



Appeal Decision

Site visit made on 31 October 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 DECEMBER 2022

Appeal Ref: APP/Z5630/W/22/3299340

9 West Road, Malden Rushett, Chessington KT9 2NR

- 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 M Szymanski against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 22/00205/FUL, dated 22 January 2022, was refused by notice dated 21 March 2022.
 - The development proposed is described as 'the demolition of bungalow and erection of 2 x 4 bed semi-detached houses'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by the Council of the Royal Borough of Kingston Upon Thames against Mr M Szymanski. This application is the subject of a separate Decision.

Main Issues

3. The appeal site is located within the Green Belt. Accordingly, the main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and relevant development plan policies;
 - the effect of the proposal on the character and appearance of the surrounding area;
 - the effect of the proposal on the living conditions of the occupants of No 11 West Road, with respect to light;
 - the effect of the proposed development on biodiversity;
 - the effect of the proposed development on highway safety; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether Inappropriate Development

4. Policy G2 of the London Plan (2021) (LP) states that the Green Belt should be protected from inappropriate development. Paragraph 149 of the Framework establishes that the construction of new buildings should be regarded as inappropriate in the Green Belt unless they fall within the list of exceptions set out in this paragraph.
5. The Council has put forward that the exception at paragraph 149(d) is potentially applicable. This provides for the replacement of a building if the new building is in the same use and is not materially larger than the one it replaces. Additionally, the appellant has put forward that the exception at paragraph 149(g) is relevant. It provides for the limited infilling or the partial or complete redevelopment of previously developed land, where this would not have a greater impact on the openness of the Green Belt than the existing development. No other exceptions are relied upon.
6. The Council calculates that the new two storey building would result in a 197% increase in volume over and above the existing bungalow and the appellant does not contest this figure. Due to this increase, and the increase in footprint, height, depth and massing of the replacement semi-detached unit, it is that the scale of the replacement building would be significantly materially larger than the size of the existing bungalow. As such, the proposal would not meet the criteria of paragraph 149(d).
7. The Council has not alleged that the proposal does not constitute infilling or the partial or complete redevelopment of previously developed land. However, in order to ascertain whether the paragraph 149(g) exception applies, an assessment of the effects of the proposal on the openness of the Green Belt is required. Paragraph 137 of the Framework identifies openness as an essential characteristic of the Green Belt. The courts have held that the openness of the Green Belt has a spatial aspect as well as a visual aspect.
8. The substantial increase in volume over the existing building indicates a clear spatial loss of openness. In addition, due to two storey nature and the front projecting gable the proposal would be clearly perceptible and more prominent from the highway, as it would extend over the width of the plot to a greater degree, particularly at first floor level, and extend to a greater height.
9. The proposal would therefore have a greater impact on the openness of the Green Belt both spatially and visually. The harm to openness would be significant. As such, the proposal would also not meet the criteria of paragraph 149 (g).
10. The Council reference Policy DM5 of the Kingston Core Strategy (2012) (CS), however this refers to sites adjacent to the Green Belt, public open space and sports and play provision. As such, it is of limited relevance to the main issue in this instance.

Character and Appearance

11. West Road is a small cul-de sac formed mostly of similar hipped roof semi-detached pairs, however there are a pair of bungalows, including the appeal site. In addition, opposite the appeal site are a pair of gabled two storey semi-

detached dwellings and at the turning head of the cul de sac are terraced properties.

12. Whilst taller than the neighbouring semi-detached units at Nos 11 and 13 West Road and incorporating front facing gables, the proposed semi-detached dwellings would not appear incongruous in this mixed context and would be similar to the dwellings opposite in form and scale.
13. In addition, the proposed dwellings would be seen in the context of the properties opposite and would not appear overly prominent and would sit comfortably within the existing pattern of development within the street scene. A condition securing appropriate materials to match the surrounding dwellings will further ensure that the properties sit comfortably within the existing street scene. The relationship between the proposed dwellings and No 7, the remaining bungalow, would be similar to that between the existing bungalow and Nos 11 and 13. There would remain sufficient separation gap for the semi-detached unit to not overwhelm No 7.
- 14.** Notwithstanding the harm to openness already identified, I therefore conclude that the proposed development would maintain the character and appearance of the surrounding area. The proposal would therefore comply with Policy DM10 of the Kingston Core Strategy (2012) (CS), which, along with part 12 of the Framework, sets out that development should incorporate principles of good design.

