
Appeal Decisions

Site visit made on 20 November 2019

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 23rd December 2019

Appeal A:

Appeal Ref: APP/P5870/W/19/3231782

Land rear of 27 Burdon Lane, Cheam SM2 7PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Boathouse Properties Ltd against the Council of the London Borough of Sutton.
 - The application Ref DM2019/00229, is dated 25 January 2019.
 - The development proposed is construction of 3 new detached dwellings including two car barn structures, associated groundworks and landscaping.
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Appeal B:

Appeal Ref: APP/P5870/W/19/3231788

Land rear of 27 Burdon Lane, Cheam SM2 7PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Boathouse Properties Ltd against the Council of the London Borough of Sutton.
 - The application Ref DM2019/00375, is dated 1 March 2019.
 - The development proposed is construction of 1 new detached dwelling including detached garage structure, associated groundworks and landscaping utilising existing highway access point.
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Decisions

1. In relation to Appeal A, the appeal is dismissed and planning permission for the construction of 3 new detached dwellings including two car barn structures, associated groundworks and landscaping is refused.
2. In relation to Appeal B, the appeal is dismissed and planning permission for the construction of 1 new detached dwelling including detached garage structure, associated groundworks and landscaping utilising existing highway access point is refused.

Preliminary Matters

3. As set out above, there are two appeals which primarily differ in relation to the number of dwellings proposed. Although, I have considered each proposal on its individual merits, to avoid duplication I have considered the proposals together, except where otherwise indicated.

4. I am aware of the history of the site, including the latter recent proposals, as well as that it was part of a wider proposal, which had been granted planning permission in 1971, and which has been partially implemented. I understand that, in the current circumstances, the appellant is unable to comply with the requirements of the permission. Therefore, as the extant permission is unable to be implemented, I attach limited weight to its significance and have therefore determined the appeals as fresh applications and on the basis of the current planning policy context.
5. I am aware of the widespread concern relating to the removal of vegetation and the felling of trees which has already taken place on the site, which I was able to see on site. However, I am only able to consider the applications before me on the basis of the current situation.
6. Reference has been made to an emergency Tree Preservation Order, but I have not been provided with any details. Therefore, I have only considered the trees which have been identified within the appellant's schedule. To avoid confusion, I have identified trees by the use of the survey reference rather than the TPO schedule.
7. Both parties have been given the opportunity to comment on the Panel's Report into the emerging Local Plan.
8. I note that the Council's ecologist accepts that, subject to conditions, protected species issues are unlikely to be affected by the applications.
9. A number of additional plans were submitted by the appellant relating to highway matters to accompany the appeal against non-determination of the application for three dwellings. As these were available at the time of the publicity relating to the appeal proposals and referred to within the appellant's Statement of Case, I conclude that, in the context of the Wheatcroft principles no parties would be prejudiced by my accepting the plans.

Main Issues

10. The Council has set out putative reasons for refusal, had it been in a position to determine the applications, following the submission of the appeals against non-determination. There is no dispute between the main parties that, in isolation, the individual design of the proposed houses and ancillary buildings would not be inconsistent with the character and appearance of the area, and from what I have seen I would not disagree. On this basis the main issues are:

Appeal A

- The effect of the development proposed on the character and appearance of the area, including its effect on trees.
- The effect of the proposal on the highway safety.
- The effect of any increased use of the access on the living conditions of residents of 27 Burdon Lane, with particular reference to noise and disturbance.

Appeal B

- The effect of the development proposed on the character and appearance of the area.

Reasons

Character and appearance.

