



Appeal Decision

Site Visit made on 18 November 2020

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2020

Appeal Ref: APP/Z5630/W/20/3246194

71 Villiers Avenue, Surbiton, KT5 8BE

- 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 Mr N Daga against the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 19/01873OUT is dated 26 July 2019.
 - The development proposed is demolition of existing house and erection of new residential building housing 8 dwellings with associated parking, bins and cycle stores.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing house and erection of a new residential building housing 8 dwellings with associated parking, bins and cycle stores at 71 Villiers Avenue, Surbiton, KT5 8BE in accordance with the terms of the application, Ref 19/01873/OUT, dated 26 July 2019, subject to conditions set out in the attached schedule.
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Preliminary Matters

2. The application is in outline form with appearance, layout and scale to be determined at this stage and with access and landscaping to be reserved for subsequent approval.
3. Permission has been granted on appeal for the redevelopment of the site to provide 6 dwellings in a similarly designed building¹. This is a material consideration in the current appeal. The main differences in the current proposal relate to the construction of a larger basement and lightwells than previously approved and to changes in the layout of the dwellings on the lower two floors to include two additional studio units.
4. The appeal is in relation to failure to give notice of a decision and is dated 4 February 2020. The Surbiton Neighbourhood Committee resolved to refuse permission at their meeting on 21 January 2020, but the Council would not appear to have issued a decision notice following this prior to submission of the appeal. I have treated the appeal as a failure to give notice of a decision and have had regard to the reasons stated in the Council's minutes for opposing the development.

¹ Appeal Ref APP/Z5630/W/18/3215191, Application Ref 18/16587.

Main Issues

5. The main issues therefore are (a) the effect of the proposal on the character and appearance of the area in relation to the siting of the building and its associated lightwells, (b) whether the basement units would provide satisfactory living conditions for future occupiers in relation to outlook and creating a sense of enclosure and (c) whether the proposal would incorporate an appropriate mix of units sizes and types to meet identified housing needs.

Reasons

Character and appearance

6. The proposed building would be sited as previously approved on appeal slightly forward of the frontage of the adjacent house 73 Villiers Avenue. Much of the remaining front garden would need to be excavated for the proposed front lightwells. The appellant's Design and Access Statement comments "*The front hedges will be replaced with new ones and lawn and permeable paving will replace existing hard standing areas.*" However, the appeal statement indicates that the frontage hedge would be retained and supplemented by a new hedge and lawn. Landscaping is not for determination as part of the outline application; there is therefore uncertainty on the final frontage treatment.
7. Given the proximity of the privet hedge on the front boundary and on the return frontage to Cranes Park Crescent to excavations for the lightwells, it is unlikely that all the hedge would be retained. Even if it is, gaps would remain at the present vehicular access points to both frontages. These may be filled, but an opening would be formed leading to the front entrance. The remaining front garden would have an irregular shape but with a depth not greatly exceeding 2m for landscape measures. The front lightwells would therefore be visible in close views of the site and would have an incongruous appearance as they are not a characteristic of the immediate locality. The appellant has drawn to my attention an appeal decision at 36 Villiers Avenue granting permission to a development of 8 flats arranged over four floors including a basement with front and rear lightwells². This scheme would be similar in massing to the current proposal but would be set further back from the frontage providing a larger front garden area around the lightwells.
8. The previous Inspector at the current appeal site noted that "*the front building line would sit marginally forward of the building line of the adjacent house but not to an extent which would be harmful*" and that the scheme would retain "*space for landscaping at the front*". The current proposal would significantly reduce the space for landscaping at the front. The scale and appearance of the building itself would not change from the previous proposal and have been found to be acceptable in regard to the character and appearance of the area.
9. Nonetheless, the proposal now would result in some harm to the appearance of the street scene in relation to the forward siting and conspicuous nature of the lightwells. There would therefore be limited conflict with those parts of Policy 7.6 of the London Plan (2016) and Policies CS8, DM10 and DM11 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (2012) (LDF) relating to a design approach that protects and enhances local character including integrating well with surrounding streets.

