
Appeal Decisions

Site visit made on 19 June 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 7TH July 2017

Appeal A - Ref: APP/P5870/W/17/3169445

Land to the rear of 13 – 25 Boundary Road, Wallington SM6 0ES

- 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 Gordon Phillips against the decision of the Council of the London Borough of Sutton.
 - The application Ref D2016/74175/FUL, dated 13 April 2016, was refused by notice dated 24 August 2016.
 - The development proposed is the creation of four new, two storey, semi-detached, four bedroom dwellings, arranged as a block of two semi-detached dwellings.
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Appeal B - Ref: APP/P5870/W/17/3169472

Land to the rear of 13 – 25 Boundary Road, Wallington SM6 0ES

- 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 Gordon Phillips against the decision of the Council of the London Borough of Sutton.
 - The application Ref D2016/75885/FUL, dated 14 November 2016, was refused by notice dated 10 January 2017.
 - The development proposed is the creation of four new, two-storey, four-bedroom detached dwellings.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed and planning permission is granted for four new, two-storey, four-bedroom detached dwellings on land to the rear of 13 – 25 Boundary Road, Wallington SM6 0ES in accordance with the terms of the application, Ref D2016/75885/FUL, dated 14 November 2016, subject to the conditions in the schedule at the end of this decision.

Procedural matters

3. In Appeal A there was a second reason for refusal which related to insufficient information having been provided in order for the Council to accurately assess the impact of the scheme on trees. The appellant states that this reason for refusal was an error as relevant information had been provided. The Council in its appeal statement has not refuted this assertion and this reason for refusal was not repeated in relation to Appeal B. On this basis, I have proceeded on
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the basis that the second reason for refusal in relation to Appeal A has fallen away.

4. The Council supplied a list of suggested conditions in relation to the scheme in Appeal A, but not in relation to Appeal B. After the site visit, the Council was invited to submit conditions in relation to Appeal B, but they did not respond within the allotted time. The appellant has had the chance to comment on the conditions in relation to Appeal A. As the appeals relate to the same site, same access and both schemes propose four dwellings, I see no good reason therefore not to use the conditions suggested in relation to Appeal A for Appeal B. I have therefore done so.

Main Issue

5. The main issue in both appeals is the effect of the proposed development on the character and appearance of the area.

Reasons

6. The appeal site has been assembled by joining together land that once formed the rear sections of the back gardens of houses that surround the site. At paragraph 53 the National Planning Policy Framework ('the Framework') advises that local planning authorities should consider setting out policies to resist inappropriate development of garden land. Policy DM30 of the Site Development Policies Development Plan Document (SDPDP) states that garden land will not be developed where, amongst other matters, it currently makes an important contribution to the character and appearance of the surrounding area.
7. The appeal site in its current secured state is not visible in public views and all trees, vegetation and outbuildings have been removed from it. As a result, it does not make an important contribution to the character and appearance of the area. I therefore agree with the Council that find that the principle of residential development of the site is acceptable.
8. The scheme in Appeal A was designed to address the concerns identified in relation to a previous scheme dismissed on appeal¹. The proposal in Appeal B has sought to address the reasons for refusal of the scheme in Appeal A.
9. A plan has been submitted in relation to both appeals that shows the size of the rear gardens to the proposed dwellings would be within the range of those found in the immediate area. As a result, I find that the proposed plot sizes in both appeals would be in keeping with those that characterise the locality.
10. As access to the site would be from Boundary Road, it is in the context of residential development along it that the appeal site should be assessed. Boundary Road is characterised by semi-detached houses set back from the road behind front gardens. Gaps of approximately 5m separate the houses. This helps to create a pleasantly spacious residential environment by preventing the houses from massing together.
11. In Appeal A, two pairs of semi-detached houses are proposed. They would be significantly wider, taller and longer than the semi-detached houses along Boundary Road. The large scale of the proposed houses would be compounded by the massing together of the four dwellings which would only be separated by a narrow central gap of approximately 3m. As a result, the development

¹ Appeal ref APP/P5870/A/14/2211952

- would be out of scale to its surroundings and result in a far more closely spaced urban form of development than is characteristic of the area. The disparity in scale and increased massing would be readily apparent in views of the development from the appeal site and from surrounding development.
12. The houses would incorporate hipped roofs, double height bay windows and otherwise would be sympathetic in terms of design, materials and appearance to the houses on Boundary Road. Extensive landscaping would also help soften the appearance of the development in time. However, these considerations would not overcome the significant adverse effects that I have described and the unacceptable harm the character and appearance of the area that would result.
 13. Reference has been made to four other housing developments in the Borough that have been granted planning permission where the appellant states the design closely followed pre-application advice. Local planning authorities are not bound by their pre-application advice and for the reasons that I have given I found that the scheme in Appeal A would be harmful. Reference to these other permissions therefore does not alter my findings in relation to the scheme in Appeal A.
 14. In Appeal B, four detached houses are proposed. They would be narrower, shorter in length and less tall than the houses proposed in Appeal A. Their dimensions in these regards appear to be only slightly greater than those of the existing houses on Boundary Road. In comparison to the semi-detached dwellings proposed in Appeal A, the introduction of a small gap of approximately 1m between the first and second houses and the third and fourth helps to break up the mass of development. The wider central gap of approximately 5m replicates that seen between existing dwellings on Boundary Road. I therefore find that the scale, massing and pattern of development of the houses proposed in Appeal B would be sympathetic to Boundary Road and the context of the appeal site.
 15. Subject to conditions ensuring that sympathetic materials and landscaping, the proposed development would therefore constitute good design that would complement the character and appearance of the area.
 16. For the reasons given above, I therefore conclude that whilst the scheme in Appeal B would complement the character and appearance of the area and constitute good design, the scheme in Appeal A would cause unacceptable harm in this regard and is poorly designed. The proposed development in Appeal B therefore would comply with policy DM1 of the SDPDP, policy BP12 of the Core Planning Strategy Development Plan Document and supplementary planning document 4: Creating Locally Distinctive Places (SPD), whilst the scheme in Appeal A would not. These policies and SPD require the protection of the character and appearance of a locality through high quality design that respects local design features.

Other matters

17. The Annual Monitoring Report for 2015-2016 identifies that whilst the Council is able to demonstrate a five year supply of housing land, only 13% had three bedrooms or more. This is below the Council's target of 25%. The schemes in both appeals would make a small contribution towards helping address this shortage.

18. In terms of living conditions, the proposed houses would be located over 30m from the rear elevations of surrounding houses. As a result, privacy within the existing and proposed dwellings would not be harmed, the development would not be overbearing and levels of daylight and sunlight would not be adversely affected. The proposed houses would be closer to the gardens of the houses that surround the appeal site. However, with separation distances of at least 12m no material overlooking would occur. Whilst the site is within an Air Quality Management Area, as parking provision would not exceed two spaces per house the view of the Council is that the development would be acceptable in this regard. I agree with that position.
19. The previous application for residential development of the site that was dismissed on appeal, was dismissed, in part, because of concerns regarding noise from vehicles using the access between 15 and 17 Boundary Road² harming living conditions. However, since then the appellant has carried out further work. This has demonstrated to the satisfaction of the Council that although occupiers of the properties would be aware of vehicle movements at certain times, living conditions would not be materially affected. On the basis of what I have read and seen, I agree with that assessment.
20. Concerns have been raised regarding the effects of the proposal on ecology, surface water drainage and whether satisfactory provision would be made for waste storage. These concerns can be addressed by the use of suitably worded conditions.
21. In terms of highway safety, the Council has no objections subject to conditions controlling the gradient of the access, provision of a footway and creation of adequate visibility splays. Although at certain points between the flank walls of 15 and 17 Boundary Road the access is 4.6m to 4.85m in width it would be wide enough for a wide vehicle and pedestrian to pass. As vehicles could not pass each other along this part of the access, if vehicles were travelling in opposite directions, one would have to give way to the other. I am satisfied on the basis of the appellant's highway reports, which have not been challenged by the Council, that there would be sufficient space for two way traffic to wait clear of Boundary Road to allow this to happen. As a result, I find that the proposed access would not endanger highway safety.
22. The occupiers of Nos 15 and 17 currently use that part of the site access in front of their houses to park their cars clear of the road. They argue that if the development went ahead they would be deprived of off road parking in front of their houses and that they would have no safe route to and from their properties. However, the appellant states that since the appeal site was assembled such rights have ceased to exist. As the right to use land is a matter of civil law, and a planning application is determined on its planning merits, this is a consideration that has not altered my assessment of the appeal.

Overall conclusions

23. For the reasons that I have given above, Appeal B should be allowed.
24. In relation to Appeal A, I have found that the proposed scheme would unacceptably harm the character and appearance of the area contrary to the development plan. The site though is in an accessible location and the scheme

² Appeal ref APP/P5870/A/14/2211952

would provide four family sized houses, with three or more bedrooms, for which there is an identified, but unmet, need in the Borough.

25. Having regard to all of the matters raised in relation to Appeal A, I conclude that the adverse impacts of the proposed development would demonstrably outweigh its benefits and that it would not comply with the development plan and the Framework as a whole. As a result, the proposal would not constitute a sustainable development. Appeal A should therefore be dismissed.

Conditions

26. In order to provide certainty, the relevant plans that the development shall be carried out in accordance with need to be specified. To ensure that the development complements its surroundings, further details on materials and landscaping are required. In order that any planting becomes well established it needs to be well maintained.
27. In the interests of highway safety, the gradient of the access needs to be controlled, a pedestrian footway provided and visibility splays created and retained.
28. Given the potential for nuisance to nearby residents control needs to be exerted on dust, emissions and the hours of construction. Weekends and bank holidays are particularly valuable and construction noise on such days would be particularly intrusive. Other than on Saturday mornings I have therefore prevented work on these days.
29. To conserve and enhance biodiversity, an Ecological Enhancement and Management Plan is necessary. To mitigate climate change and comply with policy DM6 of the SDPPDP, an Energy Statement needs to be agreed and implementation verified.
30. Although the site is at low risk of flooding, it is located within a critical drainage area where surface water from the site if not properly controlled could increase flood risk off the site. As a result, a flood risk assessment and together with a scheme for the management of surface water run-off is necessary in accordance with policy DM7 of the SDPPDP. Further details are required to ensure that the development will be water efficient in accordance with policy DMP of the SDPPDP.
31. In the interests of amenity, details of how refuse will be stored and collected need to be provided.
32. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.

Ian Radcliffe

Inspector

Schedule

- 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: BR16 10-10P Rev C, BR16 90-01P Rev

- B, BR16 90-02P Rev A, BR16 20-03P Rev B, BR16 20-01P Rev B, BR16 10-11P Rev C, BR16 10-12P Rev C, BR16 40-01P Rev A, BR16 10-01 P, BR16 20-02P Rev C, BR16 10-13P Rev B, Tree Survey & Protection Plan.
- 3) Prior to the commencement of development, the type and treatment of the materials to be used on the exterior of the buildings, including samples of materials, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
 - 4) No development shall take place until a scheme of hard and soft landscaping and replacement tree planting shall be submitted to and approved in writing by the Local Planning Authority. The submissions shall include full details of materials to be used in hard landscaping along with details of all replacement trees and plants, their sizes, and densities. All landscaping shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognized codes of good practice. The works shall be carried out in accordance with the timetable agreed with the Local Planning Authority, and any plants or trees that (within a period of five years after planting) are removed, die, or become in the opinion of the Local Planning Authority, seriously damaged or defective shall be replaced as soon as is reasonably practicable with others of a similar size/species/number as originally approved, unless the Local Planning Authority gives written consent to any variation.
 - 5) Prior to any works on site, a detailed Ecological Enhancement and Management Plan for the site shall be submitted to and approved in writing by the local planning authority. The plan shall include the monitoring of species to ensure that there has not been a net loss of biodiversity. The plan shall also include proposed lighting levels, information on the state of the translocation prior to any reptile translocation, monitoring of any translocated reptiles, suitable provision within the landscaping scheme to provide foraging resources for birds, insects/ invertebrates, reptiles, amphibians and bats. The Ecological Enhancement and Management Plan shall be carried out in accordance with the approved details.
 - 6) No development shall take place until a Construction Management Plan has been submitted to and approved by the local planning authority. The Construction Management Plan should set out the measures that will be put in place during the construction phase in order to control dust and emissions. The Construction Management Plan shall be adhered to throughout the construction period for the development.
 - 7) Prior to building work starting on site, an Energy Statement incorporating 'as-designed' BRUKL outputs prepared under the Standard Assessment Procedure (SAP) must be submitted to and approved in writing by the local planning authority. The Energy Statement shall demonstrate how each of the dwellings will apply the Mayor's energy hierarchy (use less energy, supply energy efficiently and use renewable energy) to secure at least a 19% reduction in CO2 emissions below the target emission rate (TER) based on Part L1A of the 2013 Building Regulations and seek to achieve a 10% reduction in total emissions (regulated and unregulated)

- through on-site renewable energy generation. Development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of development, details of the access road with a gradient not exceeding 1:15 for the first 5 metres from the highway boundary, details of the pedestrian footpath and details of a minimum 2 metre visibility splays either side of the proposed access onto Boundary Road shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the visibility splays created in accordance with this condition shall thereafter be retained.
 - 9) Prior to building work starting on site, a site specific Flood Risk Assessment (FRA) together with a scheme for the management of surface water run-off must be submitted to and approved in writing by the local planning authority. The scheme shall identify appropriate site drainage and flood risk management measures, including SuDS, in order to manage surface water run-off as close to its source as possible in accordance with the Mayor's drainage hierarchy. The proposed scheme shall also ensure that the peak run-off rate for the 1 in 100 year 6-hour rainfall event (plus 30% for climate change) will be as close as reasonably practicable to and no more than 3 times the calculated greenfield run-off rate for the same event, and ensure a minimum discharge rate of 5 litres per second per outfall. Written confirmation that development has been carried out in accordance with the approved details shall be submitted to the local planning authority, and approved in writing, prior to first occupation of the dwellings hereby permitted, and all the measures implemented shall be retained for as long as the development is in existence.
 - 10) Prior to first occupation of the dwellings, 'as-built' BRUKL outputs prepared under the Standard Assessment Procedure (SAP) shall be submitted to the Local Planning Authority and approved in writing to demonstrate that the development has been carried out in accordance with the approved details. If the development is unable to meet the required reduction in CO2 emissions through the approved energy strategy, then any shortfall shall be made up through the application of further sustainability measures unless otherwise approved by the Local Planning Authority in writing.
 - 11) Prior to first occupation of the dwellings, a completed Water Efficiency Calculator for New Dwellings shall be submitted to and approved in writing by the local planning authority. The Water Efficiency Calculator shall demonstrate that the internal potable water consumption for each of the dwellings will be limited to 110 litres per person per day (l/p/d) based on the Government's national calculation method for water efficiency for the purpose of Part G of the Building Regulations. The Water Efficiency Calculator shall also be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development. Development shall be carried out in accordance with the approved details.
 - 12) The development shall not be occupied until there has been submitted to and approved in writing by the local planning authority a detailed waste

management scheme to show how refuse and recycling facilities will be stored and collected on/from the site. The development shall be carried out in accordance with the approved scheme prior to the first occupation of the development and thereafter retained, unless otherwise agreed in writing by the Local Planning Authority.

- 13) No demolition or construction works, including site excavation or any external site works, the operation of plant and machinery, the erection of scaffolding, the delivery of materials, the removal of materials and spoil from the site and the use of any sound amplification equipment, shall take place outside 0800hours to 1800hours Mondays to Fridays and 0800hours to 1300hours on Saturdays and at no time on Sundays or Bank Holidays.

-----End of Conditions Schedule-----