



Appeal Decision

Site visit made on 18 October 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02/11/2022

Appeal Ref: APP/P5870/W/21/3285907

Land rear of 44 Dale Park Avenue, Carshalton SM5 2EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Chris Barrie (Greengate Homes) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2021/00523 was dated 12 March 2021.
 - The application sought planning permission for the erection of a two-storey, four-bedroom dwellinghouse with associated front and rear gardens, bin and bicycle storage and parking without complying with a condition attached to planning permission Ref DM2020/01574, dated 25 January 2021.
 - The condition in dispute is No. 17 which states that: *Prior to the commencement of the development hereby approved, a scheme of lighting for the access road serving the development site shall be submitted to, and approved in writing by, the local planning authority, and the approved scheme shall be implemented on site in accordance with the approved details prior to the first occupation of the new dwelling.*
 - The reason given for the condition is: *To reduce the fear of crime, to ensure access to the proposed dwelling is of a suitable standard whilst not unduly increasing overspill light pollution, and to accord with the principles of the Designing Out Crime SPD (SPD1).*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-storey, four-bedroom dwellinghouse with associated front and rear gardens, bin and bicycle storage and parking in accordance with application DM2021/00523 made on 12 March 2021 without complying with condition No. 17 set out in planning permission DM2020/01574 granted on 25 January 2021 by the Council of the London Borough of Sutton, but otherwise subject to conditions in the attached schedule.

Background and Main Issue

2. Planning permission was most recently granted in January 2021 for a new dwelling. That permission was subject to a number of conditions. In particular, condition 17 required the submission of a scheme of lighting for the access road serving the development site to be submitted to and approved by the Council, prior to the commencement of development. That approved scheme should then be implemented prior to occupation of the dwelling.
3. The development has commenced and been carried out without complying with condition 17 imposed on the planning permission. The application seeking the

removal of condition 17 was not determined by the Council within the statutorily prescribed timeframe and is now the subject of this appeal.

4. The Council has stated that, had it determined the case, it would have found that without this condition there would be an adverse impact on pedestrian safety and the safe and efficient access for waste management and other required services for the occupants of the dwelling. As such, the proposal would be contrary to Policies D3, D6 and D8 of the London Plan.
5. These reasons slightly differ from the reasons given for the original condition which were to reduce the fear of crime and ensure a suitable access to the dwelling.
6. Given the above, the main issues are whether the disputed condition is reasonable and necessary in order to a) reduce the fear of crime; and b) provide a suitable access to the development with particular regard to protecting pedestrian safety.

Reasons

Fear of Crime

7. The dwelling is sited within a plot to the rear of Nos. 44 to 52 Dale Park Avenue. The access to the site is via an existing unmade driveway, which is positioned between Nos. 56 and 58 Dale Park Avenue. It appears that the original and on-going purpose of this driveway is to provide access to the rear of a number of properties in Dale Park Avenue, both to the north and south of the access.
8. Given its position, the new dwelling is largely hidden by the existing houses on Dale Park Avenue. Indeed, it was not visible from the public footpath when I undertook my site visit. Accordingly, it does not seem to me that it would necessarily be likely to attract any additional unwanted attention to the driveway from anyone walking along Dale Park Avenue.
9. Clearly when in use and occupied, and with lights on, the house's existence could become clearer. However, by the same token, a dwelling would increase the level of passive surveillance and would have the potential to reduce any fear of crime in the area. I also note that the removal of the disputed condition would not prevent future occupiers of the new dwelling from installing lighting within their own curtilage, which could also light part of the access to the dwelling.
10. Dale Park Avenue has street lighting and thus the public realm is lit at night. The access already provides an unlit route to the rear of a number of houses on Dale Park Avenue. As the land is privately owned it has been open to the existing neighbouring residents to consider the installation of lighting if they felt it would reduce the fear of crime. One existing resident explicitly commented that they did not want any lighting along the access.
11. I have no substantive evidence before me to indicate what crimes the area might previously or is currently subject to, nor is there substantive evidence to suggest there is a fear of crime which the lighting would address. Furthermore, I note that the Metropolitan Police's Secured by Design Officer raised no objection to the removal of the condition and confirmed that the lighting is not required to achieve Secured by Design Accreditation for the development.

