



Appeal Decision

Hearing held on 25 September 2012

Site visit made on 25 September 2012

by Lesley Coffey BA (Hons) BTP MRTPI

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

Decision date: 14 November 2012

Appeal Ref: APP/R5510/A/12/2175907

Vacant Land Fronting Northgate and Adjacent to Oakhurst, Northgate, Northwood HA6 2TH

- 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 Lang, PC Bernays and GFR Bernays against the Council of the London Borough of Hillingdon.
 - The application Ref 67012/APP/2011/2712 is dated 4 November 2011.
 - The development proposed is erection of a detached dwelling, including basement and formation of a vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling, including a basement and the formation of a vehicular access at vacant land fronting Northgate and Adjacent to Oakhurst, Northgate, Northwood HA6 2TH in accordance with the terms of the application, Ref 67012/APP/2011/2712, dated 4 November 2011, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by the Council of the London Borough of Hillingdon against MR Lang, PC Bernays and GFR Bernays. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council resolved that it would have been minded to refuse the application had the appeal not been submitted. Its deemed reasons for refusal were:
 - Due to the sub-division of the retained curtilage of Oakhurst, the rear garden would be dominated and shaded by oak tree T29 and would not afford adequate useable amenity space for occupants of Oakhurst. It would therefore be likely to result in the indirect loss of a protected tree which would be detrimental to the visual amenity and character of the Copsewood Estate Area of Special Local Character.
 - The proposal fails to provide adequate up-to-date information in respect of European and UK protected species.

- The proposal would make inadequate provision for the protection and long-term retention of oak tree T29 and trees within G1 of TPO 173.
 - The failure of the proposal to make provision for infrastructure contributions towards education.
4. An Ecological Assessment Report submitted with the appeal updates a previous report that included a Phase 1 Habitat Survey and Badger Survey. The Council is satisfied that there are no badger setts on the appeal site and consider the proposal to be acceptable in terms of its effect on protected species. It therefore withdrew its second reason for refusal.
 5. The appellant submitted a revised arboricultural method statement and Tree Protection Plan Rev F (TPP). This showed an amendment to the access, in order to reduce the impact of the proposal on the trees at the front of the site. The Council do not object to the substitution of this plan and I am satisfied it would not prejudice any party. I have determined the appeal on the basis of the alterations shown on this plan, although I note that the block plan differs in terms of the arrangements at the front of the property.

Main Issues

6. I consider the main issues to be:
 - The effect of the proposal on the living conditions of the occupants of Oakhurst with particular reference to amenity space;
 - The effect of the proposal on the character and appearance of the surrounding area with reference to tree T29; and
 - Whether a financial contribution is necessary to provide adequate education facilities in the area.

Reasons

7. A previous appeal in respect of a similar proposal was dismissed in 2011. The Inspector believed that the appeal site formed part of the curtilage of Oakhurst, and that the appeal proposal would leave Oakhurst with a much reduced garden in which the useable amenity space would be constrained by the extent of the overshadowing from oak tree T29.
8. This decision was upheld in the High Court which ruled that based on the submitted evidence, there were sound reasons for the inspector to reach this conclusion. However, information submitted with the present appeal shows that this is not the case and that the appeal site and Oakhurst have been in separate ownership since 2009. Therefore the appeal proposal would not deprive any future occupants of Oakhurst of any part of their garden.
9. The Council submit that irrespective of ownership, the only value of the appeal site as a separate plot is if it were permitted to be developed. A similar view was expressed by the Judge in the High Court, namely that it was likely to be the development of the appeal site and not the division of the legal title that would determine whether Oakhurst lost the use of the side lawn. However, it is clear that the side garden has not formed part of the curtilage of Oakhurst for a considerable period of time and following its use as a construction compound in connection with two dwellings to the rear of Oakhurst it no longer has the appearance of a residential garden. The appellants state that should

