



## Appeal Decision

Site visit made on 5 January 2021

**by J Bowyer BSc(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> January 2021

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**Appeal Ref: APP/X1925/W/20/3258611**

**Land Rear of 33 Wymondley Road, Hitchin, Hertfordshire SG4 9PN**

- 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 Danny Taylor against the decision of North Hertfordshire District Council.
  - The application Ref 20/00892/FP, dated 27 April 2020, was refused by notice dated 7 August 2020.
  - The development proposed is described as 'erection of one dwelling with ancillary access and parking area Land Rear of 33 Wymondley Road'.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Danny Taylor against North Hertfordshire District Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues are:
  - i) the effect of the proposed access to the development on the living conditions of the occupiers of 33 and 35 Wymondley Road with particular regard to noise and disturbance; and
  - ii) whether or not living conditions for future occupiers of the proposed dwelling would be acceptable, and the effect of the proposal on the living conditions of the occupiers of 29 Wymondley Road and 1 Wymondley Close, all with particular regard to privacy.

### Reasons

#### *Noise and Disturbance*

4. The appeal proposes a dwelling on land to the rear of 33 Wymondley Road which would be accessed by a driveway between No 33 and the neighbour at 35 Wymondley Road. To the side of No 35 are a large number of windows which face towards the proposed access. The closest part of the side of No 33 includes a door, but it additionally has windows to its front and rear positioned fairly close to the side of the building. Separation between both neighbouring dwellings and their boundaries with the route of the access is limited, and as a result the driveway would be in very close proximity to windows which extend above the height of the existing boundary fence and which include windows to

habitable rooms. It would also pass close to the raised patios to both of these dwellings, and would run alongside the full depth of their rear gardens.

5. There has been a previous appeal decision on the site where the Inspector found that noise and disturbance associated with the access would cause harm to the living conditions of occupiers of Nos 33 and 35. That appeal related to an outline application with all matters reserved, but given that it also concerned a single dwelling on the site and similarities between the access point considered by the Inspector and the arrangements before me, I consider that this earlier appeal decision is an important material consideration.
6. The current appeal is accompanied by a 'Noise Assessment Report' (NAR). This asserts that the increase in traffic movements would not cause a significant impact over the existing case. However, as the NAR highlights, the national Planning Practice Guidance advises that the subjective nature of noise means that there is no simple relationship between noise levels and impacts which will depend on a number of factors in any particular situation. That expected traffic movements may be no more than for other properties nearby, or fewer than movements into Wymondley Close and on Wymondley Road, is not compelling evidence that such a level of traffic would not be perceptible or cause a change to the particular situation around the appeal site. Moreover, it seems to me that vehicle movements on Wymondley Close and Wymondley Road would be less constrained than on the appeal site as a result of the greater width of these streets, and so would not pass in similarly close proximity to adjacent dwellings and their plots as in this case.
7. The NAR does not include an objective assessment of existing background noise levels and impacts on these, or other information to robustly demonstrate noise levels that would be associated with use of the access, and the extent to which this would alter the particular existing situation experienced by neighbouring occupiers. Accordingly, there is little to substantiate the NAR's comment that it might be argued that there would be 'No Observed Adverse Affect'. Whether or not numbers of vehicle movements would be similar to other properties, the weight that I can place on the assertion within the NAR that impacts would not be significant in the context of the appeal site is therefore limited.
8. While there may be a requirement to incorporate charging points on the site, it would not be possible to restrict use of the access to electric vehicles only. Nor would it be possible to control the number of vehicle movements along the access or the time of day that these would occur. I accept that vehicles would be likely to be travelling at fairly low speeds, and that hard surfacing could reduce tyre noise in comparison to gravel. Nonetheless, there would remain some noise in addition to that associated with vehicle engines.
9. At my visit, I found the appeal site to be generally peaceful, and I did not experience a noticeable background of noise from the street or elsewhere. Given this context and the very close proximity of the access to the adjacent dwellings and their gardens, I consider that noise and disturbance associated with vehicle movements would be likely to be noticeable to occupiers, despite the current boundary fencing. In comparison to the existing undeveloped site, the effect of noise and disturbance from even low numbers of vehicle movements would in my view be intrusive, and would detract from the neighbouring occupiers' quality of life.

