



Appeal Decision

Site visit made on 31 October 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 NOVEMBER 2022

Appeal Ref: APP/L5240/W/21/3287080

155 Ballards Way, Croydon CR0 5RJ

- 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 F&K Developments Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/01999/FUL, dated 14 April 2021, was refused by notice dated 6 September 2021.
 - The development proposed is the erection of 5 residential dwellings (Use Class C3); together with, car parking, cycle parking, refuse stores, servicing areas, hard and soft landscaping and associated works, following the demolition of existing buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have made minor changes to the wording of the description of development in the banner heading above for reasons of clarity.
3. When I arrived at the appeal site it was fenced off and construction activities were taking place. I had not been notified of this prior to arriving at the site and I had brought no protective equipment with me as a result. With regard to Section D of the Appeal Form, construction work is a health and safety issue that I should have been notified of.
4. Following a dynamic risk assessment, I undertook the site visit. However, if I had had any concerns with the situation, I would have aborted the site visit, which would have significantly delayed the determination of the appeal.
5. The appellant informed me that the construction works, which were taking place at street level and throughout the built part of the appeal site, were not connected to the appeal proposal. I have considered the proposal that was refused planning permission by the Council rather than what was being constructed on site.

Main Issues

6. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - Protected species or habitats;
 - The living conditions of future occupiers, with particular regard to outlook;

- The living conditions of nearby occupiers, with particular regard to outlook;
- The living conditions of future occupiers, with particular regard to bicycle storage; and
- The living conditions of future occupiers, with particular regard to safety.

Reasons

Character and appearance

7. The appeal site is located within an established residential area containing predominantly large, traditional, detached houses, with landscaped front and rear gardens and off-street parking. There are mature trees and hedgerows along this part of Ballards Way, including on either side of the appeal site, with further mature woodland beyond the dwellings to the south.
8. Ballards Way slopes downwards from the east, steepening as it approaches and passes the appeal site, and curving southwards. In the vicinity of the appeal site, the dwellings on the northern side of the road are at a significantly higher elevation than the dwellings on the southern side.
9. The higher elevation of the dwelling on the appeal site means it is accessed by steps which zig-zag through the front garden area. The existing surface car parking area by the street was being excavated at the time of my site visit, with the vegetation to the front of the building largely cleared.
10. Setting aside the construction works, the open nature of the front of the appeal property meant that it was readily visible in views from Ballards Way to the front. The side and rear of some of the late 20th century dwellings on Hollingsworth Road are also visible from Ballards Way, in views westwards across the appeal site.
11. In contrast, the dwellings at 157 and 159 Ballards Way to the east, whilst similarly located significantly above street level and accessed by steps, are largely screened in views from the street by mature trees and bushes.
12. The proposed development would entail significant changes to the appeal site and the demolition of the existing building. The existing parking area by the street would be enlarged to provide four car parking spaces, two of which would be partly set into the sloping terrain, and bin storage and a bicycle stand. There would be substantial brick retaining walls around the proposed parking area, rising to around four to five metres above the street level in places, but also lowering with the terrain.
13. Across the car park there would be a pedestrian access to a corridor, leading to a lift shaft beneath the proposed building, which would allow for level access to the ground and first floors. The existing steps to the dwelling would be moved to allow for the increased parking area and would zig-zag up to the ground floor level of the proposed building, closer to the boundary with No 157.
14. The proposed building would have a significantly larger footprint than the existing dwelling, with additional area mostly to the rear, but also to the side and front. Moreover, the proposed building would be two storeys in height for the extent of the footprint, with a pitched roof allowing for a further floor of accommodation. Whilst the proposed ground floor level of the dwelling would

- be lowered by around one metre, the proposed building would still have a significantly greater scale and massing than the existing dwelling.
15. However, notwithstanding this increased scale and massing, and the enlarged car parking area and substantial brick retaining walls, the proposal would have a generally similar impact upon the streetscene as the existing development, albeit slightly more obtrusive.
 16. The design of the front of the proposal would not be dissimilar to the existing building, including with the provision of two front gables and a central entrance served by steps. The proposal would also be partly screened in views from the east and west along Ballards Way, by nearby mature trees and bushes.
 17. The elevated and set back position of the proposed dwelling means that its overall impact would be very limited and the detailed matters the Council is concerned about such as the rooflights and different heights of the roofs, would not be readily visible.
 18. Whilst the quantum of built development on the site would increase, the scale and massing of the proposed building would not be out of keeping with many of the dwellings along Ballards Way and would not affect the largely open character of the property in views from the front. With appropriate landscaping measures the limited harm that would be caused to the appearance of the streetscene could be overcome.
 19. For these reasons the proposed development would not adversely affect the character and appearance of the area. It would not, therefore, conflict with Policy D3 (optimising site capacity through the design-led approach) of the London Plan¹ 2021 (LP), with Policies SP4.1 and SP4.2 (urban design and local character) and DM10 (design and character) of the Croydon Local Plan 2018 (CLP), with guidance contained in the Suburban Design Guide Supplementary Planning Document 2019 (SDG), and with the National Planning Policy Framework 2021 (the Framework), in this regard.

