
Appeal Decision

Site visit made on 2 November 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2021

Appeal Ref: APP/L5240/W/21/3267900

52 Welcomes Road, Kenley, CR8 5HD

- 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 Frank Amin against the decision of the Council of the London Borough of Croydon.
 - The application Ref 20/05352/FUL, dated 13 October 2020, was refused by notice dated 22 December 2020.
 - The development proposed is demolition of existing bungalow and the erection of a three storey building with 9 flats and associated parking, cycle storage, refuse and recycling, landscaping and childrens play area.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The drawings submitted with the application include 3 computer-generated images of the front elevation of the proposed building. These are inconsistent with the elevational drawings. For the avoidance of doubt I have based my decision on the latter.
3. The Council's reasons for refusal cite policies from The London Plan The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (2016). During the course of the appeal this was replaced by the publication of The London Plan The Spatial Development Strategy for Greater London (2021). The policies of the 2016 version of The London Plan therefore no longer have any weight. The main parties were given the opportunity to comment on the implications of the new London Plan for this appeal. However, neither have directed me to any relevant policies in the new London Plan.
4. The appellant makes several comparisons with an approved scheme at No 56 Welcomes Road (19/00412/FUL). I understand the appellant's position regarding the Council's decision on the scheme before me given the contended similarities between the schemes. However, I must consider the scheme before me, for which permission was refused by the Council, on its own merits. I have therefore given the permission for No 56 limited weight in my decision.

Main Issues

5. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area, including in respect of trees;

- ii) whether the proposed development would provide satisfactory living conditions for future occupiers with particular regard to privacy and external communal space;
- iii) the effect of the proposed development on the safe and convenient use of the highway and pedestrian safety; and
- iv) the effect of the proposed development on biodiversity.

Reasons

Character and appearance

6. Welcomes Road is a narrow private road and public footpath within a valley framed by trees on the higher ground to either side. The road serves large, detached properties set back in generous plots, primarily a mix of bungalows and 2 storey houses of varying ages and designs. However, I noted during my site visit that Nos 32, 36 and 57 Welcomes Road were more recent 3-4 storey apartment blocks. The appellant also refers to permission having been granted for similar flatted schemes at Nos 10, 42, 56 and 60 Welcomes Road.
7. The appeal property and other properties in the vicinity address and align with the gentle curve of the road rather than the plot boundaries contributing to a characteristic pattern of development. The northern end of the road is lined by trees to either side resulting in an enclosed character. Further to the south, in the vicinity of the appeal property, the road is more open, but trees, hedges and other vegetation combine to provide an attractive verdant character.
8. The appeal property is a large, detached bungalow set back from and slightly higher than the road with similar properties to either side and a 2 storey dwelling opposite. Trees and a hedge to the frontage make a modest but positive contribution to the character and appearance of the area. To the rear of the dwelling the land rises so that the rear garden is on different levels, with a mixture of coniferous and deciduous trees within the garden and to its northern, southern and western boundaries. These trees are visible from Welcomes Road over the bungalow and make a significant positive contribution to the character and appearance of the area.
9. The proposals follow a previous application for a similar development on the appeal site refused permission in 2020 (19/05485/FUL). However, it has not been made clear to me how the scheme before me attempts to address the Council's concerns with the previous proposals.
10. Other recent flatted developments have begun to insidiously affect the character of Welcomes Road. Nevertheless, it still retains a strong character of single and 2-storey dwellings in spacious plots. Whilst narrower than the existing bungalow and garage, the proposed main building would have substantial massing across the width of, and extending back into, the site. Together with the parking forecourt it would thus occupy a significantly greater proportion of the appeal site than the existing dwelling.
11. The height and massing of the proposed building in proximity to the existing trees to the northern and southern boundaries would result in it appearing to be squeezed in on the site. For these reasons, the proposals would erode the characteristic spaciousness of the area, with the cumulative effect of the flatted developments degrading the area's character.

