



Appeal Decision

Site visit made on 14 November 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/Z5630/W/22/3304222

19 Wolsey Close, Kingston upon Thames, KT2 7ER

- 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 Matthew Kenny against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 22/01982/FUL, dated 16 June 2022, was refused by notice dated 15 July 2022.
 - The development proposed is describes as the 'demolition of existing house, replacement dwelling over 2 floors with rooms in the roof'.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and erection of 2 storey dwelling plus rooms in roof-space at 19 Wolsey Close, Kingston upon Thames, KT2 7ER in accordance with the terms of the application, Ref 22/01982/FUL, dated 16 June 2022, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. Further to the determination of the application the appellant has submitted further information relating to fire safety and biodiversity, in addition to a number of other documents including a landscaping plan, daylight and sunlight report, energy statement and a heritage statement. Whilst submitted to the Council during the consideration of the application, the Council has confirmed that they did not accept this information at the time.
3. I have considered the additional information under the principles established by the Courts in *Wheatcroft*¹, and given that the additional information does not alter or evolve the proposed scheme in any way, only provides further detail, I do not consider that any third party has been prejudiced by my accepting and considering this information. The Council has had opportunity through the appeal process to comment on this information.
4. Notwithstanding the above, there is a discrepancy between the proposed side elevation plan and the proposed floorplan, as no windows are shown on the southwestern side elevation drawing.
5. The Council's third reason for refusal refers to No 20 Wolsey Drive. It is assumed that this is an error, and this should refer to No 20 Wolsey Close.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

Main Issues

6. The main issues are:

- 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 20 Wolsey Close, with respect to privacy and outlook;
- the effect of the proposal on fire safety; and
- the effect of the proposed development on biodiversity.

Reasons

Character and Appearance

7. Wolsey Close is a short cul de sac characterised by large, inter-war detached properties. Consistency is provided by the use of steep hipped tiled roofs and traditional appearance, however, there is variety provided by the scale and width of properties, roof forms, which include examples of front gables, flat roofed and pitched roofed dormers, and materials, including brick and render, hung tiles, timber elements and differing colour of tiled roofing.
8. The properties are set back from the road which, along with the central open grassed area and substantial rear gardens, provide the street with a verdant sense of space.
9. The Council set out that the site is located within the 'Kingston Hill/Coombe Hill Strategic Area of Special Interest', which is a non-designated heritage asset. Their appeal statement sets out that the site is located within Character Area 11 'Coombe Lane West' of the Borough Character Study. It states that this is an area which is identified as requiring enhancement to reinforce identity, and sets out that *'while there is less character spatially and architecturally than Coombe heartland, there is coherent townscape and consistently high landscape'*
10. The proposed replacement dwelling would be sited in a similar position to the existing dwelling. Whilst extending closer to the boundary with No 20, it would sit further from the boundary with No 18 and given the set back of the property from the road, there would remain a sufficient separation gap to preserve the spacious character of the street. The increase in ridge height would not be significant and whilst dormers would be introduced clearly indicating a second floor of accommodation, this is a common element within the street scene. The crown roof style would increase the massing of the roof; however, the hipped frontage would remain and there is a similar example at No 4. Additionally, I note a previously approved application² to extend the existing property would also introduce a similar size crown roof in terms of massing and depth.
11. The rear projection along the boundary with No 20, whilst substantial in length, would be single storey and therefore would remain subservient to the main house and given its siting, would not impact the street scene. Its flat roofed nature would also not harm the overall form of the dwelling given its limited visual impact. Details of the materials and solar panels can be secured through

² Application reference 21/00309/HOU

condition to ensure they do not harm the character and appearance of the dwelling and area.