12. Given the above, I do not consider the new dwelling and future occupants are likely to increase any fears of crime and if there are any existing fears there is nothing to suggest that installing lighting along the access would reduce them.

Vehicular Access and Servicing

13. As the access is private land, it does not seem to me that waste collection operatives or vehicles would enter the access regardless of whether or not it were lit. I am not aware that the Council's waste management officers raised any concerns regarding this issue.
14. Similarly, the Council refers to postal services but neither they nor similar personnel would be likely to be seeking to access the dwelling at times of the day when lighting along the access would make a significant difference to their work.
15. The distance from Dale Park Avenue to the appeal site is relatively short and includes a left turn before reaching the site itself. The route is also unmade and uneven. It therefore seems likely that any vehicle would be travelling quite slowly along the access. As such, if a pedestrian was using the access at the same time as a vehicle, there would be sufficient time for the two to see one another and pass safely.
16. Similarly, exiting onto Dale Park Avenue would be a manoeuvre that would have to be undertaken slowly given the likely parked cars and width of Dale Park Avenue itself. Any potential conflict with pedestrians or other road users would therefore be minimised.
17. I note that the Council's Highway Engineer did not object to the removal of the condition on pedestrian safety grounds or access for emergency services. I have no substantive evidence before me to reach a different conclusion in this respect.

Findings

18. I am satisfied that in this instance, there is no planning justification for the retention of the lighting along this private access. Accordingly, I find that the proposal would accord with Policies D3, D6 and D8 of the London Plan 2021 which, amongst other things seek to ensure developments can be serviced and provide safe environments.

Other Matters

19. I have not had further regard in this decision to questions of land ownership or engagement between the appellant and other parties. I have focused on the planning merits of the scheme in regard to the main issues of the case.
20. As this appeal is against the imposition of a particular condition, the substantive permission remains unaffected regardless of my decision. Therefore, the question raised as to whether the original permissions should have been granted is outside the remit of this appeal. Similarly, the issue of enforcement of the other conditions remains a matter for the Council to consider and is beyond the scope of this appeal

Conditions

21. As the development has commenced, it is not necessary for me to reimpose a time limit. In the interests of certainty, it is necessary for me to impose a condition listing the approved drawings.
22. The initial permission was subject to a number of conditions that required pre-commencement approval. From the evidence before me it appears that most have been complied with in terms of the details having been agreed by the Council. However, it is necessary for me to reimpose conditions relating to those issues to ensure the development is completed in accordance with them, amending and updating the wording as necessary.
23. I have no evidence before me to indicate that conditions 3 and 18 of the previous permission, which were pre-commencement conditions, were complied with. I have therefore reimposed similar conditions, requiring the submission of details prior to occupation of the dwelling.
24. There are a number of pre-existing conditions that require the submission of details prior to occupation. I have no information to indicate that they have been complied with so will need to reimpose them to ensure the development is acceptable in respect of these matters. Similarly, there are on-going conditions such as those relating to obscure glazing and removal of permitted development rights which are necessary in order to protect the character and appearance of the area as well as the living conditions of neighbouring occupiers.