Protected species or habitats

20. The appeal site and its surroundings contain a number of habitats that may be suitable for roosting bats. These include mature trees at the rear of the property, as well as the existing dwelling, a timber summer house in the rear garden and the garage built into the ground by the front parking area². Both the existing dwelling (B2) and a Sycamore tree (T5) at the end of the rear garden are identified as having a High Bat Roost Suitability (BRS). Other trees and buildings at the appeal site or nearby are identified as having Moderate or Low BRS.
21. The PEABSS recommends that further surveys for bats are undertaken given the proposed demolition of buildings; none of the trees on site are proposed to be removed.
22. The Council's Ecologist placed a holding objection to the proposal on the grounds that they were not satisfied that there was sufficient ecological information available for the determination of the application. This was with

¹ The Spatial Development Strategy for Greater London 2021

² Preliminary Ecological Appraisal and Bat Scoping Survey (19 April 2021) (PEABSS)

particular regard to the further surveys for bats recommended in the PEABSS, but also with regard to the species of Bluebell identified.

23. The appellant states that they were not advised by the Council of this objection and so were unable to undertake bat or bluebell surveys during the recommended time period. This may be the case but there is no survey information before me.
24. The appellant also refers to the practice of using ecological pre-commencement conditions where sufficient information is not provided at the time of determination, such as were used by the Council in another proposal³. I am not familiar with this proposal or why such an approach was considered acceptable in that case by the Council.
25. However, with reference to paragraph 8.20 of the Council's officer report, and from that, ODPM Circular 06/2005 – *Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System*, I am satisfied that such an approach would not be acceptable in this case.
26. I have previously noted that construction works have been and were taking place at the appeal site. The timber outbuilding is largely intact and whilst the existing dwelling has been significantly altered at the rear, these works are not complete, and the spaces for ground and upper floor windows were open to the outside. No compelling evidence has been supplied that demonstrates that the building is no longer capable of being a bat roost.
27. For these reasons there is no evidence that the proposed development would not adversely affect protected species or habitats. It would, therefore, conflict with Policy G6 (biodiversity and access to nature) of the LP, and with Policies SP7.4 (green grid biodiversity) and DM27 (protecting and enhancing our biodiversity) of the CLP.

Living conditions of future occupiers – outlook

28. The proposed development would include obscure glazed windows at first floor level on the eastern elevation, facing towards 157 Ballards Way. These would serve habitable rooms in Flat 4, and whilst the proposed kitchen/living/dining room would have an unobstructed outlook to the front, bedroom 3 would have no meaningful outlook as a result of the obscure glazed window and a small rooflight above the eaves.
29. As part of their appeal the appellant has proposed the first floor eastern windows be clear glazed, with the introduction of a louvred panel at the window of bedroom 3 to protect the privacy of the occupiers at No 157.
30. Government guidance is clear that *the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought*⁴.
31. The appellant has provided no compelling reason why this proposal should exceptionally be accepted as an amendment and I see no reason to do so.