10. The appellant suggests that acoustic fencing could offer mitigation. However, details of the form that this would need to take to address potential impacts has not been provided. Accordingly, I cannot be sure that the living conditions of neighbouring occupiers would not be adversely affected, nor that it would be effective. Given this uncertainty, I am not satisfied that it would be appropriate to defer consideration of whether the harm could be adequately mitigated to a planning condition.
11. Given the number of properties served, I note that a nearby access between 27 and 31 Wymondley Road is likely to carry more traffic than an access to one dwelling on the appeal site. However, while that access passes close to the sides of Nos 27 and 31, I do not know the circumstances which led to this relationship being found to be acceptable. In addition, it appeared to me that neither of these properties include comparable levels of fenestration facing the access as at No 35. Accordingly, I do not find the existence of this access a compelling justification to support development which would detract from the living conditions of the occupiers of Nos 33 and 35.
12. The appellant has also drawn my attention to 2 decisions allowing appeals for developments in Luton. In contrast to the current appeal, the proposal at 727 Dunstable Road utilised an existing access. The Land Rear of 10 Arundel Road decision does not explicitly examine the effects on neighbours of access to the development, but from the submitted details, the relationship and separation to neighbouring dwellings was not directly comparable to the appeal proposal.
13. I note that the Council's Environmental Health Officer has not raised an objection to the proposal. Nevertheless, for the reasons above and with regard to the particular circumstances of the appeal site and relationship with adjacent properties, I am not satisfied that I have sufficiently robust evidence to determine that neighbouring occupiers would not be adversely affected by noise or disturbance associated with use of the access. I do not therefore find that there is a compelling justification to support a different conclusion to that reached by the Inspector in the previous appeal on this matter.
14. I therefore conclude on this main issue that the proposed access to the development would cause harm to the living conditions of the occupiers of Nos 33 and 35 as a consequence of noise and disturbance. Accordingly, I find it would conflict with Saved Policy 57 of the North Hertfordshire District Local Plan No.2 with Alterations 2007 (NHDLP) which seeks, amongst other things, to minimise nuisance from traffic and to control noise. It would also be contrary to Policy D3 of the emerging Local Plan which advises that permission will be granted for development that does not cause unacceptable harm to living conditions. However, as I cannot be sure that it will be adopted unchanged, I afford the conflict with this policy less weight.

#### *Privacy*

15. The proposed dwelling would be set forward of the front elevation of the adjacent property at 29 Wymondley Road. Views from the appeal site to the ground level windows and garden of this neighbour would be obscured by the existing boundary fencing. The first-floor front windows would be visible from the site, but the upward angle means that there would not be meaningful views into the interiors of the rooms. Moreover, views would be similar to those already available from the access to No 29 which serves other properties, and so would not cause a harmful loss of privacy to occupiers of No 29.

16. The main outlook from windows to the front of No 29 is towards the rear garden of 31 Wymondley Road. Views over the appeal site would be possible, but given the separation to the largest part of the garden to the front of the development and that views would be oblique rather than direct, I am satisfied that there would not be unacceptable overlooking to this space. Views towards the space to the rear of the dwelling would for the most part be at a much tighter angle, and while there are angled bays, these are of limited depth and do not include panes orientated directly towards the boundary. There would also be potential for additional planting at the boundary and taking these factors together, I do not find that overlooking would be significant so as to harmfully diminish privacy for future occupiers of the site.
17. Turning to consider the relationship with 1 Wymondley Close, the rear elevation of this neighbour is set very close to its boundary with the site. I am satisfied that the differing orientations of the dwellings means that there would not be harmful overlooking between windows serving No 1 and to the development. However, there would be clear views at very close range between large first-floor rear windows to No 1 and the garden and patio to the rear of the dwelling, even without the removal of existing vegetation at the boundary.
18. The rear patio would not be directly aligned with the windows to No 1 and would be below ground level. Even so, I consider that the separation is so limited that the views from No 1 would result in pronounced overlooking of the patio and a material lack of privacy which would significantly harm its attractiveness and use. Similarly, there would be reciprocal views from the patio to the windows of No 1. Given the proximity at which these views would occur, I find that they would cause a notable loss of privacy.
19. Although there would be alternative outdoor space forward and to the side of the dwelling, the rear patio would be much larger than the one to the front of the dwelling. It would also be accessed from the ground floor level which would provide for the core living space, as well as from bedrooms at lower-ground level. It therefore seems to me that future occupiers would have a reasonable expectation that the rear patio should play an important role in providing outdoor space closely related with the dwelling, and would be likely to make use of it accordingly. Given this role, I find that the effect of overlooking between the patio and No 1 would be of particular significance so as to cause harm to the quality of life of the occupiers of both dwellings, irrespective of the availability of alternative outdoor space within the appeal site.
20. To be of sufficient height and density to adequately obscure views, new planting at the boundary with No 1 would be likely to have some effect on light to this dwelling, and would in any event take some time to become established. I am also concerned that installing obscure glazing over the rear patio could have consequences for living conditions within the dwelling, including through reducing light to and outlook from its lower level windows. Accordingly, I do not consider that it would be appropriate to use planning conditions to secure these as measures to mitigate the harm that I have identified.
21. With particular regard to privacy, I therefore conclude on this main issue that the proposal would cause harm to the living conditions of the occupiers of 1 Wymondley Close, and that there would also be some harm to the living conditions of occupiers of the development. As a consequence, there would be conflict with Saved Policy 57 of the NHDLP which seeks privacy between

