

Town and Country Planning Act 1990

Land R/O No.44 Herbert Road & fronting
Fairlawns Close, in Emerson Park, Hornchurch,
Essex, RM11 3LJ

**Appeal against the decision of the London
Borough of Havering Council (LBHC) to refuse
planning permission for a proposal to erect a
detached 2-storey 5-bed dwelling house and
separate double garage plus formation of
access onto Fairlawns Close**

Appellant's Statement of Case

PINS Ref: APP/B5480/A/14/2216369

LBHC Application Ref: P0053.14

Prepared by:

Andrew Bateson, on behalf of Mr Lawrence Nalder of Ilford &
Dagenham Properties Limited



AB P&D Reference:
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1: INTRODUCTION

1.1 AB Planning & Development Limited has been instructed by Mr Lawrence Nalder of Ilford & Dagenham Properties Limited to present this appeal evidence in order to challenge the decision by the London Borough of Havering Council (LBHC) to refuse planning permission (LBHC Ref: P0053.14) for the erection of a detached 5-bed dwelling house with separate double garage and formation of a new access driveway onto Fairlawns Close, in Emerson Park, Hornchurch, Essex.

1.2 The planning application was refused by LBHC on 6th March 2014 for three reasons:-

“1. The proposed development would, by reason of its height, bulk and mass, appear as an unacceptably dominant and visually intrusive feature in the street scene harmful to the appearance of the surrounding area contrary to Policies DC61 and DC69 of the LDF Core Strategy and Development Control Policies DPD and the Emerson Park Policy Area SPD.

2. The proposed development would, by reason of its position, bulk, massing and proximity to neighbouring properties form a visually intrusive and over dominant feature resulting in a detrimental impact on outlook and a serious and adverse effect on the living conditions of adjacent occupiers, contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies DPD.

3. In the absence of a mechanism to secure a planning obligation towards infrastructure costs of new development the proposal is contrary to the provisions of the Havering Planning Obligations Supplementary Planning Document and Policy DC72 of the LDF Core Strategy and Development Control Policies DPD.”

An informative appended to the three reasons for refusal stated that:-

“Statement Required by Article 31 (cc) of the Town and Country Planning (Development Management) Order 2010: Consideration was given to seeking amendments, but given conflict with adopted planning policy, notification of intended refusal, rather than negotiation, was in this case appropriate in accordance with para.186-187 of the National Planning Policy Framework 2012.”

- 1.3 A copy of the LPA refusal notice and the Officer's Report Recommendation is attached at Appendix A.
- 1.4 This Statement sets out the background to the Appeal and the relevant planning policy context within which it should be considered. The Statement then sets out the case for the Appellant in light of these policies and in the light of all other material considerations.

2: SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site comprises a broadly rectangular plot of land which lies to the immediate south of No.44 Herbert Road and immediately east of the head of the cul-de-sac in Fairlawns Close, at Emerson Park, in Hornchurch.
- 2.2 The site has an area of around 0.1312 hectares (0.3242 acres). The site also has a frontage width onto the eastern end of the Fairlawns cul-de-sac of 16.8m and extends a further 3m north (adjacent the corner of the garage to neighbouring No.7 Fairlawns Close) and extends south a further 26m towards the rear of properties fronting onto Beverley Close.
- 2.3 Most of the site boundaries are defined by 1.8m close-boarded fences, although in some areas no fencing exists because the boundaries are supplemented by mature trees and hedgerows, which vary from 4m up to a maximum of 17m in height.
- 2.4 The northern site boundary abuts the rear garden of No.44 Herbert Road, which was recently approved for a redevelopment to form three detached houses (LPA Ref: P0169.13, dated 18th June 2013). The boundary is defined by a 1.8m high close-boarded fence and extends a distance of 34.8m.
- 2.5 The eastern boundary is formed again by a 1.8m high close-boarded fence that runs along the back to the rear gardens of Nos.5-8 Channing Close. It runs on a NNE–SSW axis and extends for a distance of 60.2m. The southern boundary comprises another 1.8m high close-boarded fence that abuts the rear gardens of Nos.5-7 Beverley Close.
- 2.6 The appeal site contains a number of trees and shrubs and is the subject of a Tree Preservation Order (TPO). The TPO also straddles the adjacent development site to the north, which has already been substantially cleared to facilitate development.
- 2.7 There is an historic access point from the appeal site onto Fairlawns Close.
- 2.8 The appeal site lies in the heart of the developed area of Emerson Park, in Hornchurch and is within Sector 6 of the Emerson Park Policy Area, which is amplified in more detail later. The Lombards is located to the northwest and contains quite large detached houses in modest plots. Fairlawns Close is located immediately to the east and northeast and comprises detached dwellings set in plots of varying sizes.