11. The appeal site lies within the wider Burton Estates Area of Special Landscape Character, (BEASLC) whose significance has been recognised within the statutory plan since 2012. Policies 28 and 30 of the recently adopted Sutton Local Plan (SLP) continue to require that developments respond to the local context and to the local character and heritage assets. As such, the objective to preserve and where possible enhance the features of the ASLC remains relevant.
12. At my site visit I took the opportunity to visit the wider area which makes up the Burton Estate. Clearly, within the ASLC there are examples of development which do not correspond with the wider character of the area, including, the neighbouring Burdon Park, which is a discrete parcel of typical 1970s housing, with relatively modest gardens, set at a tangent to Burdon Lane, as well as modest bungalows to the north of the site. However, from what I saw, whilst there is variation in the size of plots and the size and design of the dwellings, the predominant character and appearance of the wider ASLC is of individually designed substantial houses, set on large plots, fronting the roads with mature landscaping, consistent with the description within the Burton Estates ASLC Character Appraisal, adopted as guidance by the Council in 2016.
13. The appeal site, together with the garden of the host property is consistent with the defined character and appearance of the area. It is a large extensive garden, which even though a number of trees have already been felled, contributes to the distinctiveness of the wider ASLC as a result of its size and established nature. I am aware that due to the configuration of the site, that this garden is substantially larger than that of the nearby properties. However, this does not undermine its significance. Indeed, it is of particular importance given that the immediate area has already been affected by the construction of less sympathetic development at a substantially higher density.
14. I was able to view the appeal site from the private road serving Burdon Park and from the garden of 30 Manor Avenue. Even though it was winter, and not all the trees were in leaf, it was clear that the large size of the garden together with the existing trees, make a positive impact upon the character and appearance of the area which is, with some exceptions, that of large properties set within large, peaceful, mature gardens which have been laid out to front the suburban road grid. Both appeals would substantially differ from the existing grain of development as they are back land garden development. Whilst the impact of both proposals would not be substantially visually intrusive due to the existing boundary treatments the intensification of the use of the garden through the building of substantial properties in the rear garden would disrupt the existing pattern of development, which is locally set within the adopted local plan, and thereby negatively impact on the character and appearance of the area.
15. Policy 13 of the Sutton LP resists development on back gardens. Whilst I note that the proposed developments relate to one host property and are not similar to the Woodcote Green example, set out within the introductory text to Policy 13, this does not undermine the principle of the policy of the adopted LP which remains consistent with the Framework. This is clear that plans should consider the case for setting out policies to resist inappropriate development of

residential gardens. Indeed, residential gardens are excluded from the definition of previously developed land.

Appeal A

16. The appeal site and the wider area includes a number of trees covered by a Tree Preservation Order, as well as those which do not have formal protection. These are located within the site, and along the boundary and contribute significantly to both the character and appearance of the appeal site and the wider area. From what I have read, it appears that the adverse impacts of the construction of the proposed development on the protected trees could be mitigated through the use of conditions and that due to the size of the appeal site that further trees could be planted as part of a landscape plan. Indeed, on balance, there would be no net loss of ecological significance from the development.
17. However, in considering the impact of the proposed development on the trees, and the verdant character of the appeal site and the wider area, I must consider what pressures there would be from the occupants, once the houses were occupied, to limit the growth of the trees, or to prune or lop them.
18. I have been specifically referred to a beech tree (T38) which would lie on the eastern boundary of Unit B's garden, and two beeches (T49 and T50) on the eastern boundary of Unit C.
19. Having considered the layout of units B and C, and taking into account, the location of the tree, and its potential for future growth, I am not convinced that there would not be significant pressure from future residents to prune tree (T38) and that the design has allowed adequate room for the tree to reach full maturity.
20. Similarly, the canopy of T49 already extends to more than half the depth of the rear garden of Unit C, and there is no evidence to suggest that the tree will not grow further. The design of the property includes a large kitchen dining area that opens out onto a patio area. I note, the plans appear to have taken the tree's existing canopy into account, by showing tables at the northern and southern corners of the patio area. However, it seems likely, even though the trees are protected by a TPO, that there would be increased pressure to prune them as the already tall trees grew in stature, notwithstanding any maintenance issues resulting from the loss of leaves in the autumn. Consequently, I conclude that the design of the proposed developments has not adequately taken into account the future growth of the protected trees. This would be contrary to Policy 28 which requires trees to be protected and given space to grow to maturity.
21. Moreover, the impact on the significant trees which already make a positive contribution to the character and appearance of the area would have a negative impact on the verdant nature of the area.
22. I am aware that the proposed density of the development would be significantly below that of the area delineated by the appellant. However, this is skewed by the Burden Park development and does not reflect the density of the wider ASLC. I note that the garden areas would be of an adequate size to meet local amenity standards, however, this does not in itself mean that they are appropriate to the scale of property which is proposed. As such, the individual

units would appear cramped and inconsistent with the established character of the area, which is predominantly that of large properties with deep gardens, which make an important contribution to the character and appearance of the area. Therefore, the proposed development would be contrary to Policies 13 and 28 of the SLP and policies 7.4 and 7.21 of the London Plan 2016 (LP) and paragraph 124 of the Framework.

Appeal B:

23. As set out above the appeal site makes an important contribution to the character and appearance of the surrounding area. The proposed development would be set back a considerable distance from the boundary of the site and would be mostly shielded from the street by the bulk of the host property. It would also, for the most part, be significantly screened by the existing trees, including those which are protected by Tree Preservation Orders. I note that the Council has raised no objection in principle to the density of the development or its design, which it considers to conform with the guidance contained within the Burton Estates ASLC Character Appraisal (BECA). Nonetheless, in terms of the principle of back garden development the proposal would be contrary to Policy LP 13 of the Sutton LP and would not be consistent with the advice within the BECA in relation to Back Garden Development.
24. Moreover, the introduction of back garden development within the ASLC would not respond to the local character of the area and would therefore be contrary to Policy 28 of the SLP and Policy 7.4 of the LP (2016) and paragraph 124 of the Framework.
25. Moreover, neither Appeal A nor Appeal B, which are by definition back garden development, would result in the, *'large detached houses set in attractive, well landscaped grounds which front onto tree lined roads'*, in keeping with the Burton Estates Character Appraisal.