² Appeal Ref: APP/Z5630/W/19/3241782; application Ref 19/01716/OUT.

Living conditions

10. The previous proposal included 2 duplex units on the lower floors with the largest bedrooms at basement level served by rear facing lightwells. In the current proposal the rear facing lightwells would be increased in width and would serve two studio units. Outlook from the units would be in a westerly direction over an open back garden. I am satisfied that there would be adequate natural lighting to the studio units and no undue sense of enclosure.
11. The proposed front lightwells would serve the main bedroom at basement level to the 2 duplex 3-bedroom units. The width of the window openings and depth of the lightwells would ensure adequate natural lighting to these bedrooms. Some form of screening would be necessary to protect privacy within the bedrooms given proximity to the footway. As the application is in outline form, the nature of this is not known but in my judgement, it would be possible to approve suitable measures that would not result in poor outlook or create an undue sense of enclosure through the landscape reserved matter condition.
12. The proposal would thereby be in accordance with those parts to Policy 7.6 of the London Plan and Policies CS8 and DM10 of the LDF which seek to ensure that development has regard to the living conditions of occupants, including in terms of outlook and provision of high quality indoor and outdoor spaces. Similarly, the proposal would accord with Paragraph 127 of the National Planning Policy Framework (the Framework) which seeks to ensure that developments create places with a high standard of amenity for future users. Policy DM11 of the LDF relates to design approach in relation to the character of an area and does not specifically relate to the issue of living conditions.

Housing mix

13. Policy DM13 of the LDF relates to housing quality and mix. It requires a mix of unit sizes and types including a minimum of 30% of dwellings as 3 or more bedroom units. The proposal would include a mix of 1, 2 and 3 bedroom units, but as only two of the units would have 3 bedrooms, this would equate to only 25% of the units. This shortfall would result in limited harm in respect to the aspirations of Policy DM13 for a greater bias towards larger family housing. The extant permission allowed on appeal has the same quantum of family housing as now proposed. The inclusion of two additional studio units would contribute to housing need but would mean that the current proposal no longer satisfies the percentage target for family sized units.

Other Matters

14. The Council has confirmed that it cannot currently demonstrate a five year housing land supply. As such, the tilted balance at Paragraph 11(d) of the Framework is engaged. The proposal would provide a net increase of 7 additional dwellings in a sustainable location. This is a benefit which would accord with the Government's objective of "*significantly boosting the supply of homes*" set at Paragraph 59 of the Framework.
15. The site has relatively poor access to public transport with a PTAL rating of 1b. It is likely that the proposal for 8 units of mixed size would generate a higher demand for parking than the house to be replaced. The site is within a Controlled Parking Zone (CPZ) limiting much on-street parking to permit holders outside evenings and weekends.

16. The site currently provides a front garden hardstand for parking and there is a garage at the end of the back garden with an access on to Cranes Park Crescent. The proposal seeks to provide one parking bay at the rear of the site to replace the garage. The appellant has submitted a completed planning obligation to enter into a car capping agreement except for one dwelling, which would replace the benefit from the permit allowance for the existing dwelling. Both parking bay and parking permit would be allocated to the 3-bedroom family dwellings.
17. Residents of the development would still be able to utilise on street parking bays during weekday evenings and at weekends. But as daytime on street parking on weekdays would only be possible through the purchase of pay and display tickets, I consider that the obligation would significantly limit overall demand for on-street car parking. The mix of units proposed is as previously approved with the addition of 2 studio units. Parking demand from occupiers of these small units is likely to be less than that from the larger units. I consider that the obligation would therefore mitigate any harm arising from demand for on-street car parking from occupiers of the development. I note that the Council's report supported these parking arrangements.
18. I have considered the planning obligation in relation to the tests at Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. These tests require any obligation to be necessary to make the development acceptable in planning terms, to be directly related to the development and to be fairly and reasonably related in scale and kind to the development proposed. From the evidence before me the obligation is complete and would satisfy these tests. I have taken it into account in my decision.
19. I have noted the representations from local residents against the proposal. The issues raised relate mainly to matters I have addressed above, to the scale of the building, which has been agreed in the previous appeal decision and to the processing of the previous proposal by the Council, a matter which is not before me. In relation to other matters raised, I consider that the back garden would be of adequate size for future occupiers. Any noise and disturbance arising during construction would be temporary in nature and undue nuisance could be investigated by the Council.