3: RELEVANT PLANNING HISTORY

- 3.1 A previous planning application (LPA Ref: P1147.13) proposed the erection of a 5-bed detached dwellinghouse with a separate double garage and the formation of a new driveway with access onto Fairlawns Close in a similar fashion to that subsequently refused permission by the LPA and now subject to this appeal.
- 3.2 That application was withdrawn on 20th November 2013 prior to any determination due to an outstanding issue concerning land ownership of a narrow strip of land at the end of Fairlawns Close across which access was proposed. In response to that, the subsequent appeal application was accompanied by a signed Article 12, Certificate C and site and press (Romford Recorder) publicity was undertaken for the prescribed three-week period immediately prior to application submission.

4: PLANNING POLICY CONTEXT

Development Plan Policy

4.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires that any planning application shall be determined in accordance with the Development Plan, it consisting of:-

- The Development Plan Documents (taken as a whole) which have been adopted or approved in relation to that area.

4.2 The Development Plan for this appeal site in Emerson Park, Hornchurch includes the London Plan (adopted 2011) and the Havering LDF Core Strategy and Development Control Policies DPD (adopted 2008).

4.3 Relevant adopted London Plan policies are policies 3.3, 3.5, 3.8, 7.3 and 8.3. These state that:-

Policy 3.3 – The Mayor is committed to ensuring a London that provides equal life chances...addressing the spatial needs of London's people...recognising their pressing need for more homes and ensuring delivery across London of at least 32,210 new homes each year, with at least 970 per year in Havering Borough (Table 3.1).

Policy 3.5 – Addresses housing quality and design and states that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. Developments should enhance the quality of local places, taking into account physical context, local character, density, tenure and land use mix, and relationships with, and provision of, public, communal and open spaces. Minimum space standards should conform to Table 3.3 Mayoral guidance (i.e. in this instance, a minimum 107m² GIA).

Policy 3.8 – Seeks to promote housing choice and help deliver Objective 5: healthy places of the Mayor's Health Inequalities Strategy, to ensure new homes and neighbourhoods are planned and designed to promote health and reduce health inequalities.

Policy 7.3 – LPAs should seek to create safe, secure and appropriately accessible environments and developments should reduce the opportunities for criminal behaviour and contribute to a sense of security without being overbearing by complying to a set of six specified criteria.

Policy 8.3 – The Mayor will work to ensure effective development and implementation of the Community Infrastructure Levy (CIL) and prepare guidance for Boroughs setting out a clear framework for application of the CIL to ensure the costs incurred in providing necessary infrastructure can be wholly or partly funded by those benefitting from the granting of planning permission.

- 4.4 Relevant policies in the Havering LDF Core Strategy and Development Control Policies DPD are set out below.
- 4.5 Policy CP1 deals with housing supply and states, inter alia, that a minimum of 535 new homes [the 2011 London Plan now requires a minimum of 970] will be built in Havering each year by prioritising the development of brownfield land and ensuring it is used efficiently.
- 4.6 Policy CP17 relates to design. The implementation of this policy will depend on the actions of developers through the successful application of the policy. In particular CP1 identifies that development briefs, master plans and design codes may be prepared for larger housing sites. Supplementary Planning Documents for London Riverside and Hornchurch Town Centre will also include design advice. To help ensure the successful application of these policies the Council intends to appoint an urban designer. With regard to the achievement of the ‘Secure by Design’ standard, developers are able to liaise with a Crime Prevention Design officer who is seconded to the Council on a full-time basis.
- 4.7 Policy DC2 relates to housing mix and density. It states that planning permission will only be granted for new housing if a design led approach is adopted in determining the type, size and form of new development with regard, inter alia, to: 1. local housing needs, and 2. Housing densities compatible within the defined Emerson Park special policy area SPD.
- 4.8 Policy DC3 relates to housing design and layout. It states that planning permission will only be granted if, in their design and access statements, developers demonstrate how they have addressed the policies in the Plan which impact on the design and layout of new development.

4.9 Policy DC60 relates to trees and woodlands. The policy seeks to ensure, inter alia, that adequate measures are put in place when granting planning permission to protect trees during construction works.

