



Appeal Decision

Site visit made on 8 November 2010

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

Decision date: 23 November 2010

Appeal Ref: APP/N5090/A/10/2131311

Land to the rear of Tangle Tree Close, Finchley, London N3 2TR

- 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 Higgins Homes PLC against the decision of the Council of the London Borough of Barnet.
 - The application Ref F/00595/10, dated 8 February 2010, was refused by notice dated 26 March 2010.
 - The development proposed is the development of 3 detached dwellings together with associated landscaping and car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A Planning Obligation in the form of a Unilateral Undertaking has been presented in support of the appeal. This is dated 8 October 2010 and would provide various contributions to the Council if planning permission were to be granted.

Main Issues

3. The main issues are the effect the development would have on the appearance and character of the area as a result of the loss of openness and its effect on trees; whether the proposed loss open space would be acceptable in this area; whether adequate refuse facilities would be provided; the necessity for contributions that are offered in making the proposals acceptable in planning terms; and whether adequate information has been provided to assess any potential impact on protected species.

Reasons

4. The site forms part of an open area at the core of surrounding residential properties and to the rear of some of these rear gardens. The appeal site forms part of this area and is overgrown but appears to be used as an informal recreation space. The central area is largely maintained as grass and used for recreational purposes. There is also a bowling green to the north.

Trees and Character

5. There are several trees growing on the site and these have been surveyed as T1-T6, G7 & T8-T16. Three are protected by a tree preservation order. The

largest of the protected trees, an ash, is proposed to be retained along with one further tree, a sycamore. I find no substantial reason to doubt that these trees could be successfully retained as it seems that damage during construction could be limited sufficiently. The remainder of the trees on the site would be removed, although some replanting is proposed. The protected trees that would be lost are a Norway Maple and an Ash. Some of the other trees that would be removed are fruit trees in poor condition, the remainder are assessed as low quality trees by the appellant but this assessment is disputed by the Council who also consider that some (unspecified) trees on the site have special amenity value. In any event, the loss of trees would alter the visual quality of the site, which although neglected has an overall green appearance that contrasts to its more urbanised surroundings.

6. The introduction of new built forms and hard surfaces and fences would further alter the character of the site so that it would more closely conform to the suburban character created by houses and gardens that predominate locally. In the local context the loss of trees and the erosion of contrast between the natural environment and the built environment would have a negative effect on the overall perception of the area.
7. Saved policy H16 of the Barnet Unitary Development Plan expects new residential development to harmonise with and respect the character of the area within which they are situated and policy D5 deals with outlook. The site is contained by a residential environment and would provide an adequate level of residential amenity for existing and potential occupiers. On this basis there is no specific conflict with the criteria headings set out in these policies. However policy D12 is more specific in terms of the environmental importance of trees and policy GBEnv1 seeks to protect and enhance the quality and character of the built and natural environment. Here the loss of the openness of this area and the loss of tree cover would mark a failure to respect its character and quality and harm the visual amenity of the site, leading to conflict with these policies. This indicates that the scheme would be unacceptable.

Open Space

8. The site forms an open area but is privately owned and public access is not encouraged. This has not always been the case as it appears that a former lease on the land did permit its use for recreation. Public Open Space is defined in the Unitary Development Plan at 6.3.3.1 as public parks, commons, heaths and woodland and other open spaces with recognised, well established and unrestricted public access. Currently access to this area is restricted by reason of its ownership and so it seems that the site does not fall to be considered as Public Open Space as envisaged by the Unitary Development Plan. Accordingly, Unitary Development Plan policies relating to Public open space do not appear to have a direct application to this site.
9. PPG 17 however envisages a wider definition in the application of its policies and this includes all open space of public value not just for sport and recreation but where this can also act as a visual amenity. Access is therefore not a pre-requisite for inclusion in this definition and this site is comfortably included within it as it has visual amenity value arising from its openness, contrast and tree cover and its setting within a residential area. One of the categories of open spaces listed in PPG 17 at 2(ii) is natural and semi-natural urban greenspaces and at 2(v) greenspaces in and around housing are also listed.

Accordingly, there is good reason to regard this site as an area of open space and as set out at paragraph 16 of PPG 17, in considering planning applications any benefits being offered to the community should be weighed against the loss of open space that will occur.