Conclusion

25. For the reasons given above, and subject to the conditions set out below, the appeal is allowed.

Stewart Glassar

INSPECTOR

Schedule of Conditions

1. The approved development shall be carried out in accordance with the following drawings/details:
101 P2
Preliminary Construction Management Statement ref: 0062-CMS001 P1 Written Scheme of Investigation dated July 2018
Preliminary Ecological Appraisal and Clearance Statement
Design & Access Statement dated November 2019
Bike Storage x3 Police Approved High Security Metal Bike Storage Asgard
Asgard Bike Secure Steel Storage
Proposal for Waste Clearance services
SUSTAINABLE URBAN DRAINAGE SYSTEM (SuDS) ANALYSIS
01/01
01/02
105 P1
2. Details of the external surfaces of the dwelling shall be submitted to and agreed in writing with the local planning authority. The approved details shall be fully implemented prior to occupation of the dwelling hereby permitted.
3. The construction of the development hereby permitted shall be carried out in accordance with the Preliminary Construction Management Plan (Ref: 0062-CMS001 P1) dated February 2018.
4. Prior to the occupation of the dwelling hereby permitted, the cycle storage shall be fully implemented on site in accordance with drawing no. 102 Rev. P2 installing an Asgard Bike Storage X3 - Police Approved. The cycle storage shall be permanently retained thereafter in accordance with the approved details.
5. The development hereby permitted shall be carried out in accordance with the approved waste management scheme, "Proposal for Waste Clearance Services by envirowaste" dated 26 February 2018 and the approved arrangements shall thereafter be retained.
6. The development hereby permitted shall be constructed in accordance with the previously approved Energy Statement for the site dated 23 December 2019, and the approved details shall be retained for the lifetime of the development.
7. Prior to first occupation of the dwelling hereby permitted, as-built Standard Assessment Procedure (SAP) outputs must be submitted to the Local Planning Authority and approved in writing to demonstrate that the development has been carried out in accordance with the approved details. If the development is unable to meet the required reduction in CO2 emissions through the approved energy strategy, then any shortfall shall be made up through the application of further sustainability measures unless otherwise approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the approved details and thereafter retained.
8. The development hereby approved shall be constructed in accordance with the approved details within the Sustainable Urban Drainage System (SuDS) Analysis prepared by SHA Environmental and dated 9 March 2018 (version 1.0). Prior to first occupation of the development, written confirmation that the approved site drainage and flood risk management measures, including SuDS, have been implemented as part of the development as built must be submitted

to the Local Planning Authority and approved in writing. All of the approved measures must thereafter be permanently retained.

9. Prior to first occupation of the dwelling hereby permitted, a completed Water Efficiency Calculator for New Dwellings must be submitted to the Local Planning Authority and approved in writing to show that internal potable water consumption will be limited to 110 litres per person per day based on the Government's national calculation method for water efficiency for the purposes of Part G of the Building Regulations. The Water Efficiency Calculator should be accompanied by details of the location and type of all appliances or fittings that use water, the capacity or flow rate of any equipment and any rainwater or greywater collection systems incorporated as part of the development.
10. Prior to the occupation of the dwelling hereby permitted, full details of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard and soft landscaping and tree planting shall be carried out in accordance with the approved details and with the relevant recommendations of appropriate British Standards (in particular, BS 3882: Specifications for Topsoil, Recommendations (2015) and BS 8545: Trees from Nursery to Independence in the Landscape, Recommendations (2014) or other recognised codes of good practice). The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any tree(s) or plants that (within a period of five years after planting) are removed, die, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
11. Prior to the first occupation of the dwelling hereby permitted, space for the parking of two cars shall be laid out to the front of the new dwelling, and this space shall be permanently retained for this use.
12. The flat roofs hereby approved shall not be used, all or in part, as a terrace or other amenity space. No railings, fences, walls or other means of enclosure shall be erected on this flat roof, and no alterations shall be carried out to the rear elevation of the dwelling hereby permitted to form access onto the roof.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending or revoking and re-enacting that Order with or without modification) no development within Schedule 2, Part 1, Classes A, B, C, D, E and F to that Order shall be carried out without the express permission of the Local Planning Authority.
14. The first floor window in the side (east) elevation of the development hereby approved shall be glazed with obscure glass and fixed shut in a manner that it cannot be opened and so maintained.
15. No windows, other than those shown on the approved plans, shall be installed without the written approval of the Local Planning authority.
16. Prior to the occupation of the dwelling hereby permitted, details of measures to improve the security of the building shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the occupation of the dwelling and thereafter retained.

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