4.10 Policy DC61 relates to urban design. It states that planning permission will only be granted for development that maintains, enhances or improves the character and appearance of the local area. It requires development to:

- harness the topographical and ecological character of the site, including the retention of existing trees and landscape features while providing appropriate landscaping;
- respond to distinctive local building forms and patterns of development and respect the scale, massing and height of the surrounding physical context;
- complement or improve the amenity and character of the area through its appearance, materials used, layout and integration with surrounding land and buildings;
- provide structure by utilising and protecting existing views, vistas, panoramas and landmarks and creating new ones;
- reinforce, define and embrace the street and create natural surveillance by ensuring streets and open spaces are overlooked;
- create or enhance and clearly define the public and private realms and ensure these are free of clutter and easily accessible;
- meet the needs of all people and of all ages;
- be designed and orientated around the needs of pedestrians, cyclists and connectivity to the public transport network; and
- be durable, flexible and adaptable. Where necessary, applications for planning permission must be accompanied by a Design and Access Statement, which addresses the guidance in Circular 1/2006.

The policy goes on to state that planning permission will not be granted where a proposal:

- results in unacceptable overshadowing, loss of sunlight/daylight, overlooking or loss of privacy to existing and new properties and has unreasonable adverse effects on the environment by reason of noise impact, hours of operation, vibration and fumes between and within developments; or
- prejudices the satisfactory development of adjoining land and/or the development of the surrounding area as a whole.

4.11 Policy DC69 relates to other areas of special townscape or local character. Planning permission will only be granted by the LPA if it maintains, or enhances, the special character of:

- the Emerson Park Policy Area, which is typified by large and varied dwellings set in spacious mature, well landscaped grounds;
- the Hall Lane Policy Area, which is typified by large detached and semi-detached dwellings set in large gardens with considerable tree and shrub planting; and
- the Gidea Park Special Character Area, which is derived from the quality of its urban design and architectural detailing and also its locally important heritage and historical associations.

Detailed criteria for dealing with planning applications in these areas will be contained within separate SPDs.

The Council will also seek to preserve the special character of Havering Ridge, including protecting views to and from the area.

4.12 The Emerson Park Policy Areas SPD (adopted February 2009) is also relevant, providing locally specific guidance for the locality.

4.13 The appeal site lies within Sector 6 of the Policy Area, which is typified by medium and large dwellings located in spacious well landscaped grounds. The southern boundary of the site also abuts Sector 5 of the Policy Area.

4.14 The associated commentary on Sector 6 in the SPD states that the redevelopment of a number of properties or backland development can result in increased density and reduced rear garden length, both of which could be harmful to the special character of the Sector.

4.15 The criteria applying to new dwellings in Sector 6 include the following:

- be limited to infill development of existing frontages at plot sizes equivalent to immediately surrounding properties (my emphasis);
- redevelopment will not be permitted where it would materially increase the existing density of the immediately surrounding area;
- be of a detached, single family, large and architecturally varied dwellings;
- provide a minimum plot width of 23m, which should be achieved at both the road frontage and building line; and

- the minimum requirement is that first floors must be set in 2m from the common party boundary (1m at ground floor). These are minimum requirements and that in the majority of cases the LPA will expect them to be exceeded.
- 4.16 As mentioned above, the southern boundary of the appeal site abuts Sector 5. The SPD confirms that Sector 5 contains a mixture of medium and large sized detached family houses often located in spacious well landscaped grounds typical of Sector 6 and the smaller often semi-detached properties, set in smaller grounds of the other Sectors.
- 4.17 The LPA also has Design for Living and Biodiversity guidance, which covers residential design quality, Lifetime Homes and ecological safeguards of protected species and their important habitats.

Strategic Planning Policy Guidance – The National Planning Policy Framework

- 4.18 The National Planning Policy Framework (NPPF) was adopted by Government in March 2012. It sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system. This is essentially a pro-growth document with the intention of delivering significantly more housing based on the principles of sustainable development. Paragraph 14 cites a presumption in favour of sustainable development. For decision makers this means, inter alia, approving proposals that accord with the Development Plan without delay.
- 4.19 Paragraph 17 cites twelve core planning principles for the planning system. These include proactively driving and supporting sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places that the country needs. In addition, the system should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
- 4.20 The NPPF reiterates that design is regarded as a key aspect of sustainable development and is indivisible from good planning.
- 4.21 Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is proper to seek to promote or reinforce local distinctiveness (Paragraph 60). NPPF states that permission should be refused for development of poor design that fails to

take the opportunities available for improving the character and quality of an area and the way that it functions (Paragraph 64).

- 4.22 Paragraph 53 states that LPAs should consider the case for setting out policies to resist inappropriate (my emphasis) development of residential gardens, for example where development would cause harm to the local area.
- 4.23 In accordance with NPPF Government advice, the appeal proposal would represent an opportunity for residential regeneration within a sustainable urban location and the proposal would represent a far more efficient use of a former residential garden plot. In accordance with NPPF guidance, residential gardens do not constitute previously developed land but that does not preclude it from development subject to it respecting the character and appearance of the site and its wider surroundings.

5: THE APPEAL PROPOSALS

- 5.1 The application was received by the LPA on 13th January 2014 and subsequently allocated application reference P0053.14. The application was accompanied by all relevant plans and particulars and a combined Design and Access/Planning Support Statement.
- 5.2 The application sought planning permission for a proposal to erect a detached 5-bed dwelling house and separate double garage on a vacant plot of former garden land that lies to the rear of No.44 Herbert Road and fronts onto the head of Fairlawns Close cul-de-sac, at Emerson Park, in Hornchurch. The application also proposed the formation of a new access driveway onto the Fairlawns Close cul-de-sac.
- 5.3 The proposed house would have two storeys plus accommodation in the roof served by front and rear dormers and roof lights. The roof would have a hipped form, sloping away from the lateral boundaries. The dwelling would also have front bay windows and a porch and a single storey section to the rear comprising a first floor roof terrace. The detailed design of the building is described in detail later, in Section 6.
- 5.4 In summary, the proposed dwelling would be constructed primarily of red brick with white rendered elements at first floor on the front and along the front portions of the side elevations, plus a little timber cladding in the two forward facing roof gables. The roof and three dormer windows would be tiled in grey slates.

6: PLANNING CONSIDERATIONS

- 6.1 Section 38(6) of the Town and Country Planning Act 1990 requires that where, in making a determination under the Planning Acts, regard is to be had to the Development Plan, the application should be determined in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The planning considerations, and as such the case for the Appellant, will focus upon the three reasons for refusal specified by the LPA, as set out at paragraph 1.2, i.e. the key issues of whether the development proposal would be in keeping with the appearance and character of its surroundings; whether or not the new dwelling would impact adversely on the living conditions of occupants in adjacent neighbouring properties and the impact on local infrastructure.

The LPAs First Reason for Refusal:

- 6.3 The first reason for refusal states:

“1. The proposed development would, by reason of its height, bulk and mass, appear as an unacceptably dominant and visually intrusive feature in the street scene harmful to the appearance of the surrounding area contrary to Policies DC61 and DC69 of the LDF Core Strategy and Development Control Policies DPD and the Emerson Park Policy Area SPD.”

- 6.4 The appeal site comprises former residential curtilage land. It is relatively flat and is separated from all neighbouring houses by 1.8m high close boarded fencing. It has a 16m wide frontage onto the head of a cul-de-sac at the end of Fairlawns Close. The site contains nine individual trees around its edges and three small groups of smaller trees beside the boundary with Fairlawns Close, in a line towards the southern end of the site, or towards the common boundary with no.6 Channing Close.
- 6.5 It should be recognised that the appeal site lies within the urban heart of the Emerson Park area of Hornchurch and is entirely surrounded by established residential development. Accordingly, a more intensive residential redevelopment of the large, landscaped former garden plot would generally be in character with its surroundings and would be consistent with both national and local planning policies that encourage the more efficient use of land and urban infill developments.

- 6.6 In terms of design, building styles vary in the immediate locality. Most are constructed over two-storey, although some are taller and others smaller. The majority are of brick construction, although there are other finishes including render and timber panels.
- 6.7 The proposed dwelling would be constructed primarily of red brick with white rendered elements at first floor on the front and the front portion of the side elevations and with a little timber cladding in the two forward facing roof gables. The roof would be tiled in grey slates and there would be a single dormer window facing towards the front and two on the rear roof pitch.
- 6.8 Door and windows styles and sizes would be typical of properties in Channing Close to the east and the style of those recently approved in the redevelopment of No.44 Herbert Road, to the immediate north. It is also important to note that the LPA has no stated objection to the proposed architectural style. Its concerns relate to the massing and bulk of the proposals.
- 6.9 As was demonstrated in the site location, contextual and block plan drawings that accompanied the application submission to the LPA, the surrounding area is primarily developed at a net density of around 7-9 dwellings per hectare (dph). The density of development on the adjoining redevelopment site to the north is around 7.4 dph. The appeal proposal would be located on a site of around 0.1312 ha and would equate to a density of around 7.72dph. This would make better use of the appeal site and would still maintain the spacious character and sylvan character and appearance of the locality.
- 6.10 As confirmed above, the proposed dwelling would be located well away from the lateral boundaries of the appeal site that form the rear boundaries of properties fronting Channing Close to the east, Beverley Close to the south and Fairlawns Close to the west. The proposal complies with the relevant minimum distance guidelines specified in the SPD.
- 6.11 In terms of scale, the proposed dwelling would be two-storey plus accommodation in the roof, akin to the approved dwellings on the redevelopment site to the immediate north. The roof would hip away from the side boundaries of the site and would terminate in a small area of crown roof. The eastern flank of the building would also be set back from the front elevation, adding to the hierarchy of roof elements. The dwelling also has a staggered footprint with two front bays and a small single-storey rear projection. The bays would be subordinate to the main roof, reducing bulk and creating visual interest. Discrete dormers would also be located within the roof.

