



Appeal Decision

Site visit made on 22 March 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2023

Appeal Ref: APP/N5660/W/22/3300320

Land to the Rear of 23 Moorland Road, London SW9 8UA

- 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 Havialand Trading Company against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 22/00753/FUL, dated 24 February 2022, was refused by notice dated 25 April 2022.
 - The development proposed is Construction of single storey dwelling (Class C3) with associated cycle parking, refuse storage and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted amended plans to the appeal which show amended materials for the proposed dwelling and an amended boundary treatment. The Council's reason for refusal does refer to the unsympathetic alterations to the boundary wall. The Council has acknowledged these alterations in their statement and indicated that further detail would be sought by condition were the appeal to be allowed.
3. The Wheatcroft Principles arise from a High Court judgement and focus on the issue of amendments. That case established that the main, but not the only, criterion on which judgement should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation. Integral to this legal test is the issue of fairness to interested parties. The proposed amendments do not substantially alter the development as proposed, particularly given the existing boundary treatment on the site. I therefore consider that no party would be prejudiced were I to include these plans and I therefore determine the appeal with regard to them.
4. The Council did not specifically refer to Lambeth Local Plan adopted September 2021 (LLP) Policy T3, which concerns cycling, in its second reason for refusal. The parties are in agreement that the provisions of this policy are relevant and I have taken that policy into account when considering the second main issue.
5. The open space to the rear of the appeal site and an adjacent road are both called Loughborough Park. For clarity, the open space will be referred to as 'the park' and the adjacent road as 'the road'.

Main Issues

6. The main issues are:

- whether the proposal would preserve or enhance the character or appearance of the Loughborough Park Conservation Area and whether it would preserve the setting of the nearby listed building; and
- the effect of the proposal on the safe and efficient operation of the highway network in the vicinity of the appeal site with regard to provision for parking.

Reasons

Heritage Assets

7. The appeal site lies to the rear of 23 Moorland Road. It is bounded by Nos 23 and 21 Moorland Road and a public park to the rear. It sits adjacent to a footpath, which is separated from the road by an area of open space which is mounded and includes tree planting.
8. The site incorporates a considerable portion of what was the rear garden of No 23. At the time of my site visit, it was overgrown, with some rubble and debris present. Due to the overgrown nature, the fence referred to by the appellant as separating the appeal site and the garden of No 23 was not readily apparent, and the appellant confirms it is not visible from the street. While I acknowledge the two sites have been in separate ownership for a considerable length of time, I did not find the appeal site to be visually distinct from the rear garden of No 23 in the context of the wider area.
9. The site lies within the Loughborough Park Conservation Area (CA) where s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. The Loughborough Park Conservation Area Draft Character Appraisal dated September 2020 identifies three character areas, with the site lying within character area 1. This area is characterised by 19th century substantial detached and semi-detached dwellings set in spacious plots. Dwellings face onto the street, providing a formal, regular pattern of development fronting towards the highway. The north-east side of Moorland Road forms the boundary of the CA. The detached, two storey villas contrast sharply with the post-war development opposite and provide a distinct sense of enclosure to the CA. The park lies to the rear of the site. The character statement explains it was originally entirely enclosed by surrounding development, and as a result of post-war clearance now has an open frontage to the road.
10. The significance of the CA as it relates to this appeal is derived from the historic interest as evidence of the historic development of the area, including the relationship between the public area of the park and the private rear gardens of the surrounding properties and the architectural interest arising from the cohesive design of the properties.
11. The modest scale of the development would be markedly different from the predominant form in the CA. Its siting, in what is perceived as a rear garden, would interrupt the historic pattern of development in the area and would erode the character of substantial dwellings in spacious plots. It would not have

a direct relationship with the road frontage, further emphasising the incongruous nature of the proposal.

12. It would erode the distinction between the rear elevations of the dwellings on Moorland Road, the space of their private gardens and the open space of the park. This would be to the detriment of the historic relationship between the park and the dwellings.
13. The appellant has put forward that the dwelling would not be readily visible behind the existing boundary feature due to its single storey design, green roof and changing levels of the site. As such it would retain the sense of openness at the site. However, it was not apparent from my site visit that levels on the site were lower than those of the adjacent footpath and playground, which were level with each other. No evidence of the existing and proposed levels at the site have been submitted as part of the appeal so I cannot be certain of this relationship. In any event, even if the relationship with the boundary treatment were that shown on the plans, the dwelling would be clearly visible above the boundary treatment.
14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting.
15. 5-23 Moorland Road is a Grade II listed building (LB). It was listed in 1981 and comprises a number of two-storey, mid-nineteenth century stucco villas. The significance of the LB as it relates to this appeal is in its historical significance in the development of the area and the architectural significance of the substantial, similarly designed villas set in regular, commensurate plots. The consistent open layout of the rear gardens allows for the LB to be experienced in its entirety in the views available from the park and the road.
16. The proposed dwelling would introduce a new form of development which would not be well related to the cohesive layout of the LB or the regular pattern of the rear gardens. Despite its low height and the potential for the green roof to integrate with the existing planting, it would interrupt the views of the building, both the individual component of No 23 and the LB as a whole. Consequently, the coherence of the LB would be meaningfully diminished.
17. Given the limited scale of the development, I find the harm to be less than substantial to both the character and appearance of the CA and the setting of the LB. Nevertheless, paragraph 199 of the Framework confirms that great weight should be given to the asset's conservation. In these circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
18. The appellant has set out what they consider to be the public benefits of the scheme. There would be a public benefit from the delivery of an additional dwelling that would be able to access existing services and facilities, particularly given the aim of the Framework to significantly boost the supply of housing. There would also be the economic benefits associated with the development during both the construction and occupation stages. These benefits would be limited as the proposal is for a single dwelling.