Planning balance

20. The previous appeal decision at the site established that the proposed building would be in accordance with the development plan. I have found limited harm arising from the changes to the scheme now proposed. In relation to the harm to the character and appearance of the area from the front lightwells, there is scope for mitigation through landscape measures, such as fencing or railings, to be approved at the reserved matters stage. The policy conflict relating to housing mix is arithmetic, a small shortfall in the percentage of family sized units as a result of the addition of the two studio units, although the number of family sized units would not change from the previous scheme. There would be no policy conflict with the development in relation to living conditions for future occupiers.
21. The harm arising must be balanced against the benefits of the current proposal through the provision of a net increase of 7 residential units which would contribute towards meeting local housing need. This benefit attracts significant

weight as the Council is not currently meeting its housing targets. In my judgement, the adverse impacts arising from the current proposal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, any harm in relation to the development plan would not be sufficient to warrant refusal of planning permission. The appeal should therefore be allowed.

Conditions

22. Conditions are necessary to set timeframes for submission of reserved matters and for the subsequent implementation of the permission as the proposal is in outline form. The approved plans need to be listed to provide certainty on what has been approved and to enable the approval of minor material amendments should this be expedient. Otherwise, the conditions necessary for the current proposal are largely those set by the previous appeal decision given the similarity between the schemes.
23. Conditions are necessary to ensure that retained trees are protected and that the approved landscape measures are implemented and maintained. To protect the privacy of occupiers of 73 Villiers Avenue a condition is required to ensure that flank windows are obscurely glazed with limited openings. A condition is necessary to control the external materials for the development to respect the character and appearance of the area. In the interests of sustainable transport and the living conditions of residents respectively, conditions are necessary to ensure the cycle parking and refuse storage areas proposed are provided.
24. The Council's report to Committee suggests several other planning conditions in addition to those included on the extant permission allowed on appeal, but without adequate commentary on why they should be included this time when the issues to which they relate are little changed. This is a relatively small development with a garden area capable of accommodating materials and plant during construction; the suggested construction management condition is not necessary. Whilst sustainability objectives are laudable, there is no evidence before me on why energy and water efficiency conditions are now necessary to make the scheme acceptable in planning terms. Details of access to the building can be examined under the Building Regulations. There is no evidence before me of contamination or drainage problems at the site; the precautionary conditions suggested relating to these matters are not necessary.
25. I have included the suggested condition on window and door reveals as this would enable enhancement of the appearance of the building and can be considered concurrently with the approval of external materials. Fencing details or other means of enclosure, including in the front garden, can be examined during consideration of the landscape reserved matter.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR

Schedule of Conditions

- 1) Details of the access and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: F3218-T, VR71-03-1001, VR71-03-1002, VR71-03-1003, VR71-03-1004, VR71-03-1005, VR71-03-1006, VR71-03-1007, VR71-03-1008, VR71-03-1009 and TH/A3/1726/TPP.
- 5) The tree protection measures specified in the Arboricultural Impact Assessment and Method Statement dated 8 August 2018 shall be fully implemented prior to the commencement of development and those measures shall be retained throughout the course of the development.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The building hereby permitted shall not be occupied until the windows on the side elevation facing 73 Villiers Avenue have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 8) No development above ground level shall commence until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Details of window and door reveals, overhangs and rainwater goods shall be included in the submission. Development shall be carried out in accordance with the approved details.
- 9) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. VR71-03-1004 for 12 bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 10) No dwelling shall be occupied until the space shown on drawing no. VR71-03-1004 for refuse storage has been provided and that space shall thereafter be kept available for the storage of refuse and recycling.