³ LPA Ref. 19/02678/FUL

⁴ Paragraph M.2.1 Procedural Guide: Planning appeals – England April 2022

32. Furthermore, even if I were prepared to accept such a revision, the clear glazing would allow for overlooking of the next door property. Little detail is provided about the effectiveness of the proposed louvre panel in preventing harmful overlooking, and only one of the windows would have a louvre panel. I am not satisfied that these proposed windows would not allow for harmful overlooking of the front patio area of No 157, which due to the elevated position and screening vegetation, has many of the characteristics of private amenity space.
33. I note the appellant's comments regarding conditions and that the Council has suggested Condition 10 in its Appeal Statement were the appeal to be allowed, which concerns obscure glazing / louvres. In any event, from the evidence I do not consider that this is a matter that could be satisfactorily controlled by a condition, even if I had been prepared to accept the proposed revision.
34. Bedroom 1 within Flat 5, in the roofspace of the proposed dwelling, would be served by three rooflights which would offer a very limited outlook. Whilst I note that the appellant considers this to be a pragmatic solution to the issue of habitable loft space and would be content with a condition to control the final position of the windows, I do not think that would be appropriate; lowering the window height above the floor level to improve outlook would also increase the scope for harmful overlooking of the next door property. The indicative images provided at Figure 6 of the appellant's Statement of Case do not cause me to alter my position on this matter.
35. Whilst not of concern to the Council, the clear glazed, eastern ground floor windows of Flat 2 would also have a very limited outlook. Flat 2 has a very similar layout to Flat 4 above, and so the proposed kitchen/living/dining room would have an unobstructed outlook to the front. However, the sole outlook from bedroom 3 would be towards the ground at No 157, some one metre higher than the ground level of the proposed building, with a one metre high fence above, at a distance of just over one metre. This would not be an acceptable outlook to this habitable room.
36. Whilst the provision of family sized homes would be a benefit of the proposal, the adverse effects on the living conditions of the occupiers of two of the homes would outweigh this.
37. For these reasons the proposed development would adversely affect the living conditions of future occupiers, with particular regard to outlook. It would, therefore, conflict with Policies D3 and D6 (housing quality and standards) of the LP, with Policy DM10 of the CLP and with the SDG.

Living conditions of nearby occupiers - outlook

38. The demolition of the existing building and the construction of a substantial 2-storey replacement, as is proposed, would reduce the outlook of the occupiers of No 157.
39. As stated previously, the proposed 2-storey building would occupy a much larger footprint than the existing dwelling and would have a significantly greater scale and massing, despite the lowering of the ground level at the appeal site by around one metre. The eastern elevation of the proposed building would also be much closer to the boundary with No 157 than most of the eastern elevation of the existing building.

40. The side gable window of No 157 faces towards the appeal site, and the scale, massing and position of the proposed 2-storey building would significantly reduce the outlook from this window. The other side windows at No 157 would have a greater outlook as a result of their position relative to the proposed building. Nevertheless, a substantial 2-storey building only a few metres away would reduce the outlook from these windows too. Whilst a dual-aspect room would substantially lessen the harm caused by this reduced outlook, it would not eliminate it.
41. The scale, massing and position of the proposed 2-storey building would also extend past the front elevation of No 157. Whilst I note the CGI provided by the appellant at Figure 8 of their Statement of Case, from my observations on site, I am not confident that there would not be a limited harmful effect on outlook from the front amenity space, as a result of the scale, massing and position of the proposed building.
42. There may be other locations where such close positioning of buildings is considered acceptable, as referenced by the appellant. However, I am not familiar with these developments and in any event each proposal should be determined on its individual merits, which is what I have done in this case.
43. For these reasons the proposed development would adversely affect the living conditions of nearby occupiers, with particular regard to outlook. Consequently, it would conflict with Policy D3 of the LP and Policy DM10.6 of the CLP.

Living conditions of future occupiers - bicycle storage

44. An internal bicycle storage area would be provided for the use of residents off the proposed passageway that leads to the lift. Positioned near to the entrance doorway, up to 12 bicycles would be stored in this area in a two-tier rack system, which would meet the minimum requirements for future occupiers and for visitors set out in Policy T5 (cycling) of the LP and consequently Policy DM30 (car and cycle parking in new development) of the CLP.
45. A further Sheffield stand is proposed at the southern part of the parking area, which it is said would have the scope to accommodate a larger or non-standard sized bicycle.
46. The Council lists a number of matters that cause them concern, including the secure storage, electric charging points and the width and operation of the entrance door. These minor amendments are matters that I would have expected the Council and the appellant to have resolved prior to the Council's determination of the proposal. However, were the proposed development otherwise acceptable these could be controlled by way of suitably worded conditions.
47. I note that the appellant has submitted revised plans addressing the Council's concerns. As mentioned previously, the appeal process should not be used to evolve a scheme and no exceptional justification for why such an amendment would be acceptable in this case has been provided. I have determined this appeal on the basis of the proposal refused planning permission by the Council.
48. For these reasons the proposed development would have an acceptable effect on the living conditions of future occupiers with particular regard to bicycle storage. It would, therefore, accord with Policies T5 of the LP and DM30 of the CLP.