12. The development would result in a modern interpretation of the surrounding traditional dwellings, incorporating a scale that would be in keeping with the properties within the street scene, and would result in a well-proportioned and balanced form and design that would sit comfortably with the existing coherent character and appearance of Wolsey Close. Given the extensive scale of the wider Kingston Hill/Coombe Hill Strategic Area of Special Interest, the replacement of one dwelling within a cul de sac would not detrimentally affect its special qualities would therefore preserve its significance as a non-designated heritage asset.
13. I therefore conclude that the proposed development would maintain the character and appearance of the surrounding area. The proposal would therefore comply with Policies CS8, DM10, DM11 and DM12 of the Kingston Core Strategy (2012) (CS), which sets out that development should recognise distinctive local features and character, incorporate principles of good design and preserve or enhance heritage assets.

Living Conditions

14. The existing property is set behind No 20 so that's its front elevation windows provide, albeit at an extremely oblique angle, a view of the rear elevation of this neighbour.
15. The replacement dwelling would be slightly re-orientated, so that this angle is slightly less oblique. Nevertheless, the relationship between the two properties would remain similar with regards to this element, and the overlooking impact from the front elevation fenestration would be minimally increased. This would not lead to a noticeable loss of privacy.
16. A condition to secure obscure glazing to the side elevation windows shown on the floorplans is necessary to prevent unacceptable direct overlooking of no 20 and also No 18.
17. The principal outlook from the rear of No 20 is at present over the large open rear garden. I understand that a number of trees have been recently removed however I saw that there remains a number of trees and tall hedging/shrubs on the boundary with No 19, mostly sited on the side of No 20.
18. The single storey rear projection, housing a pool, would extend a substantial depth along the boundary with No 20. However, it would be set away from the boundary and, given the orientation of the properties, would sit a substantial distance from the nearest window of No 20.
19. Due to the orientation of the properties, its limited height and the existing screening provided by the boundary planting, I am satisfied that the single storey projection would not harm the outlook from the rear facing windows which would remain principally over its extensive rear garden, and rear garden itself of No 20. Moreover, the boundary screening could be supplemented by additional planting secured through a landscaping condition.

20. A landscaping plan³ has been submitted, however this shows a 3.5m bamboo screen on part of both side boundaries. I consider this to be excessive and unnecessary in height and would result in an oppressive boundary for a significant length. A further amended landscaping plan is required therefore, and a condition to ensure a suitable scheme is necessary. Whilst this would be unable to include new planting on the neighbour's garden, this would also mitigate against any possible impact the structure would have on the existing boundary plants.
21. I therefore conclude that the development would not harm the living conditions of occupants of No 20 Wolsey Close in respect of privacy and outlook. 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.

Fire Safety

22. LP Policy D12 seeks to secure the safety of all building users by ensuring that all development proposals must achieve the highest standards of fire safety. For major development, Policy D12 seeks a Fire Safety Statement. For all development, Policy D12 requires that schemes identify suitably positioned unobstructed outdoor space for fire appliances and assembly, are designed to incorporate appropriate features to reduce the risk to life and the risk of serious injury in the event of a fire, are constructed to minimise the risk of fire spread, develop a robust strategy, and provide access and equipment for firefighting.
23. The appeal scheme does not represent major development for which Policy D12 requires a Fire Safety Statement. The dwelling is located on a normal width road which would enable a fire engine to drive through and park safely to access if required. I observed on site that there would also be sufficient space outside No 19 for use as an emergency assembly point. Further details as to the requirements within Criterion A of the Policy have also been provided by the appellant and information has been put to me demonstrating that the design details as submitted have taken into account issues of fire safety.
24. However, the supporting text to LP Policy D12 is specific in requiring site plans illustrating the appropriate positioning of fire appliances and evacuation assembly points. Whilst described in text, these site plans have not been provided. I am satisfied that these requirements could be secured by means of planning condition. Accordingly, and subject to the imposition of a suitably worded planning condition, the proposal could provide satisfactory standards with regards to fire safety in accordance with the requirements of Policy D12 of the London Plan.

Biodiversity

25. Paragraph 179 of the Framework requires that plans should identify, map and safeguard components of wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites, such as Sites of Importance for Nature Conservation. The Council identify that the application site is within 80m of Coombe Wood Golf Club which is a Site of Importance for Nature Conservation (SINC).

