



Appeal Decision

Site visit made on 12 May 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 JUNE 2023

Appeal Ref: APP/L5240/W/22/3303662

The Retreat, 14 Zig Zag Road, Kenley CR8 5EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Trinity Square Developments against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/04715/OUT, dated 8 September 2021, was refused by notice dated 2 February 2022.
 - The development proposed is outline application for the consideration of access, layout, appearance and scale only in relation to front and side extension to existing property along with its conversion to two self-contained flats, construction of six dwellings to the rear with associated vehicle access, vehicle and cycle parking, refuse stores and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Several amended drawings were provided with the appeal¹, which detail proposed changes to the position and size of window openings and the alignment of the access drive. An indicative Landscape Concept Plan² was also provided, illustrating that the revised access alignment would allow for increased boundary planting.
3. Although the Council has commented on the amended plans, I cannot be confident that interested parties are aware of them or have had an adequate opportunity to comment upon them. While the amendments are presented on the basis that they are of minor significance, they would have a bearing on the relationship with immediately adjacent properties. Therefore, there is a risk of prejudice to the occupiers of those properties if they have no opportunity to comment. In accordance with the Wheatcroft principles, therefore, I have considered the proposed window layout and access alignment based on the drawings considered by the Council when it determined the application.
4. Interested parties would have the opportunity to comment on detailed landscaping proposals at a later date, should outline planning permission be granted. On that basis, I have had regard to the illustrative Landscape Concept Plan in so far as it pertains to the fourth reason for refusal. On a similar basis, I have had regard to additional arboricultural and biodiversity evidence submitted with the appeal. However, I have not relied on the Landscape

¹ As listed in Table 4 of Trinity Square Developments Statement of Case dated June 2021

² Petrow Harley Landscape Architects Landscape Concept Plan drawing ref 952-L-01 Rev B

Concept Plan where it indicates planting that would depend on the amended access alignment.

5. The amended drawings also included additional cross sections, clarification of the position of an adjacent bay window and clarification of the alignment of ground levels and boundary fencing³. I have had regard to these additional details, which are limited to clarification of the proposal and do not propose any amendments to it.
6. A Fire Strategy Report⁴ was provided with the appeal and includes plans confirming that it is based on the site layout as considered by the Council. Therefore, there is no risk of prejudice to interested parties if this additional technical evidence is taken into account. The Council has confirmed that the Fire Strategy Report would satisfactorily address the third reason for refusal, and I return to this matter below.
7. The planning application was in outline, with access, appearance, layout and scale to be considered at this stage. Since landscaping is a reserved matter, I have treated details of hard and soft landscaping on the proposed block plans as being indicative. I have had regard to Tree Protection Plan TPP & AMS 03 Rev C when considering the effect of the proposed layout on trees. However, I have kept in mind that final details of tree retention and protection measures could change at reserved matters stage.
8. Since the application was decided, the Council has revoked the Croydon Council Suburban Design Guide Supplementary Planning Document adopted April 2019 (SDG). Therefore, references to the SDG in the reasons for refusal are no longer relevant and in reaching my decision I have not had regard to it.

Main Issues

9. The main issues are:
 - the effect of the proposed development on the character and appearance of the area,
 - its effect on living conditions within neighbouring properties, with particular regard to outlook and privacy for the occupiers of Woodhurst and 72 Welcomes Road,
 - whether the proposed development would protect or enhance biodiversity, and
 - whether the proposal makes adequate provision for lower carbon transport options.

Reasons

Character and Appearance

10. The appeal site is in a residential area of generally detached houses in spacious plots with mature landscaping. Welcomes Road has a particularly verdant character. Houses are set into steeply sloping sites, with extensive woodland planting on rising land to the rear. Parts of Zig Zag Road are less highly

³ Drawing nos TSD02-MAA-XX-DR-A-01504, TSD02-MAA-XX-DR-A-01101 rev P11 (bay window) and TSD02-MAA-XX-DR-A-01501 rev P07 (section AA)

⁴ Appendix 5 of Trinity Square Developments Statement of Case dated June 2021

vegetated, but the established housing nevertheless has a spacious character. Dwellings are informally laid out, responding to the sloping topography and winding road layout. Designs are varied, with little consistency of external materials or detailing.