Living Conditions: Appeal A

26. The proposed access drive would run past the side of the host property and sweep to the rear of the garden. The appellant's evidence suggests that the proposal would result in around 15 further movements between 7:00 and 19:00. In addition, it would be reasonable to suggest that cars could arrive later in the evening with associated noise and disturbance
27. I note that the owner of no 27 Burdon Lane is aware of the proposals and raises no objection. Notwithstanding this, I must consider the impact of the proposal on the living conditions of future occupants.
28. It would be possible to control the landscaping and any boundary treatment through the use of a condition. However, given the relative proximity of the access road to the side and south eastern aspect of the property, and the comings and goings of cars, and larger vehicles, would result in intermittent noise and disturbance that would be noticeable to those living within the property, when both within the house and whilst enjoying the garden. This would result in an adverse impact on their living conditions. This would be particularly the case as I observed that the windows to the main sitting room and bedroom, which were designed on the basis that the property sat in a large garden, are orientated in the direction of the proposed access road.

29. As such, the proposed development would be contrary to Policy 29 of the SLP, and Policies 7.1 and 7.2 of the LP, which requires developments to contribute to a good quality environment by not adversely impacting on the living conditions of those living nearby.

Highway Safety: Appeal A

30. From the evidence before me, it appears that the revised plans which accompanied the appeal demonstrate that the proposed development could provide an access route which would accord with the cross over policy and would meet the 4.5 m width standard up to 10 m from the back of the footpath. In addition, concerns relating to the safety of cyclists and pedestrians along the access road could be overcome through the use of conditions.
31. There is agreement that the appeal proposal would accord with the Council's parking standards. It has been suggested that refuse vehicles would be likely to visit the site at a time when vehicles would not be parked on the turning head. However, I have not been provided with any evidence to substantiate this.
32. In any case, irrespective of the size of the three properties, it would not be unreasonable to expect that there could be some parking within the turning head. This would make the already tight reversing manoeuvre for refuse lorries, or other similarly sized vehicles, impossible, and would therefore, require them to back onto Burdon Lane. As this is on a bend, on what appeared at the time of my site visit, to be a, relatively busy, suburban road, this would have a potential severe impact on highway safety, particularly given the proximity of the Burdon Park junction, irrespective of the distance between the two accesses meeting the Council's cross over policy.
33. I have also considered the appellant's Option 2: that residents could wheel their bins up to 90 m to a collection area close to Burdon Lane and that the refuse vehicle would park on the highway. However, I note that no objections had been raised to the proposed approach to refuse collection set out in relation to Appeal B.
34. Nonetheless, for the reasons set out above, the proposed development would have the potential to increase road danger as a result of vehicles backing onto Burdon Lane and would therefore be contrary to Policy 36 of the SLP and emerging Policy T4 of the LP.

Other matters

35. I have been provided with details of two recent appeals which were determined following the adoption of the Sutton local plan. However, both proposals are not directly comparable, as each of the schemes to which I have been referred would directly front onto a road. I have also been referred to a scheme for four dwellings at 105 Burdon Lane, which was allowed on appeal¹. However, as I have not been provided with any detailed information relating to the policy context or the specific circumstances of the proposed development, I am unable to conclude whether it is of direct relevance to the appeals before me, which in any case I have considered on the basis of their individual merits,

¹ APP/P587/W/18/3211364

36. Concerns have been raised in relation to the effect on the privacy of neighbours. However, satisfactory intervening distances would be achieved between the proposed buildings and existing nearby houses. Consequently, the living conditions of neighbours would not be prejudiced as a result of either scheme. I am also aware that the outlook from neighbouring properties would not be substantially impacted by either of the proposed developments.
37. I have been referred to the detailed planning history of the site, including the pre- application advice provided by officers and difficulties that the appellant reports in engaging with the Council. I am also aware of the letters in support of the proposed developments which were received. However, these matters are insufficient to overcome the concerns I have identified above.

Planning balance and conclusions

38. The appeal proposals would make a small but valuable contribution to the housing supply. However, Sutton Local Plan sets out a detailed strategy for development within the Borough to meet its housing needs through the effective use of land. This includes the protection of back garden land.
39. I must determine the appeals in accordance with the policies of the development plan unless material considerations indicate otherwise. As such, for the reasons set out above, I dismiss both Appeal A and Appeal B.

L. Nurser

INSPECTOR