- the appeal fail, there is no mechanism in place to allow the return of the garden to the curtilage of Oakhurst. Therefore there is no certainty that even if the appeal site remained undeveloped it would revert to Oakhurst in the future.
10. Irrespective of the ownership of the appeal site, there could be some benefit to the occupants of Oakhurst derived from their outlook onto an area of undeveloped land. Moreover, if the appeal site remains undeveloped, it could potentially provide an opportunity to improve the amenity space to Oakhurst.
 11. The appeal site comes within the Copsewood Estate Area of Special Character which is typified by wide tree-lined streets with large detached houses situated within generous plots. It is an 'L' shaped site and previously formed part of the curtilage of Oakhurst. Both the dwelling at Oakhurst and the proposed dwelling would have generous rear gardens that would be comparable with others within the Area of Special Character. Oakhurst appears to have been vacant for a number of years and is an attractive locally listed building in the Arts and Craft style.
 12. Policies BE13, BE19, BE23 and BE38 of the London Borough of Hillingdon Unitary Development Plan (1998) (UDP) require high quality housing and seek to protect the visual amenity and character of residential areas, including the Copsewood Estate Area of Special Character.
 13. The proposal is to erect a detached house with a basement and an integral garage. The revised TPP modifies the position of the proposed access. Whilst this would necessitate the removal of a total of four trees, including a laburnum and a hawthorn, these are low quality trees with limited amenity value. I agree with the Council that their loss would not have a significant effect on the character of the area.
 14. The Council is satisfied that the garden to the proposed dwelling would be satisfactory. The ground and upper floors of the proposed dwelling would not generally project beyond the rear elevation of Oakhurst. It would not intrude on the outlook from the rear of the dwelling or dominate views from within the rear garden.
 15. The rear garden to Oakhurst has a southern aspect, is relatively generous in size, and would continue to provide an appropriate setting for Oakhurst. A number of trees on the appeal site and within the curtilage of Oakhurst are protected by a Tree Preservation Order, including an oak tree (T29) situated within the retained rear garden of Oakhurst. This tree occupies a broadly central position within the garden. Its crown has been lifted to a height above the roof of the dwelling providing the rear garden with an open, spacious, suburban character.
 16. At the time of my visit, on a sunny day, the tree cast a dappled shade on the ground. Due to the open nature of the crown and its height above ground, much of the garden was in sunlight. Although this tree is a prominent feature within the garden, most of the garden is laid to lawn, and it is not unduly dominated by trees and shrubs. There is adequate useable amenity space for the usual recreational activities associated with the family occupation of a large dwelling. I believe that many people would consider the tree to be an attractive feature that adds to the character of the garden.
 17. The relationship between the tree and the dwelling at Oakhurst would be unchanged by the proposal, in that the principal rooms of the dwelling would

continue to face towards tree T29. In addition, the oak tree (T28 on the TPO) on the boundary with the appeal site is in decline, and it is proposed to fell it. This would further open up the rear garden of Oakhurst. I am therefore satisfied that Oakhurst retains an adequate useable rear garden.

18. The previous inspector considered that 'the tree would result in a significant level of overshadowing of the amenity area, particularly that which is closest to the house during the months when the tree is in leaf.' At the time of my visit the tree was in leaf and I was able to observe the open nature of its canopy, which is noticeably less dense by comparison with many other oak trees. Moreover, at the time of the previous appeal, the fence between the appeal site and Oakhurst was not positioned on the boundary line, and I am told that there was an extensive area of dense vegetation close to the rear elevation of the dwelling. As a consequence, the garden to Oakhurst would have appeared smaller in size. For these reasons, I have reached a different conclusion from the previous inspector with regard to the ability of the retained garden to Oakhurst to provide adequate useable amenity space.
19. I therefore conclude that the appeal proposal would not harm the living conditions of the occupants of Oakhurst and would comply with UDP policies BE13, BE19, BE23 and BE38.
20. I have found that tree T29 would not unduly dominate the garden to Oakhurst, and therefore I am satisfied that the Council would be able to resist proposals to fell or substantially reduce it. Therefore the proposal would not harm the character and appearance of the surrounding area or the Copsewood Estate Area of Special Character.

Infrastructure Contributions

21. A Unilateral Undertaking submitted by the appellant covenants to make a financial contribution towards education. Regulation 122 provides that it is unlawful for an Obligation to be taken into account in a planning decision on a development that is capable of being charged CIL (as it is in this case) if the Obligation does not meet all of the following tests: 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.
22. On the basis of the evidence submitted by the Council at the Hearing and in its statement, I am satisfied that a financial contribution towards education is necessary to make the development acceptable, and would comply with the statutory tests within Regulation 122. The amounts are not disputed by the appellant and on the basis of the evidence submitted by the Council, I am satisfied that the Obligation would comply with Policy R17 of the UDP and the Council's Planning Obligations Supplementary Planning Document (2008).

Other Matters

23. The appellant unsuccessfully challenged the previous appeal decision on a number of grounds within the High Court. Although this decision is a material consideration in respect of this appeal, it relates to the manner in which the inspector reached his decision and does not address the planning merits of the case.

