



Appeal Decision

Site visit made on 3 May 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Appeal Ref: APP/L5240/W/22/3303160

Land between 39 and 63 Kenley Lane, Kenley, Surrey CR8 5ED

- 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 O Lazar against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/01247/FUL, dated 10 February 2021, was refused by notice dated 25 April 2022.
 - The development proposed is the erection of stable block adjacent to northern boundary, and installation of post and wire fencing on all boundaries (including along the Kenley Road frontage) to include farm gate within the northern boundary.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr O Lazar against the Council of the London Borough of Croydon. That application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the proposed development on a) highway safety; b) nature conservation; c) fire safety; and d) protected trees.

Reasons

Highway Safety

4. There is a dispute between the main parties as to whether or not there is an existing access onto Kenley Lane that can be utilised by the proposal. From my observations on site, there appeared to be two wooden posts on either side of the claimed access point. One of these posts appeared to have hinges attached to what looked like the remains of a wooden gate. If it was previously used as an access, it would have been a long time ago, given the dilapidated state of the gate and posts; the rubble deposited behind the gate which was covered in weeds and moss; and the overgrown nature of the route into the fields from the highway.
5. Whilst the above points towards there being the remains of an access onto Kenley Lane, it is clearly not utilised at present. Any development would therefore increase vehicular movements above existing levels. Even allowing for the lawful use of the site, the proposed development of the stables would, it

seems to me, be likely to represent a significant change and increase in the nature of vehicle movements.

6. I note the concerns that the width of this access may be less than that of the previously proposed access. This would be likely to have some implications particularly for larger vehicles being able to enter the site in one movement, or for other vehicles towing a trailer or horsebox. Whilst this would be inconvenient to other road users it may not necessarily be dangerous given the road alignment and visibility that would be available.
7. However, views when exiting the site onto Kenley Lane would be obscured by the trees and vegetation along the boundary with the highway. Vehicles exiting at this point would clearly need to travel out onto the highway before having sufficient visibility in either direction. Whilst my site visit only represents a snapshot during a weekday morning, my observations tally with those of the previous Inspector in terms of Kenley Lane being popular with walkers. There were also other vehicles using this part of the Lane during my site visit.
8. Therefore, even if I were to conclude that there is an existing access onto Kenley Lane, it appears to me that it is constrained in terms of width and visibility. Even though any increase in vehicle movements associated with the stables and the wider use of the land may be small in numerical terms, there is no evidence to demonstrate that it would not involve an unacceptable increased risk or conflict with other users of Kenley Lane.
9. I therefore find that the proposal would be likely to represent an increased risk to highway safety. Accordingly, it would conflict with Policy T4 of the London Plan 2021 (LP) and Policies DM29 and DM30 of the Croydon Local Plan 2018 (CLP) which, amongst other things, seek to ensure developments in general, and parking/access arrangements in particular, do not increase road danger or have a detrimental impact on highway safety.
10. On this basis the proposal would also be contrary to Paragraph 111 of the Framework, which amongst other things, seeks to ensure that developments are not permitted if there would be an unacceptable impact on highway safety.

Nature Conservation

11. The site is located within the boundary of Kenley House Pastures Site of Interest for Nature Conservation (SINC). Kenley Common SINC and Riddlesdown Site of Special Scientific Interest (SSSI) are located within 1 km of the site.
12. The previous Inspector was concerned that without information on the conditions of the site, species that may support it or how the development as a whole would affect these, it was not possible to conclude nature conservation interests would not be harmed through the development of a stables on the land. A Preliminary Ecological Appraisal (PEA) of the site was undertaken in February 2021 and submitted in support of the current proposal.
13. The PEA provides a survey of the site to identify protected species and potential nature conservation value. The PEA itself acknowledges that it was undertaken at a suboptimal time of the year and so some findings would need to be considered with that caveat. Nevertheless, there are some key findings which would not be affected by the timing of the survey work, namely that the building would be sited in the least harmful position, the tree belts would not

be directly affected and aspects such as external lighting could be controlled through planning conditions.

14. The PEA's recommendations for avoidance, mitigation and enhancement include retaining the grassland on site and ensuring that it should be enhanced, and appropriately managed to promote the growth of a floristically diverse sward. A further recommendation is that the grassland should only be lightly grazed.
15. The proposal itself relates only to the physical works. Whilst the lawful use of the land would not change and grazing could be undertaken without requiring planning permission, there is no indication or suggestion that horses would be kept on the land without the stables or indeed any other animals would be kept on the land. Therefore, it seems to me that there is a direct relationship between the proposal and the nature conservation interests of the site.
16. It would be possible to secure a management plan for the grassland through a planning condition, as well as a number of the PEA's other recommendations. However, there is no information to indicate whether stabling two horses on the site would be compatible with managing the grassland and ensuring that the grass was only lightly grazed. Therefore, even if I were to impose a condition requiring a management plan, I cannot be sure that stabling two horses on the site would allow for an appropriate management plan to be implemented. It would not be appropriate to allow the appeal on that basis.
17. Therefore, I am unable to conclude with sufficient certainty that the nature conservation interests of the land would not be harmed as a direct result of the development of the stables on the land.
18. The proposal would therefore be contrary to Policy G7 of the LP and policies SP7.4 and DM27 of the CLP which, amongst other things ensure development protects SINCE, enhances biodiversity and has no adverse impact on land with biodiversity or geo-diversity value.

Fire Safety

19. Policy D12 of the London Plan requires all development proposals to achieve the highest standards of fire safety. It sets out a number of aspects to which consideration needs to be given. For major development proposals a supporting Fire Statement should be submitted, having been undertaken by a suitably qualified assessor. The current proposal is not a major development, nor are all of the considerations in Policy D12 necessarily of relevance to the proposed development.
20. There is no suggestion that fire safety has been considered from the outset by the appellant. Equally, the appellant gives little substantive detail of how fire safety issues would be addressed within the development. However, they suggest a condition could be imposed to agree this detail, were I to allow the appeal.
21. Given the modest scale and nature of the proposed development, I have no reason to doubt that satisfactory fire safety measures could be required by condition if permission were to be granted. Providing that such a condition was worded to preclude the use of the stables until these matters were addressed, I conclude that this would make the development acceptable in terms of fire

safety. Therefore, no conflict would arise with London Plan Policy D12 which seeks to ensure the safety of all building users.

Protected Trees

22. The proposal involves the installation of post and wire fencing on all boundaries (including along the Kenley Road frontage). Aside from this scheme involving a farm gate within the northern boundary and omitting a new access onto Kenley Lane, it is broadly similar to the previous scheme in terms of the means of enclosure.
23. The previous Inspector noted that the fencing would be low-key and unobtrusive and not be out of keeping with the area. Furthermore, given the nature of the boundary treatment it was concluded that there was no reason as to why the retained trees would be detrimentally affected by the proposal. There is no substantive evidence before me to come to a different conclusion.
24. The point of access onto Kenley Lane would be different from the previous scheme. It is suggested by the Council that the gap between trees through which access would be gained to serve the current proposal is less than the previous scheme and that this could be harmful to the trees.
25. I accept that this could result in some compaction of the ground near the trees, from vehicles using the access. However, this would not necessarily lead to the loss of the trees. Furthermore, I see no reason why the positioning of the fence or gate posts could not help to protect the trees from being damaged by any vehicle that misjudges the turn/manoeuvre into the site. This could be controlled through conditions to ensure appropriate positioning.
26. Overall, despite the different point of access onto Kenley Lane, there is no information or evidence before me which would lead me to reach a different conclusion from the previous appeal in regard to the effect on the protected trees. I therefore find that the proposal would accord with Policy G7 of the LP and Policies DM10.8 and DM28 of the CLP which, amongst other things, ensure existing trees, particularly those of value, are retained. In this respect, the proposal would accord with the Framework's objectives for conserving and enhancing the natural environment.

Other Matters

27. Issues of land ownership and the use of unauthorised development are matters beyond the scope of this appeal.

Conclusion

28. Although I have reasoned that issues relating to fire safety and tree protection could be addressed through conditions, these would not outweigh the harm I have identified in relation to highway safety and nature conservation. The proposal would therefore conflict with the development plan taken as a whole and there are no other material considerations to indicate that my decision should be made other than in accordance with the development plan.
29. For the reasons given above, I conclude that the appeal should be dismissed.

Stewart Glassar
INSPECTOR