10. In this part of the Borough it is also relevant that the Council has identified a deficiency in open space provision at Local Park Level. In such areas it seems reasonable to conclude that any open space that does exist has more importance as a result of the overall deficiency that has been identified.
11. Here the development proposed would result in a loss of open space that would be replaced by houses with gardens. This would result in a loss of visual amenity. Furthermore, it would be of significance in view of the location of the site within a housing area and also within an area of deficiency in open space. This conclusion is not dissimilar to that reached in an earlier appeal decision on this site.
12. The main benefit that is offered to the community to weigh against this loss related to an equipped children's play space, but there is no certainty that this would materialise (this is explained under the heading Unilateral Undertaking in this decision). Accordingly, no assessment of the potential benefit can be made and the loss of open space occasioned by the development remains as a significant factor that tells strongly against the scheme.

Protected Species

13. The Council considers that ecological surveys that have been undertaken are deficient and leave doubts as to the position relating to protected species and the potential impact the scheme might have on bats in particular. The appellant refers to the findings of surveys that have been carried out and feels that, if considered necessary, further surveys could be undertaken were planning permission to be granted. This latter approach is not acceptable, as surveys undertaken once planning permission has been granted cannot inform the decision or any conditions that might then be identified as necessary.
14. The information available from the surveys did not identify the presence of any reptiles on the site, but bat activity was recorded. The survey concludes that bats seem to arrive in order to forage, rather than to roost but some potential for roosting on the site is acknowledged, although this is considered to be negligible.
15. PPS 9 urges the refusal of planning permission where harm to protected species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm. Here there remains some doubt over the impact on protected species that at least forage in the immediate area. Overall, the current level of assessment of the potential impact on protected species appears to be deficient and this further tells against the grant of planning permission.

Refuse Storage and Collection

16. The Council is concerned to ensure that adequate provision is made for the storage and collection of refuse and points out that refuse vehicles would be unable to access the cul-de-sac that would be created. There would be adequate space to store bins and containers on the plots that would be created, but the arrangements shown for the collection of bins would involve taking them to the roadside in Tangle Tree Close (where existing residents

place their bins for collection). This arrangement is far from ideal, but does not suggest that planning permission should be withheld on this basis in this particular instance.

Unilateral Undertaking

17. Unilateral Undertakings are sometimes necessary to address planning issues and overcome objections. However, Regulation 122 of the Community Infrastructure Levy Regulations 2010 sets out limitations on the circumstances where a planning obligation can be taken into account in a planning application. The limitations or tests are: whether the obligation is necessary to make the development acceptable in planning terms; whether it directly relates to the proposed development; and whether it is fairly and reasonably related in scale and kind to the proposed development.
18. In this case a number of matters are addressed in the submitted Unilateral Undertaking. These are payments of various index linked sums for the purposes of: the provision and maintenance of an equipped children's play space; the making good of the deficiency in education provision arising from the development; a contribution to libraries; the provision of health and social care facilities; the provision of recreation and green space; the monitoring of the obligation.
19. In general these appear to be acceptable to the Council, save for the matter of the equipped children's play space as there is no indication as to whether or where a suitable space might be available. This lack of information casts doubt on whether such a space would materialise if planning permission were to be granted or for any potential benefits to be assessed. In view of this uncertainty there is considerable doubt as to whether this part of the obligation would lead to the provision of such a space, although I accept that if a site were to be identified it might, subject to assessment, help counterbalance the loss of open space that would be occasioned if the development were to proceed. However, in present circumstances the loss of open space cannot be said to be redressed by any alternative provision.
20. Examination of the remaining aspects of the Unilateral Undertaking appears to suggest that the CIL Regulations tests would be satisfied and so the contributions offered can be taken into account. In doing so they would appear to meet the requirements of the Unitary Development Plan and relevant SPG thereby avoiding conflict with the relevant policies.

Conclusions

21. The proposals would harm the appearance and character of the site by impinging on its openness and as a result of the loss of trees. Also, the current advantages that the site offers as an open space, even without the advantage of any right of public access, would be significantly diminished. In addition it is not demonstrated that protected species would be adequately catered for. These shortcomings suggest that planning permission should be withheld and while the scheme would provide additional housing that would show a reasonable degree of harmony with existing residential development and the scheme would provide for the payment of relevant contributions, this does not amount to sufficient reason to outweigh the disadvantages of the scheme.

Chris Frost

Inspector