
Appeal Decisions

Site Visit made on 10 September 2021

by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal A Ref: APP/P5870/W/20/3261725

Land To The Rear Of 194-196, London Road, Hackbridge SM6 7ET

- 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 Bruce Burkitt against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2020/00738, dated 20 May 2020, was refused by notice dated 21 July 2020.
 - The development proposed is demolition of garage and the erection of a single storey, 1 bedroomed dwelling with 1 off-street parking space, new front boundary treatment and associated refuse and cycle storage and landscaping.
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Appeal B Ref: APP/P5870/W/21/3266502

Land To The Rear Of 194-196 London Road, Hackbridge SM6 7ET

- 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 Bruce Burkitt against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2020/01335, dated 27 August 2020, was refused by notice dated 10 December 2020.
 - The development proposed is erection of a single storey rear extension and conversion of garage into a dwelling, with off street parking and associated refuse, cycle parking and landscaping.
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Decision

1. Appeal A is dismissed and Appeal B is dismissed.

Preliminary Matters

2. The planning applications were determined prior to the Government publishing the National Planning Policy Framework 2021 (the Framework) and the Mayor of London publishing the London Plan 2021 (the London Plan). Comments were sought from the main parties with regards to these matters and I have taken any responses received into account in reaching my decision.
3. In relation to appeal A, the appellant submitted two drawings that were not considered by the Council when determining the application. These are drawings 03 Revision A and 06 Revision A and show the originally proposed outwards opening gate replaced by a sliding gate. As the Council and interested parties have had the opportunity to comment on these drawings as part of the appeal process, I have accepted them. In doing so, I have had regard to the

principles established by the Courts in *Wheatcroft*¹. I consider that by accepting the drawings I have not deprived any party who should have been consulted on the drawings the opportunity to consider them; the changes they proposed are minor.

Main Issues

4. The main issues are:

- In respect of both appeals, the effect of the proposal on the character and appearance of the area.
- In respect of both appeals, whether the proposals would provide a satisfactory reduction in carbon emissions, sustainable drainage measures and water efficiency measures, and in relation to Appeal B, the effect of the proposal on flood risk;
- In respect of appeal B, whether the proposal would provide adequate living conditions for future occupants, with particular regard to internal ceiling heights; and,
- In respect of appeal A, the effect of the proposal on highway safety.

Reasons

Character and appearance (Both Appeals)

5. The appeal site is located in a built up residential area to the rear of Nos. 194-196 London Road and adjacent to No. 2 Wandle Road. The area is characterised by closely spaced terraced and semi-detached properties. While there is some variation in terms of the style, form and appearance of dwellings in the area, those in the vicinity of the appeal site are generally two storeys in height. Most are set behind small gardens enclosed by low boundary treatments.
6. The proposals would result in a single storey dwelling similar in size to the existing garage. They would also replicate the flat roof form of that building, so that the overall shape of the proposed dwelling in either scenario would appear similar to the garage. However, the prevailing form of development in this location is of two storey dwellings and I consider that a single storey dwelling would appear as an incongruous form of development. As such, the proposals would harm the character and appearance of the area.
7. The proposal under Appeal B would retain the same frontage to Walden Road as the existing garage, save for providing a splay at the corner of the building. There would be a number of private vantage points, such as neighbouring properties and their gardens, from where the residential nature of the building would clearly be apparent and incongruous. In my view, a multitude of private vantage points amounts collectively to a matter of public interest.
8. Moreover, a dwelling would, in all likelihood, result in a more intense use of the appeal site, including through vehicular parking and general comings and goings. This increased intensity of use would exacerbate the incongruity of the

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982].

