



Appeal Decision

Site visit made on 16 June 2021

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 6th July 2021

Appeal Ref: APP/L5240/W/20/3248065

Land to the rear of Nos 8a - 12a Reddown Road, Coulsdon, Surrey CR5 1AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by March 21 Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 17/06380/OUT, dated 22 December 2017, was refused by notice dated 30 August 2019.
 - The development proposed is the erection of 5 new dwelling flats.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by the appellant. That application is the subject of a separate Decision.

Preliminary matters

3. The appeal seeks outline permission with all matters reserved. It is agreed that the submitted plans are to be treated as illustrative.
4. On the application form, the description of the proposed development is for "5 new dwelling flats" as set out above. As originally submitted, the illustrative plans showed a scheme of five 1-bedroom units. During the course of the application, at the Council's request, an alternative illustrative scheme of four 1-bedroom and one 3-bedroom units was submitted. To my mind both of these schemes are consistent with the original description. I have therefore dealt with the appeal on the basis of that description, whilst having regard to both of the options illustrated.
5. The approved minutes of the Council's Planning sub-committee meeting on 29 August 2019 appear to record that the sub-committee's resolution on the application was to grant permission. The Council has since confirmed that this was an error. The Planning Inspectorate has no power to look further into that matter. Be this as it may, the Council's decision notice was a refusal, and the appeal was made on that basis. I have dealt with it accordingly.
6. In determining the appeal, I am required by law to have regard to the relevant policies of the development plan and all other material considerations. One such material consideration is the National Planning Policy Framework (the NPPF). During the course of the appeal, I consulted the parties on various

matters relating to relevant policies in the NPPF, in order to ensure that I was appraised of their views on all matters likely to be relevant. I thank the parties for their helpful responses to this enquiry, to which I have paid regard in reaching my decision.

Main issues

7. In the light of all the submissions before me, the main issues in the appeal are:

- whether the proposed development would have safe, suitable and convenient access, in accordance with relevant national policies;
- the effects of the development on the area's character and appearance;
- and whether any issues relating to potential contamination of the land, or impacts on groundwater, could be left to be dealt with by conditions.

Reasons for decision

Access

8. The NPPF seeks to ensure that matters relating to sustainable transport are a central consideration in all development proposals. Accordingly, paragraph 108 is unequivocal in requiring all development sites to have safe and suitable access for all users. In this context, paragraph 110 also requires that developments create places that are safe, secure and attractive, minimising any scope for conflicts between users; and that they allow for the efficient delivery of goods, and access by service and emergency vehicles.
9. In my view, the purpose of these requirements is self-evident. That purpose is to ensure that the buildings and places created by new development will provide acceptable standards of access, so as to offer reasonable levels of safety, security and convenience for their occupiers and users. In the case of residential development, it is normally to be expected that this will include, as a minimum, ensuring that appropriate access is available not only on foot, but also by bicycle and by vehicles, so as to meet all of the normal requirements of residential occupation. To my mind, the approach in NPPF paragraphs 108 and 110 is one that most building users would be likely to see as nothing more than basic common sense, and I can see no good reason for failing to apply that approach in the present appeal.
10. In the present case, the appeal site lies between the rear gardens of four properties in Reddown Road and the railway embankment. The site has no frontage to Reddown Road, nor to any other road. Although access is a reserved matter, it is not disputed that the only means of access currently available is via the pedestrian path that runs from Reddown Road to South Coulsdon Station. That path is entered from Reddown Road by descending a flight of 12 steps. The path is less than 2m wide, and runs between high fences and metal palisades on either side, reaching the appeal site after about 25m. Just past the site, the path turns through two sharp bends, cutting off forward visibility. It then ascends either one more substantial flight of steps to reach the nearer railway platform, or two upward flights and one downward, to cross to the other side.
11. Whilst these steps along the Station pathway are not excessively steep, they are numerous, especially for those needing to access the Station or town

centre. For anyone of less than average mobility, or for people carrying shopping or other items, or escorting children, even the shorter flight from Reddown Road would present a significant obstacle. Few but the most physically able would be likely to attempt the steps in either direction with a bicycle; indeed the difficulty of doing so is illustrated in the appellant's own photographic evidence. Access for wheelchair users would be, to all intents and purposes, impossible. In wet or icy weather, the difficulty and potential danger of the pathway would be further exacerbated.

12. In addition, even though the Station path is said to have CCTV, it still suffers from a lack of direct natural surveillance, which the proposed scheme would only marginally improve. The potential for concealment, and the lack of escape routes, would remain. Consequently, the path as a whole would be likely to be perceived as threatening to women, children and other vulnerable people. This perception would be especially heightened after dark, notwithstanding the presence of some existing lighting.
13. Deliveries of furniture or other large items would be more than usually difficult, as would maintenance visits by tradesmen and others, particularly those requiring bulky tools or equipment. Whilst it is said that household refuse collections could be arranged using private contractors, there is no clear evidence that this would be realistic, and no certainty that it would remain so in the long term. In my view the difficulties associated with deliveries and collections would be likely to result in significant inconvenience, not only to those providing these services, but also to the occupiers themselves.
14. In the event of a medical or fire emergency, the lack of vehicular access and visibility from the street, would have the potential to delay the relevant services in finding the site. Once there, the added difficulty of transporting equipment from a vehicle to the site, by hand, would be likely to lengthen the overall response time. Whilst such incidents would be likely to be rare, nevertheless delays in providing emergency services would have the potential to endanger life.
15. With regard to access during construction, I accept that the difficulties involved in physically carrying out the development would normally be a matter mainly for the developer or contractor. In this respect I also note the solutions suggested in the appellant's Outline Construction Logistics Plan, including the use of pumped concrete and lightweight materials including insulated concrete form polystyrene blocks. But even so, based on the information provided, building operations are estimated to last for between 16 - 31 weeks. Given the nature of the Station pathway, including its lack of width and other constraints, its use for the delivery of materials and equipment, and for access by construction workers and machinery, would in this case have a high potential to cause obstruction, soiling and damage. To my mind, such impacts could only be partly ameliorated by a boot wash and changing station as suggested. Consequently, the construction phase would be disruptive to other users. I note the suggestion that an alternative temporary access could be formed through one or more of the frontage properties, but there is no evidence that any of the relevant owners would be receptive to such an option; nor has it been established whether this would be technically feasible on the steeply sloping terrain, or could be made acceptable in planning and highway terms. In the circumstances it seems to me that this alternative option can carry little or no weight in the present appeal.

16. Furthermore, I note that the Station path is said to be privately owned, by Network Rail, and does not appear to be registered as a public right of way. Therefore, although currently the general public is allowed to use the path on a discretionary basis, that does not seem to me to represent any guarantee that it will remain open on that basis in perpetuity. Whilst the appellant asserts that the appeal site enjoys a right of way, no evidence of such a right has been produced. I appreciate that legal rights are essentially a private matter, but in this case the lack of certainty reinforces my doubts about the wisdom of relying the Station path for the development's sole access. For similar reasons, I give little weight to any suggestion that the Station path could be improved. The path is outside the application site boundary, and there is no evidence of any rights to carry out works to it.
17. I appreciate that the occupiers of the proposed development would be self-selecting. Those who would choose to live there would be aware of the site's limitations, and the development would be likely to attract mainly those who are more able. But the needs and circumstances of individual occupiers could easily change over time. And in any event the occupiers themselves would not be the only people who would use the building or need access to it.
18. In the light of all the above considerations, I conclude that the proposed development would fail to provide safe or suitable access for all users, or to avoid conflicts between users, or to allow for the efficient delivery of goods, and access by service and emergency vehicles. It also follows that, due to these shortcomings in terms of the lack of a satisfactory access, the development would not succeed in creating a secure, convenient or attractive place for future occupiers and others to live or visit. In all these respects, the scheme conflicts unacceptably with the national planning policies set out in paragraphs 108 and 110 of the NPPF.

Effects on the area's character and appearance

19. The illustrative plans show a mainly 3-storey, flat-roofed building, set against the site's rear boundary, against the railway embankment. The main entrance would face the Station pathway, with cycle and refuse stores located alongside. The ground floor flat(s) could have an external deck or patio, and the upper units could have balconies, all facing south. A further small area of outdoor amenity space, either shared or private, could be provided in the site's triangular southern corner beyond these.
20. The Council's objections on grounds of character and appearance relate principally to the proposed building's size, relative to the site, and its relationship to the existing pattern of development in the area. I note these concerns. However, it is not unusual in this part of London to see backland development, including flats, set behind the original frontage houses. Rather, such developments are often a good way of making the best use of urban land. Indeed an example of this approach already exists, almost adjacent to the appeal site, in the Hadleigh Grove development which includes Balmoral house and other apartment blocks, set partly behind some of the houses in Reddown Road. Although that development differs from the appeal scheme, in that it evidently had the opportunity to create a new access road, its position relative to the original development pattern is otherwise similar.

21. Based on the illustrative plans, the development now proposed would have more storeys, and somewhat greater massing, than the original pairs of semi-detached houses in Reddown Road. But it would be sited on lower ground, and against the backdrop of the embankment and associated trees. Consequently, a building of the size shown would not be unduly dominant in this location. The architectural style illustrated would be more modern than the existing houses, but that does not mean that a scheme along these lines would not be compatible; and in any event the outline permission sought would allow further consideration of the detailed design at a later stage. The space left for landscaping would be small, and heavily overshadowed, but as long as the species were carefully selected, it seems to me that it would still be possible to provide some worthwhile planting.
22. In none of these respects therefore do I find any of the Council's concerns well-founded. In terms of the development's location and scale, no convincing reasons have been put forward as to why a scheme of five apartments could not be designed so as to fit on the site without adversely affecting the area's character or appearance. Accordingly, I find no conflict with any relevant development plan or NPPF policies in this regard.