dwellings. The development would also be contrary to Policy D3 of the emerging Local Plan, although as this is not part of the adopted development plan and is subject to change, this conflict attracts less weight.

### **Planning Balance**

22. The main parties indicate that the Council is not able to demonstrate a 5 year supply of deliverable housing sites. In accordance with the National Planning Policy Framework (the Framework), the policies which are most important for determining the proposal are therefore considered to be out-of-date. In these circumstances, paragraph 11 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
23. The Framework refers to boosting significantly the supply of housing, and highlights that small and medium sized sites such as the appeal site can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. It also indicates that development of windfall sites should be supported, giving great weight to the benefits of using suitable sites within existing settlements for homes.
24. The proposal would make more efficient and effective use of the site to deliver an additional dwelling within an existing built-up area. In accordance with the Framework, the provision of an additional home here for which there is an acknowledged need is a benefit of considerable importance. The contribution the development would make though is limited given the small scale of the proposal, and I therefore give it moderate weight overall. The development would offer some further short-term economic benefits during the construction period, as well as support for the local economy by future occupiers, and associated social benefits to the community. However, the contributions have not been quantified, and are likely to be constrained by the small scale of the development. The weight that I afford to these benefits is therefore limited. While the Council has not identified adverse impacts on the character of the area, this is a neutral factor and weighs neither for nor against the proposal.
25. The Framework advises that where there is an existing shortage of land to meet housing needs it is important that decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site. Nonetheless, it requires any assessment in this context to take into account the policies within the Framework, and these also highlight that development should function well, provide a high standard of amenity for existing and future users, and not undermine quality of life. Similarly, even if I were to accept the appellant's suggestion that the flexible approach to policies or guidance relating to light advocated by the Framework should be extended to also apply to other development effects, the principle is subject to provision of acceptable living standards. The harm that I have identified above to the living conditions of neighbouring and future occupiers would be contrary to these requirements of the Framework, and weighs against the proposal.
26. I consider that the harm to the living conditions of future occupiers of the dwelling would be fairly modest given the availability of alternative outdoor space. Nevertheless, it would be in addition to the harm that the proposal would cause to the living conditions of the occupiers of 33 and 35 Wymondley Road and 1 Wymondley Close which taken together I find to be significant. In

the context of paragraph 11(d) of the Framework, I find that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development set out at paragraph 11(d).

27. The proposal would conflict with Saved Policy 57 of the NHDLP. Insofar as this policy seeks to manage the effects of development to ensure acceptable living conditions, it is broadly consistent with the expectations of the Framework. The conflict with this policy therefore carries significant weight, and the proposal would conflict with the development plan when it is read as a whole. Material considerations, including the Framework, do not lead me to conclude that a decision contrary to the development plan should be reached.

### **Conclusion**

28. For the reasons given above, I therefore conclude that the appeal should be dismissed.

*J Bowyer*

INSPECTOR