- proposals in this location; notwithstanding ownership, the building currently appears subservient to, and different from, surrounding residential uses.
9. In reaching this conclusion, I have considered that the functional appearance of the garage, aligned with its prominent location at the back edge of the pavement, does not make a positive contribution to the streetscene. The appellant suggests that the proposals would improve the appearance of the site, while the Council refer to the design detailing improvement over the existing garage. However, such benefits would not outweigh the harm that I have identified, and there is no indication that the building as it stands is anything other than authorised.
 10. In relation to Appeal B, the appellant has referred me to a scheme which was allowed at appeal in relation to the rear of 38 Georgia Road². That scheme is not located in the immediate area to the proposal before me and so is likely to be viewed in a wholly different context. I am also mindful that each case must be considered on its own merits. As such, I afford limited weight to this matter in my assessment.
 11. The Council are concerned that the proposals would occupy a limited plot relative to the prevailing form of the area. However, the appeal site already appears as a distinct plot, which would not be made smaller to accommodate the proposals. As such, I consider that the proposed plot size in itself would have no harmful effects on the character and appearance of the area.
 12. In reaching this conclusion, I have had regard to the appeal decision referred to me by the Council at 46 Wood Street, Mitcham Junction³, where a similar issue was considered. Again, that scheme is not located in the immediate area to the current appeals. Moreover, I do not have the full details of that scheme before me so cannot consider fully how it may compare with the current appeals.
 13. A front boundary wall with railings is proposed under Appeal A, which would measure approximately 1.8 metres in height. The prevailing form of boundary treatments to dwellings fronting Wandle Road is much lower, although there are also properties that have open frontages. In this context, the proposed boundary treatment would appear as an incongruous and overly dominant addition to the streetscene, resulting in harm to the character and appearance of the area.
 14. I have had regard to the appellant's comments that the garage currently occupies the same position at the back edge of the pavement that the proposed boundary treatment would. While that may be the case, the proposed boundary treatment would fail to respect the prevailing form of development in this location for the reasons I have set out and I do not consider the existing situation justifies the resultant harm.
 15. The appellant also suggests that a planning condition could be imposed to resolve any concerns over the boundary treatment. The Planning Practice Guidance on the use of planning conditions states that the use of conditions to modify development in a way that makes it substantially different from that set out in the application would not be appropriate⁴. That would occur would I to

² APP/L5240/W/15/3129979.

³ APP/P5870/W/18/3194950.

⁴ Paragraph: 012 Reference ID: 21a-012-20140306.

fashion such a condition. Moreover, there are other matters that may arise in the event that the boundary treatment was modified, such as the privacy that would be afforded to the occupants of the proposed dwelling given the proximity of the fenestration to the front of the site. Consequently, I cannot be satisfied that a condition would meet the relevant tests set out at Paragraph 56 of the Framework.

16. The Council are concerned with the effect of the fenestration on the front elevation of the proposed dwellings on the character and appearance of the area in respect of appeal A. In this regard, I have been referred by the Council to an appeal decision⁵ relating to a previous scheme at this site. In that case, the Inspector found that the ground floor windows of the proposed dwelling would appear discordant against the traditional bay window at No.2 Wandle Road. However, that proposal was for a two storey dwelling of a significantly different scale and design and is not directly comparable to the proposals before me.
17. The proposed dwelling under appeal A would nevertheless appear distinct and separate from the adjacent dwelling and would have a contemporary appearance. As such, the form and scale of the fenestration would reinforce the identity of the proposed dwelling as a contemporary development within a setting of more traditional buildings. This would draw attention to the building's residential use and would therefore exacerbate the above harm.
18. There is no fenestration proposed on the front elevation under appeal B, albeit that the Council's reason for refusal in this instance refers to windows in that location. However the Council's Officer Report makes it clear that it is the perceived starkness of this elevation, with only the garage door and lack of windows which it is concerned with. Given that the proposal would simply replicate the existing elevation, I do not consider that this would be harmful.
19. Notwithstanding certain mitigating factors, for the foregoing reasons, namely the incongruity of a single storey dwelling in this location and the appearance of such, I conclude that the proposals under both appeals would harm the character and appearance of the area. As such there would be conflict with Policy 28 of the Sutton Local Plan 2016-2031 February 2018 (LP), which requires among other matters, new development to respect the local context and respond to local character and to make a positive contribution to the streetscene. There would also be conflict with Policy H&BEP1 of the Hackbridge and Beddington Corner Neighbourhood Plan 2017-2027 Referendum Version November 2018, which requires all development to make a positive contribution to the character of Hackbridge and Beddington Corner. The proposal would also conflict with the objectives of the London Borough of Sutton Local Development Framework Supplementary Planning Document Creating Locally Distinctive Places Sutton's Urban Design Guide January 2008.

Carbon Emissions, Sustainable Drainage and Water Efficiency (Both Appeals) and Flood Risk (Appeal B)

20. LP Policy 31 requires that all planning applications for new dwellings should be supported by an Energy Statement incorporating 'as-designed' Building

⁵ APP/P5870/W/18/3209596 - Conversion and extension of building currently used for garaging and storage into a 2 bedroom 2 storey dwelling with private amenity space and single off road parking space

Regulations Part L outputs to demonstrate how the relevant targets for reducing CO2 emissions will be met.

21. LP Policy 32 states that proposed developments should incorporate effective sustainable drainage (SuDS) measures as part of the design and layout of the development in order to manage surface water run-off as close to its source as possible. All development proposals should include details of how each SuDS measure, and the site drainage strategy as a whole, will be managed and maintained throughout its lifetime.
22. LP Policy 33 states that developments should achieve high standards of water efficiency with all new dwellings limiting domestic water consumption to 110 litres per person per day.
23. The appellant makes no reference in his appeal statement for Appeal A to the Council's third refusal reason with regard to matters related to the above policies. However, in his appeal statement for Appeal B and his final comments in respect of both appeals he suggests that the matters raised by the Council could be dealt with by condition. In support of this, he has provided an extract from a planning permission where such conditions have been employed by the Council elsewhere⁶. Without the full details before me of that scheme, I cannot consider fully how it, or other unreferenced schemes referred to by the appellant, might compare to the current appeals.
24. There may be specific circumstances where the information required by the aforementioned policies could be secured by planning condition, for example based on the feasibility of such measures on a particular site with reference to its existing nature or planning history. However, there is no compelling evidence before me to suggest that this would be an appropriate approach in these appeals, nor any substantive information before me in those regards.
25. LP Policy 32 also states that proposed developments should avoid or minimise all sources of flood risk to people and property, taking account of climate change, without increasing flood risk elsewhere. The Council have only raised the issue of flood risk in relation to the proposal under Appeal B, wherein they identify the appeal site as being located in Flood Zone 2. The Planning, Design and Access Statement submitted by the appellant with the application also identifies the appeal site as being in that flood zone.
26. Where development sites are located in Flood Zone 2, LP Policy 32 requires all proposals to be supported by a site-specific flood risk assessment (SSFA). No SSFA has been submitted with the appeal proposal and so the proposal conflicts with the requirements of this policy. Consequently, I find that the proposal fails to demonstrate how it would avoid or minimise flood risk. I note that the Council did not object to the proposal under Appeal A on the grounds of flood risk. However, as I am dismissing that appeal on other substantive grounds, I do not need to pursue this matter further.
27. I conclude that the proposals under both appeals fail to demonstrate that they would provide a satisfactory reduction in carbon emissions, sustainable drainage measures and water efficiency measures. The proposal under Appeal B would also fail to demonstrate how it would avoid or minimise flood risk. As such, there would be conflict with LP policies 31, 32 and 33 cited above.

⁶ DM2019/01637.

Living Conditions (Appeal B)

28. London Plan Policy D6 sets out a number of standards for housing development. At paragraph 8 under the section headed Private internal space, it states that the minimum floor to ceiling height must be 2.5 metres for at least 75 per cent of the Gross Internal Area of each dwelling. The supporting text to this policy states that to address the impacts of the urban heat island effect and the fact that the majority of housing developments in London are made up of flats, a minimum ceiling height of 2.5 metres for at least 75 per cent of the gross internal area is required so that new housing is of adequate quality, especially in terms of daylight penetration, ventilation and cooling, and sense of space.
29. Standard 24 of The Mayor of London Housing Supplementary Planning Guidance March 2016 (HSPD) states that all new dwellings should meet the nationally described space standard . This indicates that minimum floor to ceiling height should be 2.3 metres for at least 75% of the Gross Internal Area. However, Standard 31 states that a minimum ceiling height of 2.5 metres for at least 75% of the gross internal area is strongly encouraged.
30. LP Policy 9 states that the Council will not grant planning permission for new residential development, including conversions, which does not meet the internal space standards set out in the London Plan (or a successor document). Although there is some complexity on that issue, Section 38(5) of the Planning and Compulsory Act 2004 as amended sets out that 'if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.' In this instance therefore London Plan Policy D6 takes precedence.
31. There is no dispute between the main parties that the floor to ceiling height of the converted garage would be less than 2.5 metres. Although the appellant suggests that the head height would still comply with national minimum space standards, it is clear from London Plan Policy D6 that there are circumstances relevant to London that requires dwellings to have a minimum of 2.5 metres floor to ceiling height. In this case, the failure to provide that height would result in unacceptably cramped living conditions for future occupants.
32. The appellant suggests, however, that the internal floor level could be lowered to provide the required internal ceiling height and that this could be secured by condition. However, I cannot be satisfied, based on the evidence before me, that such works would be technically feasible; for example, with respect to the stability of the building. Consequently, I do not consider that this matter can be resolved by imposing the condition that the appellant suggests; to do so without adequate information would be tantamount to imposing an unreasonable condition. Whilst the issue of internal head height was not referred to as a reason for refusal by the Council in respect of appeal A, I note nonetheless that the same conflict would occur.
33. I therefore conclude that the proposal would fail to provide adequate living conditions for future occupants with regard to the internal floor to ceiling height. As such, there would be conflict with London Plan Policy D6, LP Policy 9 and Standard 31 of the HSPD that I have cited above.

Highway Safety (Appeal A)

34. The drawings that the Council determined the application upon show the gates to the proposed development opening out over the footpath of Wandle Road. This would result in an obstruction to pedestrians, requiring them to step out into the carriageway and increasing the risk of collision between pedestrians and other road users. The drawings submitted with the appeal replace those gates with a sliding gate. While that gate is shown in plan form only, I am satisfied that such a solution would be technically feasible and would overcome this harm. I am satisfied, in the event that the appeal was allowed, that details of the design and height of the gate could be secured by a planning condition.
35. In light of the above, I conclude that the proposal would not adversely affect highway safety. As such, there would be no conflict with LP Policies 29 and 36, which, among other matters, require accesses to new development to be safe and should be located so as to minimise any adverse impact on the highway network.

Other Matters and Planning Balance and Conclusion

36. I have reasoned above how both proposals would result in harm to character and appearance, in terms of living conditions of future occupants and that compliance with LP policies 31, 32 and 33 has not been demonstrated. Additionally, appeal B would not be appropriate with reference to its vulnerability to flooding. I accept that both proposals would have certain benefits, notably in resulting in an incremental addition to housing stock in an accessible location, in supporting employment during construction, and as future occupants would bring trade to local services. However, such benefits would be limited given the nature of the proposal, and neither the support in the development plan nor the Framework to new housing is at the expense of ensuring that all development is appropriately designed. As such, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that appeals A and B should be dismissed.

Scott Britnell

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/P5870/W/20/3261725	Mr Bruce Burkitt
Appeal B	APP/P5870/W/21/3266502	Mr Bruce Burkitt