Contamination

23. The appeal site is understood to be former railway land, at one time associated with the adjacent railway line and station. The Environment Agency (the EA), in its consultation response dated 2 May 2018, advised that the location is also regarded as sensitive in terms of its proximity to controlled waters, which include principal and secondary aquifers and a source protection zone. In the absence of a preliminary risk assessment, the EA considers the level of risk to be unacceptable, and has formally objected. The Council's third refusal reason (RR3) is based on this advice from the EA.
24. In the NPPF, relevant advice in paragraphs 170, 178 and 180, supports a generally precautionary approach. In particular, development should not contribute to unacceptable levels of soil or water pollution. Decisions should take into account any contamination risks, and the effects on health, living conditions, and the natural environment. Account should also be taken of the sensitivity of the site, or the wider area, to any risks arising from the development itself.
25. Having regard to these paragraphs, and the EA's advice, I have no doubt that the appeal site is one where the possibility of past contamination, and the potential additional risks arising from the development now proposed, should be investigated, assessed, and if necessary mitigated for, before any development takes place.
26. However, in the development plan for the area, the most relevant policy is Policy DM24 of the Croydon Local Plan (the CLP), adopted in February 2018. That policy states that the Council will permit development proposals located on or near potentially contaminated sites, provided that a detailed site investigation is undertaken prior to the start of construction. In the event that that assessment identifies unacceptable risks, either to human health, adjacent land uses or the local environment, then site remediation and aftercare are to be agreed or secured by condition. The accompanying text, at CLP paragraph 8.28 also states that when a site is to be developed, the Council will seek to

ensure that any contamination issues are addressed through the imposition of planning conditions prior to development.

27. To my mind, this policy makes it clear that matters relating to contamination, and remediation can be dealt with where necessary by means of conditions. I appreciate that this is somewhat different from the approach advocated by in this case by the EA, which would require an investigation to be carried out, and mitigation measures fully specified, before any permission were granted. However, I can see nothing in the NPPF that expressly requires such an approach in all cases. Policy DM24 is relatively recently adopted, and there is no suggestion that it is inconsistent with national policy. In this case there seems no reason why Policy DM24 should not apply to the appeal proposal.
28. I also note that, notwithstanding the EA's comments, the Council's Environmental Health Officer (EHO) recommended that in his view the contamination issues could be dealt with by condition in this case. Although the EHO's reasons are not reported, this advice seems to me to properly reflect the approach set out in Policy DM24. There is no evidence to suggest that any necessary remediation works would not be possible in this case. In the circumstances, this reinforces my own view, based on Policy DM24 and the available evidence.
29. I therefore conclude that, in the present outline scheme, the matters raised relating to contamination and pollution risks, whilst needing to be investigated and planned for prior to development, could nevertheless be adequately dealt with by conditions. Accordingly, no conflict with Policy DM24 arises in this case.

Other matters

30. The proposed development would provide five residential units, in an accessible location, close to a station and town centre. Development in such a location could help to encourage the use of public transport, and facilitate a car-free or low car-use lifestyle. The development would also make use of otherwise vacant and redundant land, and would avoid the site becoming an eyesore. There would be the potential for some modest benefits to the local economy. The development would provide an opportunity to improve the site's surface water drainage, thus offering some potential to reduce the risk of downstream flooding elsewhere in the locality. It would have the potential for a minor enhancement for users of the Station pathway, in terms of increased natural surveillance, and borrowed lighting. Through sustainable detailed design and construction practices, the impacts on energy, water usage and carbon emissions could potentially be offset to the point of being effectively neutral.
31. Cumulatively, these potential benefits are not insubstantial. But in my judgement they are clearly outweighed by the harm that would be caused, to future occupiers and users, as a result of being reliant on a manifestly unsuitable means of access, with all the shortcomings and risks that I have identified.
32. I note the various planning policies cited by the appellant which in principle support and encourage sustainable development. But none of those policies suggests that new-build housing which lacks an acceptable form of access should be regarded as meeting that description.

33. I appreciate that the scheme was recommended for approval by Council officers. But that does not alter the planning considerations that have led me to my conclusions.

Conclusions

34. For the reasons set out above, I have found that the appeal proposal would fail to provide safe, convenient and suitable access for all, contrary to NPPF paragraphs 108 and 110. The conflict with these important elements of national planning policy weigh heavily against granting permission.
35. The scheme would not adversely affect the area's character or appearance, and the possible risks posed by unknown contamination could be dealt with by conditions. However, these matters weigh neutrally in the planning balance, and do not add any positive weight in favour of the development.
36. With regard to the development plan, no specific policies have been identified by any party which weigh clearly either for or against the proposal. But nevertheless, having regard to NPPF paragraph 11(d), I conclude that the adverse impacts of providing a development with such deficiencies in terms of access, would significantly and demonstrably outweigh the scheme's benefits.
37. I have taken account of all the other matters raised, but none alters these conclusions.
38. The appeal is therefore dismissed.

JS Felgate

INSPECTOR