24. The updated Ecological Assessment Report concludes that, subject to the recommended mitigation measures, the relevant nature conservation legislation would not be contravened and the ecological impacts of the proposal would be reduced to a minimum. Local residents have noticed badgers foraging on the appeal site, however, the two previously recorded badger setts no longer exist. The appeal proposal does not involve the demolition of any buildings or the removal of trees with the potential for bat roosting. Therefore in the absence of any persuasive evidence to the contrary, I am satisfied that the appeal proposal would not significantly harm wildlife within the locality.
25. In reaching my conclusions I have taken into account the recently published National Planning Policy Framework. However, I have not been provided with any substantive evidence which would lead me to conclude that the UDP policies referred to above are inconsistent with the Framework. Accordingly, the Framework has not led me to reach any different overall decision.

Conditions

26. I have considered the conditions put forward by the Council, in the light of the advice in Circular 11/95. For the avoidance of doubt and in the interests of proper planning, the proposal should be carried out in accordance with the approved plans, including the revised access shown on TPP Rev F. In the interests of visual amenity I agree that samples of materials should be submitted in order to ensure a high quality design that integrates with the Copsewood Estate Area of Special Local Character.
27. In view of the sylvan character of the surrounding area, and in order to safeguard the privacy and amenity of neighbouring occupiers, I agree that boundary treatment, including the boundary with the existing dwellings at High Trees and Bothkennar should be submitted for approval. A separate condition in relation to these properties is unnecessary.
28. I agree that pedestrian visibility splays should be provided in the interest of highway safety. However, the Council's suggested condition may require the removal of some of the protected trees on the frontage. I therefore consider that details should be submitted for approval. Northgate is lightly trafficked, with little on-street parking and therefore in view of the width of the footway, I consider a condition in relation to vehicular visibility splays to be unnecessary. The trees on the appeal site should be protected during construction in the interest of visual amenity. Detailed measures for the protection of the trees are specified within the revised Method Statement (dated 13 September 2012). The Council is satisfied that these measures would provide adequate protection for the trees and I have adjusted the Council's suggested condition to reflect this.
29. A landscape scheme is necessary in order to integrate the proposal with its surroundings. However, I consider the requirement to maintain the landscape scheme in perpetuity to be unduly onerous, and I have specified a period of five years. In order to maintain and enhance the biodiversity of the site a scheme for the protection and enhancement of the ecological value of the site is necessary. In the interest of sustainability the dwellings should achieve Code level 3 of the Code for Sustainable Homes.

30. The proposal includes an integral garage and therefore a separate condition requiring its provision, or that of the access, prior to the occupation of the dwelling is not necessary.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Bateson	Planning Consultant
Neil Cottrell	Agent
Simon Hawkins	Arboriculturist
Michael Snooks	Agent for Owners

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Volley	Planning & Enforcement Manager
N Cameron	Planning Solicitor
John Lawson	Tree & Landscape Officer
Ian Thynne	Sustainability Officer
Venetia Roger	Education Officer

INTERESTED PERSONS:

Brian Fredericks
Shirley Fredericks
Pandora Melly

DOCUMENTS

- 1 Revised Arboricultural Statement dated 13 September 2012 with Tree Protection Plan Rev F submitted by the Appellant
- 2 Unilateral Undertaking dated 19 September 2012 submitted by the Appellant
- 3 Summary of site history and block plans submitted by the Council
- 4 E mail dated 19 September 2012 in respect of protected trees submitted by the Council
- 5 Additional condition in respect of ecology submitted by the Council

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Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P001/01 Rev A, P001/02 Rev B, P001/03 Rev B, P001/04 Rev C, P001/05 Rev C, P001/06 Rev D, P001/07 Rev B, P001/08 Rev C, P001/09 Rev A, P001/10 Rev D and a revised block plan. The revised block plan shall accord with the recommendations within the Merewood Arboricultural Consultancy Services Method Statement (Version 2 – revised 13th September 2012) and Tree Protection Plan Rev F dated August 2012.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwelling is occupied. Development shall be carried out in accordance with the approved details and thereafter maintained.
- 5) No development shall take place until details of the pedestrian visibility splays have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) The development shall be implemented in accordance with the recommendations of the Merewood Arboricultural Consultancy Services Method Statement (Version 2 – revised 13th September 2012) and Tree Protection Plan Rev F dated August 2012. No development shall commence on site until the tree protection fencing shown on Tree Protection Plan Rev F has been erected.
- 7) Prior to the commencement of the development hereby permitted, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include a planting specification, trees and hedges to be retained, surface materials, and programme of implementation. The landscaping scheme shall be implemented in accordance with the approved details and the programme of implementation. Any trees or shrubs that fail within 5 years shall be replaced on a like for like basis, or as otherwise first agreed in writing with the Local Planning Authority.
- 8) Prior to the commencement of development, a scheme for the protection and enhancement of the ecological value of the site and a programme of implementation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and the programme of implementation.

- 9) The dwelling shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.