19. The appellant has proposed an amended boundary treatment which would reflect the existing, historic boundary wall. This would improve the visual coherence of the designated heritage assets by replacing the current, unsympathetic and incongruous boundary fence. This would be a heritage benefit and a public benefit which would comply with LLP Policy Q15 which seeks the replication of positive locally distinct boundary treatments. I attach limited weight to this.
20. Given the harm that the development taken as a whole would cause to the significance of heritage assets, the appeal proposal would not optimise the use of the land or make the most of a small site. That existing trees and a view would be retained would, at best, maintain the current position and would not represent a public benefit.
21. Given the above, I consider that the limited public benefits and heritage benefit would not outweigh the less than substantial harm to the designated heritage assets I have identified above.
22. I therefore conclude that the proposal would not preserve or enhance the character or appearance of the Loughborough Park Conservation Area nor would it preserve the setting of the nearby listed building. It would therefore be contrary to LLP Policies Q5, Q20 and Q22 which taken together seek to preserve the character or appearance of conservation areas, would not harm the setting of the listed building and require development to respond to positive aspects of the locality and its historic character.
23. The Council has referred to LLP Policy Q14 in its reason for refusal. This considers the principle of development in gardens and amenity spaces. As the reason for refusal only relates to the effect on the significance of the designated heritage assets, I do not find this policy to be directly relevant.

Parking

24. LLP Policy T1 confirms that the Council will seek to promote trips by sustainable modes of transport and reduce dependence on the private car. The site is located within a controlled parking zone (CPZ) and has a PTAL of 4. In accordance with LLP Policy T6 and LP Policy T6, no car parking is proposed as part of the development.
25. LLP Policy T6D also requires development in this location to be permit free and to make car club membership available to residents in new residential development. LLP Policy T3H requires cycle hire membership in the same circumstances.
26. The appellant has provided a unilateral planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended) (the Act) which purports to restrict occupiers of the proposed dwelling from applying for residential parking permits, provides for three years of car club membership and cycle hire membership. I am satisfied that these measures would be necessary to address the requirements of LP Policy T6 and LLP Policies T3 and T6 which taken together seek to minimise the use of the private car and promote more sustainable modes of transport.
27. However, I am concerned that the obligation would not fall within the terms of s106(1) of the Act. This requires that any restrictive planning obligations relate to the development or use of land. Schedule 1 of the proposed obligation seeks

to control the actions of the owner and future occupiers rather than the use of land. It would therefore not be enforceable under the terms of s106(3) and s106(5) as it would not run with the land.

28. Notwithstanding, the Council indicated in its appeal statement that this matter could be controlled via a negatively worded condition. I have had regard to the advice in the Planning Practice Guidance¹ (PPG) on this matter. From the evidence before me, I am satisfied that the parties are in agreement as to the principal terms of the agreement and that this has been carried out in a transparent manner. However, the PPG is clear that the use of such a condition is unlikely to be appropriate in the majority of cases and that it should be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at risk. There is no such evidence before me, nor does this development or the need to secure car free development constitute exceptional circumstances. It would therefore be inappropriate to control this issue through the use of a condition.
29. It is not clear from the evidence before me why it is necessary to specifically prevent any occupier of the dwelling from entering into a contract to park within any car park owned, controlled or licenced by the Council in the CPZ. However this is not determinative, and as I am dismissing the appeal, I have not pursued this matter further.
30. The proposal would not have an acceptable effect on the safe and efficient operation of the highway network in the vicinity of the appeal site with regard to provision for parking. It would therefore be contrary to London Plan adopted March 2021 Policy T6 and LLP Policies T1, T3 and T6 which seek to promote sustainable modes of transport and reduce dependence on the private car, and LLP Policy D4 which confirms that planning obligations are the most appropriate mechanism to secure the requirements made necessary by the development.

Other Matters

31. The Council's decision notice did not specifically identify that the proposed materials would be harmful. Notwithstanding, the appellant has proposed amending these in response to the content of the Council's officer report and would accept a condition to specify the exact finish. However, the use of appropriate materials would not outweigh the harms I have identified above.
32. I do not have full details of the Loughborough Park Estate comprehensive redevelopment before me. However given the significantly differing nature and scale of that development from that before me, it does not provide a compelling reason to allow this appeal.
33. I have been referred to various permissions in the area. I do not have full details of these permissions. However, I note these would have been approved under the provisions of a different development plan. Furthermore, each appeal is to be determined on its own merits and with regard to the statutory duties placed on me by the Act.
34. It is not in dispute that the proposed dwelling would provide acceptable living conditions for future occupiers, that the existing trees could be protected and its design, in and of itself, would be acceptable. However these factors amount

¹ Use of Planning Conditions Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019

to a policy compliant development and are therefore neutral in determining this appeal.

Conclusion

35. For the reasons given above, I find the proposal would not accord with the development plan when read as a whole. Other material considerations are of insufficient weight to justify granting planning permission contrary to the development plan. As such, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR