



Appeal Decision

Site visit made on 31 October 2019

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 18th November 2019

Appeal Ref: APP/P5870/W/19/3220753

The Avenue Nursing Home, 32 The Avenue, Cheam SM2 7QB

- 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 Patel against the decision of the Council of the London Borough of Sutton.
 - The application Ref A2017/78205, dated 16 October 2017, was refused by notice dated 8 August 2018.
 - The development proposed is demolition of existing care home building and erection of three storey detached care home with provision of lower ground basement, consisting of 24 bedrooms, provision of cycle and refuse storage and 6 off-street car parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal was amended prior to the Local Planning Authority (LPA) making its decision. I have determined the appeal proposal on the basis of those plans listed in the LPAs decision notice including the July 2018 amendments. Those amendments included an alteration to remove a modest projection on the southern elevation close to the protected beech tree and the location of the kitchen extractor duct on the roof plan.
3. The description above is taken from the appeal form which provides for a more precise description of the proposed development. It is the same as that used on the LPAs decision notice.

Main Issues

4. I recognise there has been some confusion on the matter of the trees arising from the LPAs officer report but nonetheless the LPA has presented rebuttal evidence to support its reason for refusal on this matter and I have addressed this as part of the main issue on character and appearance.
5. The main issues in the appeal are as follows:
 - (i) The effect of the proposal on the character and appearance of the surrounding area, including the setting of St. Andrew's United Reform Church, a Grade II listed building and likely long-term effect on the trees on the site including the protected beech specimen;
 - (ii) The effect of the proposal on the living conditions of the occupiers of adjacent dwellings at 30 The Avenue and 139a Northey Avenue, with particular reference to outlook and privacy; and

- (iii) The effect of the proposed parking arrangement on highway safety in the surrounding road network.

Reasons

Character and Appearance

6. The appeal site is located within a predominantly residential area of the Burton Estates Area of Special Local Character (ASLC) which was largely constructed in the 1920s and 1930s, with later post war additions. The area is broadly characterised by large detached houses in spacious plots within which trees have matured, providing a strong verdant quality, especially in The Avenue, including at the appeal location. I observed across the ASLC an appreciable degree of individuality in the appearance of the dwellings, although many have an 'Arts and Crafts' influence in their design and materials. Reference is made to the degree of consistency to the scale and appearance of housing but I found some notable variation across the ASLC and in the immediate vicinity of the appeal site, ranging from the scale and pattern of adjoining bungalows on Northey Avenue to some conspicuously large dwellings on The Avenue. The appeal location is also influenced by the significant scale and bulk of the St Andrew's Church which provides further variety to the character and appearance of this particular appeal location.
7. The appeal proposal would occupy a marginally larger footprint than the existing structures on the site but from the amended plans the overall scale of development on the appeal site, by virtue of the first floor and roofscape (second floor) additions would increase from around 515sqm to some 1310sqm. Excluding the basement, the above ground increase would be in the region of 415sqm, about an 80% increase. Consequently, the appeal proposal would result in a considerably bulkier building compared to what exists. This would not be especially noticeable from with The Avenue where the scale and massing of the front façade would not be that dissimilar to other large houses in the immediate vicinity. Various design features including changes in the roofscape and gabled bays would help to break-up the massing of the building from this perspective within The Avenue.
8. From within Northey Avenue to the south and west, and from the southern-side of The Avenue cross-roads immediately to the south-east of the appeal site the increased bulk due to the combined enlarged height and depth of the building on its corner plot would be conspicuous, notwithstanding trees on the appeal site. However, in many perspectives the building would be seen together with the much larger range of church buildings opposite on Northey Avenue. It would also project into an area of spaciousness between The Avenue and Shirley Avenue so as not to appear particularly cramped. In this context the proposed building would not appear excessively bulky or harmfully dominant.
9. The design of the building would adhere to the 'Arts and Craft' vernacular of the area in terms of its materials, openings and roofscape. The design detailing, including the proposed variation in its layout and elevations would be effective in assimilating this larger building within the local context. Its appearance would not be harmful and it would be mainly seen as a somewhat larger example of the characteristic houses in this part of ASLC. The roof arrangement would not be dissimilar to other examples found elsewhere with the ASLC, including elsewhere within The Avenue, where dormers can be found

within the front roofspace. Accordingly, the proposed roof design and dormers would not be harmful.

10. The appeal site contains, a mature high quality, protected¹ beech tree on the boundary of the site to Northey Avenue. The visual presence and quality of the tree makes an important contribution to the character and amenity of the locality. From the amended plans the proposed footprint of the building, including the basement, would no nearer the beech tree than the existing structure on the site save for a modest lightwell on the southern elevation.
11. The appellant's arboricultural report (revised July 2018) describes the tree as being in good structural and physiological condition for its age and size and accordingly it is rated as an 'A' grade specimen under the British Standard BS 5837:2012 ('the BS'). The report recommends supervised excavations to assess the presence and significance of any tree roots prior to the construction of the basement. Appendix 2 of the appellant's revised arboricultural report (the tree protection plan) shows the guide root protection area. The proposed basement would be at the periphery of this projected area and the lightwell would marginally extend into it.
12. The appellant has plotted an asymmetrical root protection area appropriately reflecting the conditions of the site. Given constraints it seems reasonable that roots for the tree would extend into the undeveloped area between the existing building at No.32 and Northey Avenue to find water, nutrients and oxygen. I am persuaded therefore, despite the distance from the canopy, that there is a reasonable likelihood of roots/rooting volume extending into the areas proposed for the lightwell and likely to be required construction access for both the lightwell and basement, even under a piling construction method.
13. Given the 'A' grade quality and reasonable life expectancy of the protected beech tree it is necessary to apply a precautionary approach. It is essential that excavation through rootable ground is avoided and I find little basis for the appellant's reference to a tolerable 20% incursion into root protection areas which would appear to apply to hard surfacing rather than root loss or excavation. Consequently, there would be a sufficient degree of risk that important roots essential to the anchorage and physiological function of the tree would be exposed or harmed resulting in an appreciable risk of irreparable damage to the tree. The appellant's approach of applying investigative excavation post planning permission, secured by way of a condition, would not provide effective protection to the tree (despite its status). I note the detailed suggested conditions from the LPA but such conditions would not be reasonable if excavations revealed that the development could not proceed as approved due to the presence of roots or rooting volume necessary to sustain the tree. Similar issues apply in relation to the feasibility of possible methods of construction/excavation for the basement and associated lack of certainty in relation to the impact on the tree arising from any degree of ingress required into the root protection area during construction. Overall, the uncertainty and risk of harm to the health and amenity value of tree from root damage arising from excavation within the root protection area would be unacceptable.
14. Based on the amended plans I am satisfied that the building would be set sufficiently back from the tree so as to reduce the impact on the living conditions of prospective residents from overshadowing. An open aspect to the

¹ Tree Preservation Order TPO 2006/15

south and west across Northey Avenue would prevail for most openings. Consequently, I am not persuaded there would be pressure to carryout regular and/or heavy canopy pruning.

15. The appeal site is opposite St Andrew's United Reform Church which is a Grade II listed building contemporaneous with inter-war development in this part of the Borough. It is a large building albeit of restrained external appearance. Within the immediate setting of the church are various ancillary buildings associated with the church and a surrounding pattern of generally large detached houses and mature trees. The appeal building would be visible in various perspectives of the church, but it would remain subservient in scale and would not distract from the status and scale of the church. Accordingly, I find there would be no harm to how the heritage asset is experienced.
16. I therefore conclude that whilst the scale and appearance of the appeal proposal would not harm the character or appearance of the surrounding area or the setting of St. Andrew's United Reform Church, a Grade II listed building, there would be a likely adverse long-term effect on the health and amenity value of the protected beech tree on the site. The tree positively contributes to the wider verdant character of the area and the potential impairment would be significantly harmful. The proposal would therefore be contrary to Policy 28 of the Sutton Local Plan 2018 (the SLP) to maintain local character and to ensure that the layout of development retains existing important trees.