- 6.12 The net result of these factors would be a building which would sit in a mature, spacious plot and would not appear overly large or bulky when viewed from Fairlawns Close or the neighbouring private gardens. In addition, the building would also be located flank on to Fairlawns Close and set well back in its plot, reducing its visual impact on the Close.

The LPAs Second Reason for Refusal:

- 6.13 This reason states:

“2. The proposed development would, by reason of its position, bulk, massing and proximity to neighbouring properties form a visually intrusive and over dominant feature resulting in a detrimental impact on outlook and a serious and adverse effect on the living conditions of adjacent occupiers, contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies DPD.”

- 6.14 The eastern flank of the proposed dwelling would be located around 4.8m from the lateral boundary with No.6 Channing Close to the east. The flank of the proposed dwelling would be located around 20m from the rear habitable room windows at the property. There is an oblique relationship between the two and, in addition, the roof to the proposed dwelling would hip away from the boundary. The footprint of the proposed dwelling would also be staggered and would not present a “whole” elevation.
- 6.15 In view of all these factors, the proposal would not result in an unneighbourly impact on No.6 Channing Close. It is also important to emphasise that that the proposed relationship would be more favourable than the existing rear to flank relationship between No.8 Channing Close and No.3 The Lombards, to the immediate north.
- 6.16 In addition, the LPA has raised a further objection relating to the suggested impact of the proposed roof terrace on the amenities of occupiers of Nos.5 and 6 Channing Close and Nos.6 and 7 Beverley Close.
- 6.17 In response, the proposed dwelling would be located at right-angles to Nos.5 and 6 Channing Close. The occasional use of the proposed balcony would not result in loss of privacy to neighbouring residents. Moreover, additional comfort could be provided by the imposition of a planning condition along the following lines:- “Notwithstanding the details on the approved plans, details of a 1.6m high imperforate and obscure glazed privacy screen to be installed along the eastern flank of the proposed roof terrace shall be submitted to and approved in writing by the LPA prior to

commencement of the development. The approved details shall be installed prior to initial occupation and thereafter retained as such”.

- 6.18 In addition, the rear wall of the proposed house would be located around 20m from the rear boundary with properties in Beverley Close. The latter dwellings are themselves around a further 14m from the boundary, i.e. the total separation distance being around 34m. This distance is very significant and intervening boundary screening would be retained and bolstered, which can be governed by condition. The net result is that the proposed roof terrace would not result in loss of privacy to dwellings in Beverley Close, In addition, the Council’s Tree Officer has raised no objection to the modest amount of proposed tree removal required to facilitate the development.

The LPAs Third Reason for Refusal:

- 6.19 This reason for refusal states:

“3. In the absence of a mechanism to secure a planning obligation towards infrastructure costs of new development the proposal is contrary to the provisions of the Havering Planning Obligations Supplementary Planning Document and Policy DC72 of the LDF Core Strategy and Development Control Policies DPD.”

- 6.20 The Appellant has no objection to making commensurate contribution towards associated infrastructure improvements and has reached prior agreement with the LPA on this point concerning the amount of contribution payable and the type of infrastructure improvements in would help fund. We therefore intend submitting a completed S.106 Planning Obligation within the appeal timetable, which would overcome the LPAs concern.

7: CONCLUSION

- 7.1 In my professional opinion, the Appellant has demonstrated that by virtue of all the documentary evidence submitted as part of the original planning application to the London Borough of Havering Council together with all the arguments set out in this appeal Statement of Case that the appeal proposal would create a high quality, innovative form of development. Its proposed design would both preserve and help enhance the character and appearance of the site and its surroundings. In addition, the proposal would make efficient use of urban garden land within a sustainable settlement location and would help promote housing choice.
- 7.2 Accordingly, we consider that the proposed development is compliant with both Development Plan and NPPF policies and I would respectfully urge the Inspector to allow this appeal and grant conditional planning permission for the development proposal.

APPENDICES