12. With 3 storeys plus roof the proposed building would be substantially higher than the existing property on the site and the dwellings to either side. Being close to the side boundaries of the site, the overall bulk would relate poorly to the neighbouring properties. The Suburban Design Guide Supplementary Planning Document (SDG) indicates that where surrounding properties are predominantly single storey, new development should seek to accommodate a third storey within the roof space. As the top floor would not be fully contained within the roof space the proposal would not fully accord with the SDG.
13. The degree of variation in the depth of the front elevation would provide some relief from its apparent bulk. However, the lack of detailing for the windows, particularly in the central front elevation, and the lack of significant variation in the ridge height, notwithstanding the pitched form of the roof, would result in a rather monolithic appearance, emphasising the bulk of the building.
14. Furthermore, the proposed building would align with its northern and southern boundaries rather than Welcomes Road and so would be at odds with the prevailing pattern of development in the vicinity. Due to its height, overall massing and alignment, the proposed building would be incongruous in the street scene. The massing of the proposed development would also screen views of the trees to the rear of the site, which would diminish their contribution to the attractive character and appearance of the area.
15. No information on land levels has been provided to demonstrate how the proposed building would relate to the rising ground of the plot. If the front elevation would be at existing ground level, excavation would be required to the rear of the building given its deep footprint. Without sections of the building in relation to the ground levels and details of any retaining walls I cannot be clear as to the effect these would have on the appearance of the development. Furthermore, there is no indication of how any retaining walls might affect the existing important trees on the side boundaries of the site.
16. The proposed forecourt would dominate the frontage and require the removal of two of the existing trees. Whilst replacement trees are proposed and could be secured as part of a comprehensive landscaping scheme were planning permission to be granted, it could take some years before these make the same contribution as the existing trees. The removal of these trees would therefore be harmful to the character and appearance of the area.
17. However, the frontage of the existing dwelling is already partially hard surfaced and the roadside hedge is to be retained. The proposed site plan indicates sufficient room for additional planting to soften the appearance of the forecourt and parked cars. The harm to the verdant character and appearance of Welcomes Road from the proposed forecourt would therefore be limited. Two trees are also indicated to be removed in the rear garden. However, both of these are relatively small specimens that do not make a significant contribution to the character and appearance of the site or area. Their loss would thus not have an unacceptable impact in this respect.
18. Whilst the proposed bin and cycle stores would be on the frontage of the property, they would be set back from the road, integrated with landscaping and of limited height and overall size. They would thus not be significantly harmful to the street scene in themselves. The use of appropriate materials and boundary treatments could be secured by condition were planning permission to be granted.

19. For the reasons given above, I conclude that the proposed development would be harmful to the character and appearance of the area. Accordingly, in this respect, the proposals would conflict with Policies SP1.2, to which an interested party refers, SP4, and DM10.7 of the Croydon Local Plan (2018) (the Local Plan). These policies, amongst other things, require development proposals to respond to and enhance local character and be of a high quality which contributes positively to townscape.
20. The proposals would also conflict with Policy DM10.1 which, whilst seeking to achieve a minimum height of 3 storeys, sets out that proposals should respect the scale, height and massing of the surrounding area and development pattern, with roof forms that are sympathetic to the local context. The proposals would also be in limited conflict with Policies DM10.8 and DM28 of the Local Plan which protect existing trees that contribute to the character of an area. However, I find no conflict in this respect with Policy DM10.5 of the Local Plan on the quality of outdoor communal space in flatted developments.

Living conditions of future occupiers

21. The Council accepts that each of the proposed apartments would meet the standards for internal floorspace set out in the Technical housing standards - nationally described space standard as required by Policy SP2.8 of the Local Plan. Each of the proposed flats would also have private external space in the form of a terrace or balcony.
22. However, the submitted layout plan shows the terrace for Flat 1 separated from the forecourt by only a narrow strip of planting and the terrace for Flat 2 immediately abutting the forecourt. Both of these external spaces would therefore be likely to suffer disturbance and a lack of privacy. Moreover, paths providing access to the rear of the property would run immediately adjacent to the terraces for all three proposed ground floor flats, compromising the privacy of the users of these terraces.
23. The proposed paths would also pass directly in front of windows serving habitable rooms of the ground floor flats. The side-facing windows of the living/kitchen/dining spaces of these flats would be obscure glazed but the rear-facing windows to a study and bedroom of Flat 2 and the bedrooms of Flat 3 would be clear glazed. Whilst some degree of overlooking is to be expected in a communal living environment, with users of this path passing directly in front of these windows there would be an unacceptable lack of privacy for the occupiers of these flats.
24. Whilst it would be possible to access the rear gardens from within the proposed building, the external door would be immediately adjacent to the study and close to a bedroom for Flat 2. The appellant suggests that a through corridor could be provided on the ground floor to provide access to the rear communal space, but that is not what is before me, and it is not the purpose of the appeal process to evolve a scheme.
25. Notwithstanding the depth of the proposed building and the proposed loss of two trees, the communal rear garden area for the development would be of a significant size and an attractive combination of lawns and trees. However, the garden would be on different levels accessed from the perimeter path around the building via steps. It would therefore not be accessible to less able users and so would not be inclusive.

26. The garden would not comply with Optional Requirement M4(2) of the Building Regulations 2010 which requires step free access to be provided to communal facilities intended for the occupants to use. Whilst the appellant has indicated a willingness to discuss this matter with the Council, I must determine this appeal on the basis of the details before me.
27. The rear garden would include a proposed child play area on an upper level. No details of this have been provided other than its location but further details could be required by a condition were planning permission to be granted.
28. For the reasons given above I therefore conclude that the proposed development would not provide satisfactory living conditions for all prospective future occupiers of the proposed flats. Accordingly, in this respect, it would not fully accord with Policies SP2.8 or DM10.4 of the Local Plan which require all proposals for new development to provide private amenity space that is of high quality and functional.
29. It would also be contrary in this respect to Policy DM10.5 of the Local Plan which requires the provision of high quality communal outdoor amenity space in all flatted developments that is, amongst other things, accessible and inclusive. The development would also be contrary in this respect to Policy 10.6b, which supports development proposals that do not result in direct overlooking at close range or habitable rooms in main rear or private elevations.

Safe and convenient use of the highway and pedestrian safety

30. Nine parking spaces are proposed which satisfies the standard set out in Policy DM30 of the Local Plan. However, I note that access to parking space 1 would be constrained by an existing tree to be retained and the proposed cycle store. It has not been demonstrated through swept path diagrams that vehicles using spaces 1 - 8 would be able to turn on site allowing them to exit the property in forward gear. Furthermore, without a detailed drawing showing the requisite visibility splays, it has not been fully demonstrated that adequate splays could be achieved.
31. The proposed development could therefore lead to conflict between vehicles exiting the site and pedestrians and other vehicles on the highway. Whilst the provision of turning space and visibility splays could potentially be secured by a condition I would need to be satisfied that these could be achieved before granting permission, had the proposal been acceptable in all other respects.
32. Moreover, a vehicle using space 9 would have to reverse and manoeuvre in front of the entrance to the building. No separate pedestrian route from the highway to the entrance door of the building is shown on the submitted site plan. The proposed forecourt layout is therefore unsatisfactory with potential conflict between pedestrians and vehicles.
33. The Council contends that the site is within the Kenley Transport Study Area and that, if planning permission were to be granted, a financial contribution of £2,000 per unit through a S106 agreement would be required towards the mitigation measures identified in the Study. The appellant has not disputed this contention and has expressed a willingness to make this contribution although I have no evidence of it having been paid nor is there a planning obligation before me in this respect.

34. However, the appeal site is outside the Study Area shown in Figure 1-1 in the Study. Even if it is within the Area, the Council has not directed me to any relevant part of the Study that relates to Welcomes Road. I note that Plan 2 in the Study does not identify the lack of footway or any other issues with Welcomes Road and the provision of a footway is not shown as a 'solution' on Plan 3. No other specific justification for sustainable transport improvements within the Kenley area or how the figure of £2,000 per unit has been derived has been put to me.
35. It has thus not been demonstrated that a financial contribution in this regard is necessary to make the development acceptable in planning terms or that it would be fairly and reasonably related in scale and kind to the development. I am not persuaded therefore that a planning obligation is justified and would meet the tests in paragraph 57 of the National Planning Policy Framework (the Framework). Consequently, I have not taken the absence of a planning obligation into account in my decision.
36. I have not been directed towards any policy requirement for the provision of a 1.5 m wide strip of land to the front of the site for a possible future footway. Details of alterations to the vehicle crossover serving the site and of the provision of electric vehicle charging points and for bicycle storage could be required by condition were planning permission to be granted.
37. For the reasons given above I conclude that the proposed development would be harmful to the safe and convenient use of the highway and to pedestrian safety on the site. Accordingly, in this respect, the proposed development would not accord with the aim of Policy SP8 of the Local Plan to enhance the pedestrian experience. It would conflict in this respect with Policies DM29 and DM30 which set out that development should not have a detrimental impact on highway safety and must ensure that the movement of pedestrians is not impeded by the provision of car parking.

Biodiversity

38. The appellant's preliminary ecological appraisal (PEA) identifies that the existing bungalow offers a small number of low value bat roosting features within the main roof coverings and recommends that a single emergence survey is carried out. Circular 06/2005 advises that such surveys should be carried out before planning permission is granted. Although the Planning Statement submitted with the application refers to a bat survey having been undertaken this has not been provided to me. I note that an emergence survey was cancelled in September 2020 as the weather was too cold. However, a survey could have been undertaken during the course of the appeal which has coincided with the optimal survey season of May to August.
39. The Circular also advises that surveys should only be required by a planning condition in exceptional circumstances i.e. where the appellant has undertaken recent surveys for protected species. Although the PEA was undertaken in September 2020 and its findings are valid for a period of 24 months, it would appear that no specific bat survey has been undertaken.
40. Therefore, whilst the recommendations for biodiversity enhancement in Appendix 2 of the PEA could be secured by condition were planning permission to be granted, this would not be an appropriate mechanism for securing a bat survey. Without such a survey, the duty to have regard to the purpose of

conserving biodiversity as set out in the Natural Environment and Rural Communities Act 2006 would not be entirely fulfilled.

41. I therefore cannot conclude that the proposed development would not have a harmful effect on bats. Accordingly, in this respect, the proposed development would conflict with Policies SP7.4 and DM27 of the Local Plan which seek to enhance biodiversity across the borough and set out that development proposals should not have an adverse impact on a protected species.

Other Matters

42. The Council acknowledges that redevelopment of this site for a higher density residential development is acceptable in principle. The proposals accord with the Government's aim of significantly boosting the supply of homes as set out in the Framework. Great weight should be given to the benefits of using suitable sites within settlements for homes. The development would have social and economic benefits from the net gain of 8 dwellings and expenditure by future occupiers.
43. However, the Framework also exhorts the protection of character and biodiversity, the minimisation of the scope for conflict between pedestrians and vehicles and the provision of a high standard of amenity for future users. It therefore pulls both ways in this appeal and so does not outweigh the conflict with the development plan I have identified above.
44. I acknowledge the appellant's contentions that the Council rushed to refuse the application and that several matters could have been resolved. However, these contentions relate more to the processing of the application rather than to its planning merits and therefore attract little weight in my determination.
45. An interested party refers to Policy SP2.7 of the Local Plan. This sets a strategic target for 30% of all new homes in the borough up to 2036 to have 3 or more bedrooms. The Council confirms that this proportion relates to the gross number of new dwellings. The proposals include 3 x 3-bedroom units, representing 33% family-sized accommodation. The proposals therefore accord with Policy SP2.7 notwithstanding the loss of the existing bungalow.
46. I note the other objections raised by the Welcomes and Uplands Road Association (WURA) and other interested parties on matters including refuse collection, potential harm to the living conditions of the occupiers of neighbouring dwellings, flooding, additional traffic and the capacity of local infrastructure. However, I find no requirement in Policy DM13.1, to which WURA refers, for provision for bins to be placed kerbside for collection. None of these considerations have been determinative in this appeal.

Conclusion

47. I have found above that the proposed development would conflict with the policies of the development plan in respect of design, character, appearance, living conditions, highway safety and biodiversity. There are no considerations, including the policies of the Framework, that indicate a decision should be made in this case other than in accordance with the development plan. For this reason, and having regard to the other matters raised, the appeal is dismissed.

Martin Small INSPECTOR