three purposes of the policy. For this reason, I consider that the proposed development passes the test of exceptionality.
41. Policy DMH6 states that where a development meets the test of exceptionality a limited scale of backland development may be acceptable subject to the proposal complying with criteria i), ii), iii) and iv) as set out within the policy wording.
42. Given that the development would deliver two semi-detached dwellings of modest proportions to the rear of existing residential development on The Drive, I consider that the proposal would constitute a limited scale of backland development. To this regard, I note that the parties agree that the proposal would constitute a form of backland development¹¹.
43. When assessing the proposal against criteria i), ii), iii) and iv) of Policy DMH6, the parties agree that the proposal would accord with criteria ii), iii) and iv). I agree with the views of the parties in respect of these matters.
44. However, at the hearing, the Council argued that the proposal would conflict with criteria i) of Policy DMH6, in so far as the proposed development would

¹⁰ Policy 3.5 of The London Plan: The spatial development strategy for London consolidation with alterations since 2011 (2016)

¹¹ Section 6 of the Statement of Common Ground

harm the visual amenity of the area, which in turn would cause harm to neighbouring residential amenity. Given my conclusions in respect of the effect of the development upon the character and appearance of the area, I disagree on this matter and find that the proposal would have an acceptable effect on neighbouring residential amenity. Therefore, I conclude that the proposal would accord with criteria i) of Policy DMH6.

45. For the reasons set out above, I have found that the proposal would constitute a limited scale of backland development which passes the test of exceptionality and complies with criteria i), ii), iii) and iv) of Policy DMH6 of the LPP2. Consequently, I conclude that the proposed development would accord with Policy DMH6 of the LPP2.
46. Furthermore, for the collective reasons given, I conclude that the proposal would accord with Policy BE1 of the London Borough of Hillingdon Local Plan: Part 1 Strategic Policies, Policies DMHB11 and DMHB12 of the LLP2 and Policy D3 of the emerging PLP which collectively require new development to be of a high quality design, which is well integrated within the surrounding area and harmonises with the local context. Furthermore, the proposal would accord with Policy 3.5 of the LP in so far as it requires new housing development to protect and enhance London's residential environment and attractiveness as a place to live.
47. The delivery of housing at the appeal site would also accord with the objectives of Policy H2 of the emerging PLP, which states that Boroughs should pro-actively support well-designed new homes on small sites through both planning decisions and plan-making in order to significantly increase the contributions of small sites to meeting London's housing needs.

Other Matters

48. The Council's Highways Officer has assessed the proposal and raised no objection. I have no reason to disagree with the Council in respect of this matter and note that the existing turning head at the end of Knoll Crescent would remain as part of the proposal. In addition, I am content that the drawings demonstrate that there would be adequate space for on-site parking and turning.
49. Local residents have expressed concerns that the proposed development may result in localised drainage issues and the loss of wildlife. However, no substantive evidence has been provided to demonstrate that such issues would arise as a result of the proposed development. Moreover, no concerns have been raised by the Council.
50. In determining the application, the Council concluded that the proposal would have no material impact on the living conditions of neighbouring occupiers. Based on my site observations, which included an assessment of the separation distances between the proposed development and the existing dwellings, I agree.
51. Concerns have been expressed that allowing this appeal would set an undesirable precedent which would make it difficult for the Council to resist further residential development at the appeal site. However, I have considered the proposal on its individual planning merits and found that it would constitute

an exceptional case when assessed against Policy DMH6 of the LPP2. As such, the appeal decision would not set an undesirable precedent.

52. I am cognisant that there may be some noise and disturbance when the building works take place. However, this will be short term and I am satisfied that any harmful disturbance could be dealt with by other legislation.
53. None of the other matters raised alter or outweigh my conclusions on the main issue.