Living Conditions

15. Given the siting and depth of the new dwellings, Unit B would extend past the existing rear elevation of No 11 West Road (No 11). This neighbour has a rear facing window at ground floor, which appears to serve a kitchen. The window is already compromised in terms of light by an existing outbuilding sited on the boundary in close proximity directly in front of it.
16. The Council measure the two storey depth past the rear elevation of No 11 at 2.3m, and the appellant does not disagree with this. The flat roofed single storey rear element would project further than this to the rear. However, given its limited height and remaining separation gap, the impact of this single storey element over that of the existing boundary fence and outbuilding would be limited. I am satisfied that this element would not significantly harm the light reaching this window of No 11.
17. In addition, given the limited projection of the two storey element past the rear elevation of No 11 and the remaining separation distance between the two dwellings, I am also satisfied that this element of the proposed dwelling would have no significant impact upon the light reaching this window.
18. I acknowledge the inconsistency between the drawings with regards to the relationship between No 11 and the side boundary, however I consider that the submitted plans and what I saw on my site visit are sufficient for me to conclude on this matter.
19. I therefore conclude that the development would not significantly harm the living conditions of occupants of No 11 West Road in respect of light. Accordingly, there is no conflict with CS Policy DM10 which, amongst other matters and in accordance with the Framework, seek to provide quality urban design and safeguard the amenity of neighbouring occupiers.

Biodiversity

20. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application, if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. CS Policy DM10 sets out that the Council will have particular regard to the significant contribution that existing private residential gardens make to biodiversity and the natural and green environment. Additionally, CS Policy DM6 states the Council will require an ecological assessment on major development proposals, or where a site contains or is next to significant areas of habitat or wildlife potential.
21. There is no evidence before me that the appeal site is designated in terms of its nature conservation value, and it is located within a residential cul de sac surrounded by development. However, the Council point to the wider rural location and nearby farmland and woodland, and specifically Epsom and Ashted Commons Site of Special Scientific Interest (SSSI) approximately 1km to the east, Jubilee Wood Local Nature Reserve approximately 470m to the north-east, Bonesgate Stream approximately 160m to the north-east of the site and a pond within 120m of the site. The appellant does not dispute these distances and I consider these sites to be areas of wildlife potential.
22. Some enhancement measures such as improved landscaping or bat/bird boxes could be secured through a condition. However Circular 06/2005¹ states that, *'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.'* Although the Circular states that surveys should only be required where there is a reasonable likelihood of species being present, it advises that surveys should be carried out before planning permission is granted.
23. The detached, tiled roofed appeal property² was constructed approximately 60 years ago, it has evidently been empty for some time and the wider site is overgrown. Moreover, I saw on site that there were numerous small gaps and uneven roof tiles present. As such, there are various features which may provide a habitat for bats, having regard to the standing advice from Natural England. For these reasons and given the relatively close proximity of the identified areas of wildlife potential, there is potential for the presence of protected species.
24. In the absence of any survey information, it is not possible to establish if, or to what extent, protected species would be affected by the proposal. Therefore, it is appropriate to take a precautionary approach. Having regard to the Circular, it would not be appropriate to require surveys or further investigation by planning condition.
25. Accordingly, the proposal would be contrary to the biodiversity protection and enhancement goals of CS Policies DM6 and DM10, LP Policy G6 and the Framework, which states that planning decisions should protect and enhance sites of biodiversity value.

¹ Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

² Original planning permission identified by the Council as being granted in 1958. This is not disputed by the appellant.

26. Given my findings above I cannot be certain that granting approval would also not contravene the requirements of the Wildlife and Countryside Act 1981 (as amended), The Protection of Badgers Act (1992) and the Conservation of Habitats and Species Regulations (2017).
27. The Council again reference CS Policy DM5 which is of limited relevance in respect of this main issue. Similarly, CS Policy DM12 refers to development in Conservation Areas and affecting heritage assets. LP Policy G4 refers to open space and LP Policy G7 refers to protection of trees and woodlands. As such, these policies are also of limited relevance to this main issue.

Highway Safety

28. The two proposed properties are provided with one off street parking space each, located to the front of the site. The Council set out that the single provided off street parking space provided for each dwelling would not meet the required 4.8m x 2.4m size. There is no dispute that spaces of such sizes are necessary. The appellant disagrees that this size of spaces is not provided; however, the Council provide detailed measurements within their appeal statement illustrating that the bay window projects into and compromises the parking space, resulting in a shortfall in both depth and width. The appellant does not refute these measurements.
29. Given that the parking spaces are provided it is reasonable to assume that they would be used. In the absence of information to clearly indicate otherwise, there is a potential shortfall in parking space depth which may lead to cars overhanging the pavement. This would be inconvenient for and detrimental to the safety of pedestrians using the pavement, particularly for those with mobility or sight difficulties. Pedestrians may seek to move around the obstruction via the carriageway which would be likely to conflict with other vehicular and cycle movements, leading to situations that would be detrimental to the safety of all users.
30. The evidence indicates that sufficiently sized spaces could not be provided and therefore I cannot be certain that a condition requiring 2.4m x 4.8m spaces, as suggested by the appellant, would be achievable.
31. I conclude therefore that the proposal would result in harm to the safety of highway users, including pedestrians and vulnerable highway users. For the reasons outlined above, the proposal conflicts with the highway safety objectives of CS Policies DM9 and DM10 and the Framework.

Other Considerations and Planning Balance

32. Paragraph 147 of the Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The following paragraph sets out that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
33. I acknowledge that the development would bring some social and economic benefits to the area through the provision of new housing and during the construction phase of the development. Moreover, it is common ground that the Council is not able to demonstrate a 5-year supply of deliverable housing sites. In addition, the Council accept that the development would provide 4-

bedroom dwellings for which there is a significant identified need within the Borough. The proposal would make a small contribution to addressing the Council's housing issues. As such, the provision of an additional dwelling carries moderate weight.

34. The lack of any harm to the wider countryside, in addition to character and appearance are neutral matters not in favour of the proposal. Overall then, the other considerations identified in this case weigh moderately in favour of the proposal.
35. I have found harm as the proposal constitutes inappropriate development within the Green Belt and would have a significant impact on openness. The Framework is clear that substantial weight should be given to any harm to the Green Belt. Additionally, I have found harm with regards highway safety. In addition, it is unclear whether the proposal would harm protected species. These issues carry significant weight. Whilst not sufficient to conflict with the relevant CS policy in respect of this main issue, I have also found some limited harm to living conditions with regards to light. This carries some limited weight.
36. As such the other consideration do not clearly outweigh the harm identified. Very special circumstances necessary to justify the development do not therefore exist and the proposal would be in conflict with the Framework. As a result, the development would represent inappropriate development in the Green Belt in conflict with LP Policy G2 and paragraph 149 of the Framework as set out above.
37. Paragraph 11d of the Framework is applicable due to the Council's housing supply position. It sets out that permission should be granted unless the application of policies in the Framework that protect areas of particular importance provides a clear reason for refusing the development proposed.
38. In this light, Footnote 7 of paragraph 11 of the Framework specifically refers to land designated as Green Belt. The policies in the Framework that protect the Green Belt provide clear reasons for refusing the development. The Framework does not therefore indicate in favour of the scheme.

Conclusion

39. For the above reasons I conclude that the proposal conflicts with the development plan as a whole and material considerations do not outweigh the conflict. The appeal is therefore dismissed.

B Phillips

INSPECTOR