Living Conditions

17. The appeal site would project beyond the rear building line of the adjacent dwelling to the north at No.30 The Avenue. From the rear opening to the ground floor which serves a dining room, the appeal proposal would only be marginally visible at an acute angle. It would not appear dominant from this opening, the outlook of which would remain predominantly over the open rear garden of No.30. The appeal building would be clearly visible from first floor bedroom openings at No.30 and from within the patio area immediately to the rear of this property. However, it would not be oppressively close and again the principal outlook would remain over the open rear garden and wider patchwork of gardens which provide a strong degree of spaciousness to the rear of The Avenue at this location.
18. There would be no openings overlooking the private amenity of the rear garden of No.30 and the given the modest degree of projection beyond the existing rear building line there would be no materially harmful loss of daylight or sunlight to the property and its garden or to the solar panels on the roof of No.30.
19. To the west of the appeal site is No.139a Northey Avenue, a bungalow dwelling with a flank elevation facing towards the appeal site. There is a narrow strip of garden separating the bungalow from its boundary with the appeal site which then opens out into a wider private rear garden including a private seating area close to the boundary with the appeal site. The appeal proposal would bring two storey development, with a large roofscape containing dormer openings appreciably closer to the boundary with No.139a compared to the existing layout. There would be a retained moderate degree of separation but proposed first and second floor openings on the west elevation, serving a resident's lounge and proposed Room 20, would afford significant and direct overlooking at height down into those parts of the private rear garden closest to the rear of

- No.139a. The effect would be a significantly harmful loss of privacy and uncomfortable sense of being overlooked for occupiers of No.139a using their private garden space closest to the rear of the dwelling.
20. The appellant's Design and Access Statement (paragraph 2.2.3) submits that that any harm from overlooking could be mitigated by obscured glazing to a height of 1.5 metres. Even under such circumstances there would be a residual perception of being overlooked and a height of 1.5 metres would not prevent taller people, such as staff or visitors, from looking out. I am also concerned that obscured glazing to lounge and bedrooms, whatever the degree of opaqueness, would result in particularly harmful living conditions for future occupiers of the care home where such rooms do not have a dual aspect. This would not be appropriate mitigation.
21. There are openings on the side elevation of No.139a facing towards the appeal proposal. The unobscured opening is a narrow linear window at height and close to the eaves of the bungalow. Given the size and position of this opening I am satisfied that there would be no harmful inter-visibility from the proposed openings at the appeal proposal.
22. Numerous comments refer to noise and disturbance from the appeal proposal. Until the recent fire, the site was an established nursing home. There are other nursing homes in this residential part of Cheam. There is no persuasive evidence before me that the increased activity at the site would result in significantly harmful levels of noise and disturbance. The building would be re-built to current construction and care home standards and it would remain a largely enclosed environment for future residents. The adjacent Northey Avenue appears to be a reasonably busy thoroughfare such that any noise generated from staff and visitors arriving and leaving the site would be insignificant.
23. I therefore conclude that whilst the appeal proposal would have an acceptable impact on the living conditions of the occupiers of the adjacent dwelling at No. 30 The Avenue, the same cannot be said for No.139a Northey Avenue where there would be a significantly harmful loss of privacy at the rear of the property from direct overlooking at height and relative proximity. Consequently, the appeal proposal would fail to accord with Policy 29 of the SLP which seeks to protect the amenities of those currently occupying adjoining properties from unacceptable impacts, including on privacy.

Parking and Highway Safety

24. The appeal site is located where the public transport accessibility level (PTAL) rating is 1a (extremely poor). In such circumstances SLP Policy 37 sets an expectation that parking provision reflects the restraint-based, maximum car parking standards. These are set out in Appendix 11 (Table 11.3) and specify that the maximum standards for a C2 Use (which includes nursing homes) are 1 space per 4 staff, 1 doctor space and 1 visitor space per 10 beds. The appellant's Highways Appeal Statement (Appendix 6) assesses parking demand on the basis of 24 bed spaces, 20 full time equivalent staff and 10 part time staff. This tallies with what was applied for on the planning application form and I have no reason to find otherwise. The appellant has amalgamated the employment to 25 full time equivalent and I also consider this to be a reasonable approach. Consequently, the appellant calculates a maximum need to provide a maximum 9 parking spaces based on the Council's standards.

25. On this basis the proposal by providing 6 on-site parking spaces (including one disabled bay) would likely result in a displacement of 3 vehicles. The appellant has provided 'AutoTrack' swept path diagrams showing how a typical family size saloon car could manoeuvre into the provided parking spaces. On this basis I am satisfied that the 6 on-site parking spaces would be useable. In the event that some larger vehicles cannot be accommodated within the layout of parking spaces, there would be only a moderate addition to the degree of overspill requiring nearby on-street parking.
26. I observed that houses in this part of the Borough have appreciable off-street parking provision with large driveways and garages being a characteristic feature. There is little evidence of on-street parking stress, noting the appreciable width of the local avenues which generally provide for unrestricted on-street parking on both sides. This is borne out in the appellant's comprehensive parking surveys which chose representative days and times² and distance thresholds. These surveys calculate that there are some 200 safe, legal and unrestricted on-street parking spaces within a 200-metre walking distance of the appeal site which generally operate with significant availability.
27. The appeal site is close to the cross-roads junction of The Avenue and Northey Avenue but on-street parking around this junction is already restricted by double yellow lines and this is reflected in the appellant's parking survey. The likely quantum of displaced parking from the appeal proposal would only modestly add to existing low levels of on-street parking. Consequently, there would be no deleterious impact on highway safety from any overspill parking. Given the minimal number of vehicles involved in on-street parking at any one time, there would be no harmful impact on nearby living conditions arising from vehicles parking and leaving the area and associated comings and goings.
28. The Council is concerned that the appeal proposal has not made sufficient efforts to manage travel demands such to offset the potential for overspill parking. Details of the proposed cycle parking in accordance with the Council's standards could be secured by condition in accordance with SLP Policy 37 to reduce the demand for car parking at the site.
29. I therefore conclude that the proposing parking arrangements for the appeal proposal would not have a harmful effect on highway safety in the surrounding road network. The proposal would accord with SLP Policy 37 which expects new developments to provide car parking in accordance with the council's restraint-based, maximum car parking standards while avoiding overspill parking problems. The proposal would also accord with the NPPF at paragraph 109 which advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other matters

30. The appellant submitted a SUDs report (8 May 2018) elements of which are reflected in the submitted plans including a significant reduction in the impermeable surfacing at the site (Table 3), proposed rainwater harvesting and bio-retention features in areas well beyond the root protection areas of important trees.

² Set out at paragraph 3.12 of Appendix 6 of Appellant's Statement of Case

31. There is no persuasive data or material contrary to appellants evidence that there are high permeability and infiltration conditions at the appeal site due to the underlying geology. Changes in the footprint of the building would be minimal such that potential run-off rates, even in an assumed 6-hour duration design storm event (allowing for climate change), would be only modest and unlikely to overwhelm either discharge to ground or alternatively discharge to surface water attenuation. There would be appreciable scope within the appeal site to explore on-site attenuation avoiding the proposed basement and protected tree, should further infiltration testing reveal potential issues. As such I consider the matter could be appropriately conditioned. On this basis the proposal would not be contrary to Policy 5.13 of the London Plan 2016 or Policy 32 of the SLP which seek to ensure development minimises vulnerability and improves resilience to the challenge of flooding including an appropriate adherence to a sustainable drainage hierarchy.

Conclusions and planning balance

32. The principle of a care home and the scale and appearance of the appeal proposal would not significantly harm the character and appearance of this part of the Borough and nor would it harm the setting of the Grade II listed St.Andrew's church building. The proposal would not unacceptably impact the living conditions of occupiers of No.30 The Avenue. The likely extent of overspill on-street parking would not be harmful to highway safety. Matters of sustainable drainage can be adequately addressed by condition. The proposal would also bring back into use a previously-developed nursing home site that now requires positive redevelopment and would bring significant employment. These are all factors that weigh notably in favour of the appeal proposal.
33. On the other hand, the proposal would result in significant harm to the living conditions of the occupiers of No.139a Northey Avenue due to direct overlooking of private amenity space. There is also an unacceptable risk that, in absence persuasive evidence, that the proposed basement and lightwell would adversely affect the root area of a protected tree. The loss, premature demise or significant deterioration of this high-quality tree would be significantly harmful to the character of the area. In this case, the benefits of the appeal proposal, which are notable, would not comprise the necessary material considerations to approve a proposal that would be contrary to an up-to-date development plan that seeks to secure a high standard of amenity for all in the Borough and to maintain a strong sense of place, which at the appeal location, includes the verdant tree-lined avenues.
34. I have taken into account all other matters raised but this does not alter my overall conclusion that the appeal should be dismissed.

David Spencer

Inspector.