³ Landscaping plan 19 Wolsey Close, KT2 7Er by The Market Design & Build.

26. No detail of the SINC is provided, however the Council raise the possibility of protected species such as bats and badgers being present. The appellant has provided a bat survey⁴ which concludes that there will be no impacts on bats as a result of the works, that no suitable bat habitat will be lost to the development and that no further surveys are recommended for the site. The Council have had an opportunity to comment on this but have not done so and its findings and methodology are therefore undisputed. A condition to secure appropriate lighting during construction, as set out in the survey, is necessary to protect biodiversity interest. As such I am satisfied that there is no reasonable likelihood of this species being present.
27. With regards to badgers, the Council point to the verdant nature of the appeal site and its surroundings. However, the appeal site is located within a residential cul de sac and surrounded by residential development and near the busy A238 road. The site is surrounded by fencing and is at present a busy construction site given the works ongoing at the main house and in relation to outbuildings in the rear garden.
28. Whilst not a qualified ecologist, the appellant has also provided a 'Biodiversity and protected species statement' which sets out the lack of any evidence for badgers being present on site and the lack of any suitable hedgerows, woodlands, scrub and field margins nearby the appeal site. I note that the letters of objection from neighbours also do not raise any issue in this regard.
29. 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. However, Circular 06/2005⁵ states that surveys should only be required where there is a reasonable likelihood of species being present.
30. Given the lack of any evidence to the contrary from the Council, I am not persuaded that there is a likelihood of badgers being present on site or indeed any other protected species. As a protected species, badgers are also afforded protection by other legislation⁶ should any be encountered during work on the site.
31. I note the ecological enhancement measures proposed as part of the development, including green roofs, bird boxes, improved landscaping etc which can be secured through a condition, as suggested by the Council.
32. Accordingly, I find no conflict with the biodiversity protection and enhancement goals of CS Policies DM6 and DM10, LP Policy G6 and the Framework. In addition, based on the evidence before me, I find that the development would not conflict with the general biodiversity protection goals of the Protection of Badgers Act 1992 Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017.
33. The Council reference CS Policy DM5 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. Similarly, CS Policy DM12 refers to development in Conservation Areas and affecting heritage assets. LP Policy G4

⁴ Preliminary Roost Assessment Survey, by Arbtech dated 15/9/21

⁵ Circular 06/2005: Biodiversity and geological conservation - statutory obligations and their impact within the planning system

⁶ Such as the Protection of Badgers Act 1992

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.

Other Matters

34. The number of applications submitted on the site recently is not a material planning consideration. Any unauthorised use of an outbuilding is a matter for the Council, and not for the appeal before me.
35. The lack of any pre-application advice or discussions with neighbours does not alter my decision on the main issues. Similarly, I have based my decision on the documents before me and from what I saw on site. With regards to the wider context in Kingston, each case must be considered on its own merits.

Conditions

36. A list of suggested conditions has been provided that the Council and/or the appellants consider to be appropriate. I have considered these in light of the PPG and the tests set out in the Framework. For clarity and to ensure compliance with the tests, I have amended some of the suggested wording.
37. In addition to the standard time limit condition, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty. The submission of samples and details of the proposed external materials of the development for approval by the Council is necessary to maintain the character and appearance of the area. A condition relating to bin and cycle storage provision is necessary to ensure that occupants would have appropriate access to these facilities.
38. Given the limited scale of development, the scale of the plot and amount of off street parking to its frontage and the ease of access provided by the cul de sac arrangement, I do not consider that a condition requiring a Construction Transport Management plan is necessary and would not therefore meet the tests set out in the Framework. Similarly, a condition restricting the hours of work is unnecessary as this is addressed in separate legislation. Details of compliance with building regulations with respect to accessible units is also not considered necessary in this respect given that it is replicated in other legislation.
39. On wider sustainability requirements, an Energy and Sustainability Statement has been submitted⁷ which demonstrates that the proposed dwelling would meet a water consumption limit of 105ltr a day and would achieve a 30% reduction in CO2 emissions over Part L of the Building Regulations, in accordance with the relevant policies of the LP. Again, the Council have had an opportunity to comment on this but have not done so and its findings and methodology are therefore undisputed. A condition ensuring compliance with this statement is necessary.
40. With regards to biodiversity enhancements, whilst these are listed within the submitted Biodiversity and Protected Species statement, they are shown in detail on the landscaping plan. Whilst I have no issue with what is proposed and again the Council have not commented, given that an amended