Living conditions of future occupiers – safety

49. The appellant has submitted revised plans to remove one of the proposed M4(3) dwellings because of the effect this would have on the car parking arrangements. As mentioned previously, the appeal process should not be used to evolve a scheme and no exceptional justification for why such an amendment would be acceptable in this case has been provided. I have determined this appeal on the basis of the proposal refused planning permission by the Council.
50. Notwithstanding the geographical constraints of the appeal site the appellant has sought to make the proposed development accessible, including with an accessible car parking space, a lift from the car park level to the first floor, and with all dwellings meeting M4(2) adaptability standards and two dwellings meeting M4(3) accessibility standards.
51. As a result of the site constraints the street level car parking and refuse/recycling storage area is somewhat cramped. Whilst the parking spaces would be accessible to vehicles this would involve some complicated manoeuvres in a small area. The refuse storage area and visitor bicycle stand at the southern end of the site would only be accessible across the car parking area.
52. The doorway to the internal bicycle store and the lift corridor would be partly screened by any parked vehicles in spaces 3 and 4, in views from the car park entrance. Furthermore, to use this doorway would require people to navigate around any parked vehicles. Whilst I accept that moving vehicles in the car park would be infrequent, it is likely that vehicles would be parked there for considerable periods.
53. It is somewhat difficult to understand the reasoning put forward by the appellant with regard to the 'alternative' stepped access to the proposed building, given their efforts to make the proposed development accessible.
54. A resident of one of the proposed M4(3) dwellings whose mobility was impaired would be unlikely to consider the stairs an attractive alternative to the lift and for a person in a wheelchair this would be wholly impractical. Consequently, crossing the car park to use the lift would not be a choice but their only option. Likewise, cyclists would have no alternative but to use this doorway in order to use the bicycle storage area.
55. A person in a wheelchair would also be less visible to drivers than a standing adult, increasing the risk of accidental collisions; this matter does not seem to have been considered by the appellant.
56. Whilst as the appellant notes, there may be no policy requirement for an accessible car parking space, in providing two accessible dwellings, it is not unreasonable to conclude that an accessible parking space may be needed.
57. The layout of the car parking and refuse/recycling storage area does not provide a clear and fully unobstructed route between the street and the proposed doorway leading to the lift and bicycle storage area. This would cause unacceptable harm to the living conditions of future occupiers with regard to safety.

58. With regard to fire safety, and in particular Policy D12 (fire safety) of the LP, the appellant did not provide sufficient information with their application to demonstrate the proposed development would achieve an acceptable standard of fire safety. In particular compliance with Policy D12 A 1), 4) and 6) was not demonstrated, as evidenced by the subsequent submission of additional information with the appeal. This is supplementary information that does not amend the proposed development, and whilst it is not clear why it was not included with the original submission, it is not unacceptable in principle.
59. The appellant further notes that the remaining criteria of Policy D12 could be controlled by a suitably worded condition or would be addressed as part of Building Regulations approvals, and that the Council has dealt with fire safety matters by way of conditions for other schemes.
60. Whilst I am not familiar with these schemes and each proposal should be considered on its individual merits, such an approach may be acceptable. However, I would expect the comments of the London Fire Brigade to confirm that such an approach would be satisfactory, or for an expert fire safety opinion to have been provided by the appellant.
61. However, the Council did not consult the Fire Brigade on this proposal and no fire safety opinion has been provided by the appellant. It is also unclear whether the requirements of the occupiers of the proposed M4(3) dwellings, whose mobility may be impaired, have been adequately considered in the appellant's supplementary drawings. Consequently, I am not satisfied that the proposed development would be safe for future occupiers in the event of a fire.
62. For these reasons the proposed development would adversely affect the living conditions of future occupiers with particular regard to safety. It would, therefore, conflict with Policies D3 and D12 of the LP, and Policies SP8.6 (transport and communication), DM10.8 (design and character), DM29 (promoting sustainable travel and reducing congestion) and DM30 of the CLP, and with the Framework, in this regard.

Conclusion

63. Whilst the proposed development would have an acceptable impact on the character and appearance of the area and with regard to bicycle storage, the harm caused to protected species and habitats and the living conditions of future and nearby occupiers in terms of outlook and safety would outweigh this.
64. I have had due regard to the Public Sector Equality Duty, contained at S149 of the Equality Act 2010, in determining this appeal and I am satisfied that this is a proportionate conclusion to reach.
65. For the reasons given above, and taking into account all matters raised, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR