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## Appeal Decision

Site visit made on 4 February 2020

**by A M Nilsson BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 March 2020**

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**Appeal Ref: APP/P5870/W/19/3237007**

**1 Elgin Road, Wallington SM6 8RE**

- 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 AM Building & Management Ltd against the decision of the Council of the London Borough of Sutton.
  - The application Ref DM2019/01050, dated 19 June 2019, was refused by notice dated 14 August 2019.
  - The development proposed is erection of a new detached dwelling house with associated parking.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. I have taken the description of development from the Council's Decision Notice as this is a more precise description of the proposed development.

### Main Issues

3. The main issues are the effect of the proposed development on 1) the character and appearance of the area with regard to protected trees 2) highway safety with regard to the proposed access 3) the living conditions of occupants of 1 Elgin Road with regard to outlook, daylight and potential enclosure 4) the character and appearance of the area with regard to the proposed design, and 5) the living conditions of future occupants with regard to the provision of external amenity space.

### Reasons

#### *Character and appearance - trees*

4. The appeal site comprises a two-storey semi-detached property, which has been subdivided into flats, and the vacant land adjacent to it.
5. The proposed dwelling would be sited on vacant land adjacent to the existing converted semi-detached property. The land at present is relatively overgrown and is separated from the existing building by a timber post and rail fence. There is a substantial Copper Beech tree of around 14m in height, that is subject to a Tree Preservation Order, positioned adjacent to the footpath. It is a significant feature in the street-scene. This tree is one of a pair of Copper

Beech trees on the corner, the other being outside the appeal site and is around 13m in height.

6. Both trees are of great positive significance to the street-scene. Even at the time of my site visit during winter, I observed that they form key features in the street, whereas their contribution to the street-scene in the summer months, when they would be in leaf, would be even greater. The canopy spread of the tree towards the appeal site extends to around 6m, with the proposed dwelling being approximately 4m from the tree trunk.
7. Both parties have referred to consent that has been partially granted to the tree in the appeal site for 'selective crown reduction to reduce the northern tree canopy overhanging Elgin Road by 2.5 metres and south western canopy to provide 2 meters clearance from 1 Elgin Road. Crown lift by 5m'. The application was partially refused as the Council did not agree that there was an arboricultural need to fully crown reduce the tree by 2.5 metres as this would adversely affect the trees appearance and amenity value. The works to the tree have not been undertaken and I am required to consider the impact of the development before me, as a whole, on the tree and vice versa.
8. It is clear from the evidence before me that a significant amount of the canopy would require removal in order for the development to proceed. The Council suggest that this would be as much as 50%. I find that the amount of canopy that would require removal would unacceptably harm the significance and amenity value of the tree. It would harmfully erode the significance of the pair of trees, with one being unaltered and one being heavily cut back.
9. I also find that the proximity of the tree, at a distance of around 4m from the trunk, to the proposed dwelling would create likely pressure from future occupants to undertake further pruning of the tree to reduce overshadowing and dominance.
10. Part of the proposed dwelling would be built within the Root Protection Areas (RPA) of both trees, with the greatest area being within the RPA of the tree on the appeal site. The Tree Survey submitted with the application recommends the use of piled foundations. However, whether or not the piled foundations would avoid harm to the roots, this would not overcome the harm to the canopy and hence the appearance of the tree within the appeal site.
11. The proposal includes the provision of hard landscaping in the form of parking, front garden and access paths across the entire frontage of the site. The Council comment that this would exceed the recommended cap within BS 5837 which outlines that new permanent hard surfacing should not exceed 20% of any existing unsurfaced ground within the RPA. This cap is recommended to prevent long term adverse impact on trees due to a change in their growing condition.
12. Given that the remainder of the RPA is located beneath the footpath and roadway, the retention of the unsurfaced ground is particularly important for the future health of the tree. The appellant suggests that the amount of hard surfacing to be used could be agreed by condition and that a cellular structure could be used. I find that such details would form an integral part of the assessment of the proposal in relation to its impact on the tree, and would be required as part of the determination of the proposal to consider the impact. In

any event, I have already found unacceptable harm to the tree within the appeal site.

13. I therefore conclude that the proposal would have an unacceptable impact on the health, significance and amenity value of the tree within the appeal site. The proposal would therefore be contrary to Policy 28 of the Sutton Local Plan (2018) which requires, amongst other things, that development responds to natural features and retains trees where possible, and that where trees are present on a proposed development site the development makes provision for the retention of existing trees that are important by virtue of their significance within the local landscape, recognising that their significance may be as a result of their size, form and maturity.