⁷ 19 Wolsey Close, Kingston Upon Thames - Energy and Sustainability Statement by Elmstead Energy Assessments & Building Services

landscaping plan is required (as set out above), this should include the biodiversity enhancement details in order to ensure that the works are carried out.

41. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights should only be used in exceptional circumstances. The Council have not provided this clear justification and as such the suggested conditions removing permitted development rights and preventing any further works is inappropriate.

Conclusion

42. For the reasons given above, having regard to the development plan as a whole and all other material considerations, the appeal is allowed.

B Phillips

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A 101+A 201 RevA, Existing and Proposed Block Plan A103+A203 RevA, Proposed Ground Floor Plan A 105+A205 RevA, Proposed First Floor Plan A107+A207 RevA, Proposed Loft Plan A109+A209 RevA, Proposed Roof Plan A110+A210 RevA, Existing and Proposed Section A111+A211RevA Existing and Proposed Section A113+A213 RevA, Existing and Proposed Front Elevation A114+A214 RevA, Existing and Proposed Rear Elevation A115+A215 RevA, Existing and Proposed Side Elevation2 A116+A216 RevA, Existing and Proposed Side Elevation Location Plan.
- 3) No above ground development shall take place until details or samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.
- 4) The dwelling hereby approved shall not be occupied until cycle storage, refuse bins and recycling bins have been provided in accordance with details that shall have been first submitted to and approved in writing by the Local Planning Authority and thereafter permanently maintained.
- 5) The dwelling hereby permitted shall not be occupied until the above ground floor windows on both side elevations of the dwelling have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
- 6) The dwelling hereby permitted shall not be occupied until a detailed landscaping (hard and soft) scheme including details of trees to be planted, wildflowers (the species, size and age to be agreed with the local planning authority in writing) as well as ecological enhancement measures and habitat creation (and an associated program for implementation and management of the scheme) shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented within the first planting season following completion of the development and the tree planting and landscaping shall thereafter be maintained for five years to the satisfaction of the Local Planning Authority.
- 7) The development hereby permitted shall be carried out in accordance with the details set out within 19 Wolsey Close, Kingston Upon Thames - Energy and Sustainability Statement by Elmstead Energy Assessments & Building Services dated 1/03/22.
- 8) The development hereby permitted shall be carried out in accordance with the details set out within 'Preliminary Roost Assessment Survey 19 Wolsey Close, Kingston Upon Thames, KT2 7ER Mr. Matthew Kenny', by Arbtech dated 15/9/21.

- 9) Prior to the commencement of above ground works as part of the development hereby permitted, excluding any works of demolition, a Fire Safety Statement shall be submitted to and approved in writing by the local planning authority. This shall include details that identify:
- 1) unobstructed outside space for fire appliances to be positioned on, to be shown on a site plan;
 - 2) areas for use as an evacuation assembly point, to be shown on a site plan;
 - 3) appropriate features which reduce the risk to life and the risk of serious injury in the event of a fire; including appropriate fire alarm systems and passive and active fire safety measures;
 - 4) design measures that minimise the risk of fire spread;
 - 5) means of escape and an associated evacuation strategy for all building users;
 - 6) a robust strategy for evacuation which can be periodically updated and published; and
 - 7) suitable access and equipment for firefighting. The development shall not be implemented or occupied other than in accordance with the approved details.

End of Schedule