Conditions

54. The Council have suggested ten conditions which I have considered against the tests as laid out in paragraph 55 of the Framework. In the interests of precision, I have amended the wording of some of the conditions.
55. Planning permission is granted subject to the standard three-year time limit condition. It is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
56. In the interests of the character and appearance of the area, it is necessary to impose conditions relating to materials, site levels, landscaping and cycle and refuse storage. To ensure that the proposed landscaping becomes established at the site, I have amended the suggested landscaping condition to include a five-year maintenance requirement. To safeguard the character and appearance of the area, it is necessary for the site levels to be agreed prior to the commencement of development.
57. In the interests of highway safety, it is necessary to impose a condition requiring details of the vehicle access to be agreed with the Council and constructed accordingly. To ensure the pedestrian visibility splays remain functional I have imposed conditions to restrict the height of any structure, erection or landscaping features placed/grown within them. I have also imposed a condition to ensure that the parking spaces are constructed prior to the occupation of the dwellings and retained as such thereafter.
58. To ensure the delivery of accessible housing, I have imposed a condition relating to the provision of step free access. In addition, I have imposed a condition which requires the dwellings to meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings. The delivery of accessible housing is a requirement of Policy 3.8 of the LP and Policy D7 of the emerging PLP.
59. To safeguard existing trees of amenity value, it is necessary to impose a condition requiring the development to be undertaken in accordance with the approved arboricultural impact assessment, method statement and tree protection plan. To ensure that the trees are protected during the entire construction period, it is necessary for the protective fencing to be erected prior to the commencement of development.
60. The appellant agreed to pre-commencement conditions relating to external materials and step free access. However, the Planning Practice Guidance states such conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission. I consider that there is

no clear justification for the imposition of pre-commencement conditions in relation to these matters. Therefore, I have altered the conditions to require the details to be submitted to and approved in writing by the Local Planning Authority prior to the erection of the development above slab level.

Conclusion

61. For the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Christopher Miell

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing No: 17/3088/10 – Location Plan
 - Drawing No: 17/3088/12 REV:C – Proposed Site Plan
 - Drawing No: 17/3088/13 – Proposed Floor Plans
 - Drawing No: 17/3088/14 REV:C – Proposed Elevations
 - Drawing No: 901.19.1D – Landscape Proposals
 - Tree Survey, Arboricultural Impact Assessment and Method Statement (Submitted 9 March 2020)
- 3) No development shall take place until plans of the site showing the existing and proposed ground levels and the proposed finished floor levels of all proposed buildings have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter the development shall not be carried out other than in accordance with the approved details.
- 4) Prior to the erection of development above slab level, full details and/or samples of all materials, colours and finishes to be used on all external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved details.
- 5) No dwelling shall be occupied until the hard and soft landscaping scheme as set out on drawing no. 901.19.1D has been implemented in full. Any changes to the approved scheme must be agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in full accordance with the approved details.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Prior to the erection of development above slab level, full details of cycle and refuse storage to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The cycle and refuse storage shall be implemented as approved prior to the first occupation of the development and retained as such thereafter.
- 7) Prior to the erection of development above slab level, details of the vehicle access between the development and the highway, which shall include details of pedestrian visibility splays and any alterations to the existing footway, kerbs and surfacing material, shall be submitted to and approved in writing by the Local Planning Authority. The access shall be provided in accordance with the approved details prior to the first occupation of the development and retained as such thereafter.

- 8) No structure or erection exceeding 0.6 metres in height shall be placed within the pedestrian visibility splays referred to in condition 7.
- 9) No shrubs, trees or other vegetation shall be allowed to grow above 0.6 metres in height within the pedestrian visibility splays referred to in condition 7.
- 10) No dwelling shall be occupied until space has been laid out within the site for four cars to be parked, in accordance with drawing no. 17/3088/12 REV:C, and that space shall thereafter be kept available at all times for the parking of vehicles.
- 11) Prior to the erection of development above slab level, details of step free access via the principal private entrance of the dwellings hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and such provisions shall remain in place for the life of the approved dwellings.
- 12) The dwellings hereby approved shall be constructed to meet the standards for a Category 2 M4(2) dwelling, as set out in Approved Document M to the Building Regulations 2010 (as amended), and all such provisions shall remain in place for the life of the approved dwellings.
- 13) No site clearance or construction work shall take place until the protective tree fencing has been erected in accordance with the details approved within the Tree Survey, Arboricultural Impact Assessment and Method Statement as amended (Ref. 707 & 901) including Tree Protection Plan 701.17.3C (dated 25.11.19).

Thereafter, the development shall be implemented in accordance with the approved details. The fencing shall be retained in position until the development is completed.

The area within the approved protective fencing shall remain undisturbed during the course of the works and in particular in these areas:

- 2.a There shall be no changes in ground levels;
- 2.b No materials or plant shall be stored;
- 2.c No buildings or temporary buildings shall be erected or stationed.
- 2.d No materials or waste shall be burnt; and.
- 2.e No drain runs or other trenches shall be dug or otherwise created, without the prior written consent of the Local Planning Authority.

***** END *****

APPEARANCES

FOR THE APPELLANT:

Mr M Malski	Appellant
Mr S Barker MA (Cantab) MA MRTPI	Barker Parry Town Planning
Ms K Sharland MPlan MRTPI	Barker Parry Town Planning
Mr J Lopez, Barrister	Francis Taylor Building Chambers

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Volley DipTP MSc MRTPI	Council of the London Borough of Hillingdon
Ms K Munro, Solicitor	Council of the London Borough of Hillingdon
Mr C Merrett, Barrister	Francis Taylor Building Chambers

OTHER INTERESTED PARTIES:

Mr T Sherling	Northwood Residents Association
Mr D Bradley	Local Resident
Mrs L Bradley	Local Resident
Mr M Haffner	Local Resident
Mr V Thakrar	Local Resident

DOCUMENTS SUBMITTED AT HEARING:

1. Aerial photographs of the appeal site
2. Appendix 4: Glossary - Hillingdon Local Plan: Part 1 - Strategic Policies (Adopted November 2012)



Costs Decision

Hearing Held on 27 January 2021

Site visit made on 28 January 2021

by Christopher Miell MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2021

Costs application in relation to Appeal Ref: APP/R5510/W/20/3244256 Land forming part of 43 The Drive, adjacent to 68 and 113 Knoll Crescent, Northwood HA6 1HW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by the Council of the London Borough of Hillingdon for a full award of costs against Mr Mick Malski.
 - The hearing was in connection with an appeal against the refusal of planning permission for erection of two semi-detached houses with associated parking involving demolition of existing buildings.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The PPG¹ states that the right of appeal should be exercised in a reasonable manner and that the appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when: the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence; and the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
4. The Council submits that the appellant has acted unreasonably by appealing against the Council's refusal of permission. They contend that the unreasonable behaviour has occurred in respect of both grounds set out above and they are seeking a substantive award of costs against the appellant to cover the full costs incurred by the Council in defending the case at a Hearing.

¹ PPG Reference: Paragraph: 053 Reference ID: 16-053-20140306 (Revision date: 6 March 2014)

5. As set out within the Appeal Decision, the appeal site has a lengthy planning history and there have been several planning applications and appeals seeking permission for various forms of residential development dating back over the past ten years, all of which have been unsuccessful.
6. The current proposal follows on from an appeal² which was dismissed in May 2019. In that case, the Inspector concluded that the proposal would cause substantial harm to the open and verdant character of the area through the impact upon protected trees and the harm to the contribution that the site makes to the character of the area.
7. Since that time, the development plan has changed with the London Borough of Hillingdon Local Plan: Part 2 Development Management Policies and Site Allocations and Designations (the 'LPP2') being adopted on 16 January 2020.
8. In addition, the Emerging Draft London Plan, which I have referred to as the 'Publication London Plan' (the 'PLP'), was at an advance stage of its examination when the appeal was made. Following the submission of the appeal, the Secretary of State wrote to the Mayor of London to confirm that he is content for the new London Plan to be published, with no further changes.
9. Given that the current appeal was submitted at a time following a change to the development plan and that the appellant's case also sought to partially rely on emerging policy contained within the PLP, I am satisfied that the circumstances had materially changed in the intervening period since the previous appeal decision was issued. Therefore, the appellant exercised the right of appeal in a reasonable manner in this regard.
10. Furthermore, the current proposal is materially different to the previous unsuccessful proposals at the appeal site. When compared to the most recent scheme, the proposal has a different design and appearance, lower ridge height and retains the Ash trees to the rear of the proposed dwellings, which were previously shown to be removed. Therefore, the proposal is not the same or a very similar development when compared to the previous proposals.
11. In determining the appeal, I concluded that the proposal would have an acceptable effect upon the character and appearance of the area and found that the proposed development constituted an exceptional case, which satisfied the criteria set out within Policy DMH6 of the LPP2. My conclusion was different to the Council and I allowed the appeal. Therefore, I cannot agree that the appellant acted unreasonably by making an appeal that had no reasonable prospect of succeeding.

Conclusion

12. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Christopher Miell
INSPECTOR

² PINS Ref: APP/R5510/W/18/3212491