#### *Highway Safety*

14. The proposal includes the provision of a vehicle crossover to provide access to a proposed off-street parking space for the dwelling.
15. On my site visit I observed a number of vehicles in both directions negotiating the 90 degree turn in the road, close to the proposed access. The impact of cars parked on the street resulted in a narrowing of the carriageway and convergence of vehicles into the path of the other. Due to the relatively slow speed of the vehicles I witnessed there was no imminent danger or collision.
16. The appellant has confirmed that in order to improve visibility the proposal would involve the removal of the existing brick wall that runs along side of the appeal site. The extent of the removal of the wall is unclear from the submitted plans. Accepting the removal of the wall, the remaining features would be the two trees and a utility cabinet that is located on the footpath. I also observed that the land to the side of the appeal site was parked with cars which would also contribute to obstructing visibility. Whilst the wall could be removed the utility cabinet and the parked cars are not within the control of the appellant. The removal of the two trees would be unacceptable for the reasons stated above.
17. Given these physical conditions, drivers of vehicles reversing out of the site would have their view of traffic turning on the bend partially obscured, and similarly drivers of vehicles turning on the bend will have their view partially obscured and are unlikely to anticipate the possibility of a vehicle reversing into the road in such close proximity to the turn. Due to the lack of visibility, the risk of collision would be high and the proposal in turn would increase the highway risks associated with it.
18. I therefore find that the proposed access would have an unacceptable impact on highway safety. It would be contrary to Policies 36 and 37 of the Sutton Local Plan (2018) which require, amongst other things, that developments minimise any adverse impact on the highway network and provide appropriate car parking.

#### *Living conditions - occupants of 1 Elgin Road*

19. The existing property on the site, comprising ground and first floor flats, has a number of windows in the side elevation which look onto the land on which the dwelling is proposed. There are five windows to the ground floor flats in the side elevation. Two are the sole windows to a bedroom, one to a bathroom, one the sole window to a kitchen and another a secondary window to the

- bedroom. There are four windows to the first-floor flats in the side elevation. Two are the sole windows to the kitchens of their respective flats, one is the sole window to a bedroom and one to a bathroom. I have not considered the impact on the bathroom windows as these are not habitable rooms.
20. A Daylight/Sunlight Assessment was submitted with the application. This assessment considers, amongst other things, the impact on the windows in the side elevation of the adjacent flats.
21. The assessment uses the Vertical Sky Component (VSC) and Annual Probable Sunlight Hours tests. The assessment shows that the five windows to the ground floor flat would fall below the BRE recommended 80% of their existing VSC measurement. In relation to the secondary window to the bedroom, and the bathroom window in the side elevation, I am satisfied that the bedroom, due to its larger window in the rear elevation would not be unreasonably impacted upon, and the bathroom forming a non-habitable room does not require assessment. Of the other three windows that fall below the guidance, the appellant has undertaken further analysis using the Average Daylight Factor test. They outline that this shows that the rooms served by these windows retain sufficient daylight for their intended uses and in excess of 80% of current levels. In terms of sunlight the assessment concludes that all windows retain in excess of 80% of their current values and so the scheme accords with BRE guidance in relation to sunlight and there would therefore be no adverse impact on sunlight to neighbouring properties.
22. Despite the conclusions of the Daylight/Sunlight Assessment I find that the proposal due to its siting, scale and height in relation to the habitable room windows of the ground floor bedroom (flat A) and kitchen (flat B) in the side elevation would have an unacceptable impact on the levels of daylight.
23. I also find that due to its siting, scale and height the proposal, at a distance of 4m from the existing property, would have an unacceptable impact on the outlook from the habitable rooms with their sole window(s) overlooking the proposal. The proposed development in such close proximity, at the height and scale proposed would represent a form of visual intrusion, have an overbearing impact and create a sense of enclosure for the occupants of the adjacent flats.
24. I therefore conclude that the proposed development would have an unacceptable impact on the living conditions of occupants of 1 Elgin Road with regard to outlook, daylight and the creation of a sense of enclosure. It would be contrary to Policy 29 of the Sutton Local Plan (2018) which outlines, amongst other things, that planning permission will not be granted for development that adversely affects the amenities of those currently occupying adjoining properties with regard to, amongst other things, outlook, daylight and creation of a sense of enclosure.

#### *Character and appearance - design*

25. The appeal site occupies a corner position and is located in a predominantly residential area where there are a range of property sizes and styles.
26. The design of the proposed dwelling is heavily based on the existing semi-detached property on the site, incorporating a large ground floor bay window and semi-circular detailing above the entrance and first floor windows. The angles of the roof slope reflect those of the adjacent property, however as the

appeal proposal is for one dwelling, with the existing property on the site being one of a pair of semi-detached properties, the ridge would be lower than the adjacent properties.

27. I find that the elevational treatment, which is heavily based on the existing semi-detached property on the site, due to its design and use of materials would not be out of character with the street-scene or cause harm to the appearance of the area. Although the ridge level would sit lower than the existing pair of semi-detached properties, the angles of the roof slope reflect those on the existing pair of semi-detached properties. The roof would be proportionate to the property, which would effectively be a detached version of one of the existing pair of semi-detached properties and would not cause unreasonable harm to the character or appearance of the area in this regard.
28. I find that as the development would retain separation from the site boundaries that would be consistent with other properties in the vicinity of the appeal site, in this context it would not appear as a cramped form of development. The land to the east of the appeal site (currently undeveloped) contributes to retaining an open aspect to this corner location. I find that the development comprising the two-storey projecting element would not be dominant or intrusive. As the Council highlight, such forms of development are common to properties in the locality, and whilst the proposal may not mimic the exact form of other outrigger extensions, I do not find that the proposal would be excessive in the context of the size of the site and the proposed dwelling.
29. On the matter of the use of hard surfaces in relation to the character and appearance of the area, I find that this would be consistent with other properties in the street-scene. The use of good quality, and a variation in, hard surfaces, can equally positively contribute to the character and appearance of an area. These details could be agreed by way of a condition were I to allow the appeal.
30. I therefore find that the proposal, in terms of its design, would not have an unacceptable impact on the character and appearance of the surrounding area. It would comply with Policy 28 of the Sutton Local Plan (2018) which requires, amongst other things, that new development is attractive, designed to the highest standard, especially with regard to architectural detailing, and uses high-quality materials; respects the local context; is of a suitable scale, massing and height to the setting of the site and/or townscape; and makes a positive contribution to the street frontage.

*Living conditions – future occupants*

31. The Local Plan and Urban Design Guide Supplementary Planning Document (SPD) requires a minimum of 70 sqm of private outdoor space to be provided for a 3-bedroom dwelling.
32. The appellant has referred to The Mayor of London's Housing Supplementary Planning Guidance (SPG) 2016 which sets a minimum standard of 5sqm of private outdoor space for 1 to 2-person dwellings and an extra 1sqm for each additional person. They consider that as the proposal would provide 50sqm of private outdoor amenity space, it would comply with the SPG.
33. The Council's policy sets out that it will not grant planning permission for new residential developments which do not provide an adequate amount of private

amenity space. An adequate amount of amenity space will be considered on a case-by-case basis with reference to the minimum standards (used as a guide) set out in the council's Urban Design Guide SPD (or any successor document) and taking into account local character.

34. The supporting text to Policy 9 of the Local Plan outlines that in a suburban setting, typical of large parts of the borough, the minimum private outdoor space standard in the SPG is inappropriate. It also outlines that the Council's SPD may be considered too onerous, and it is considered more appropriate to use the SPD as a guide, rather than minimum standards, taking into account surrounding local character.
35. I find that in this case the amount of private amenity space that would be provided, whilst falling short of the SPD, would be suitably sized to provide an area for future occupants to utilise. It would be large enough for patio furniture and to provide space for small children to play. It would appear that there is a wide variation in sizes of outdoor amenity space to surrounding properties, and the proposal would not be inconsistent with the amount of space provided elsewhere. As such, considering the proposal on a case-by-case basis, I find the size of the space would be appropriate, consistent with the local character.
36. I therefore find that the proposal would provide acceptable living conditions for future occupants with regard to the provision of external amenity space. Although it would fall short of the amount specified in the Urban Design Guide (SPD) (2008) it would comply with the requirement of Policy 9 of the Sutton Local Plan (2018) that an adequate amount of private amenity space is provided in residential developments.

## **Conclusion**

37. Although I find no harm would be caused to; the character and appearance of the area in terms of the design, and the living conditions of future occupants, this does not overcome the harm I have found would be caused to; the character and appearance of the area due to the impact on protected trees, the living conditions of existing occupants, highway safety and the consequent conflict with the development plan as a whole. I therefore conclude that the appeal be dismissed.

*A M Nilsson*

INSPECTOR