11. The appeal site contains an existing two storey dwelling, subdivided from an adjacent larger dwelling known as Woodhurst. Access is from Zig Zag Road, with a driveway, garage and mature trees in front of the dwelling. To the rear is a long, narrow garden, running behind properties on Leacroft Close and Welcomes Road. The rear garden contains extensive vegetation including several trees, bushes and undergrowth, which becomes increasingly dense towards the southern end of the site.
12. The site slopes steeply upwards across both its length and width, with the existing dwelling sitting on the lower land and its rear garden rising steeply beyond. Dwellings along Welcomes Road are at a lower level while those on Leacroft Close and Simone Drive are on higher land. The existing vegetation forms part of the verdant backdrop to dwellings fronting Welcomes Road.
13. It is apparent that the character of the area has evolved over a period of many years. This includes the introduction of cul-de-sacs, which are somewhat less spacious in character than the longer-established housing fronting Welcomes Road. The proposed development would reflect that process, by introducing a cul-de-sac of six properties. However, its form and layout would depart in a number of significant respects from the surrounding housing.
14. The proposed dwellings would be more tightly laid out, on narrow plots, with very limited rear gardens. Much of the land in front of the dwellings would be devoted to access and parking, with limited opportunity for soft landscaping. While their siting responds to the topography and follows the curved access road, the new dwellings would not have the level of variety or informal layout which is typical of the wider street scene.
15. Despite minor differences in materiality and detailing, the proposed dwellings would have a very consistent and distinctive design. A contemporary architectural approach is not inappropriate within this varied context. However, their repeated narrow form and regular layout would be a significant contrast with the varied designs and more informal layout of the surrounding detached housing.
16. While landscaping is a reserved matter, it is clear from the proposed layout that there would be limited space for meaningful tree cover behind the dwellings. This is largely confirmed by the Landscape Concept Plan, which indicates that vegetation behind the new dwellings would be limited to the site boundaries, allowing for areas of lawn and paving behind each dwelling. At the same time, scope for planting in front of the dwellings would be highly limited, based on the layout proposed at application stage.
17. Although the proposed dwellings would be well screened from Zig Zag Road, there are views into and across the site from Welcomes Road, between the widely-spaced detached houses. The site currently forms part of the wooded backdrop to Welcomes Road. The proposed dwellings would be in an elevated position and therefore relatively prominent on the hillside. As a result, the introduction of this more intensive and contrasting form of development would

erode the spacious, verdant character of the street scene to a materially harmful degree.

18. The proposed alterations and subdivision of the existing building to form two flats would involve little change in its character or appearance. This would not therefore, of itself, be harmful to the established character and appearance of the area.
19. While increased parking would be required on the site frontage, there would be space to retain and reinforce the existing planting, to maintain a leafy frontage. Zig Zag Road is generally less extensively vegetated than Welcomes Road and the balance between hard and soft landscaping along this frontage would be reasonably consistent with its immediate surroundings, subject to consideration of detailed landscaping proposals.
20. Nevertheless, for the reasons given above I conclude that the proposed development would be materially harmful to the character and appearance of the area. As such, it would conflict with policies DM10 and SP4.1 of the Croydon Local Plan adopted 2018 (CLP) and policies D3 and D4 of the London Plan adopted 2021. These policies, amongst other things, require that development should respond to the existing character of a place, including existing development patterns, layout and the appearance, built and natural features of the surrounding area.

Living Conditions

21. The proposed dwellings would be on three storeys, but set into the slope. The differential in ground levels, together with boundary screening, would be sufficient to safeguard privacy for the occupiers of neighbouring properties on higher land in Leacroft Close and Simone Drive. However, the new dwellings would be in an elevated position above the adjacent properties at Woodhurst and 72 Welcomes Road, sited close to the boundary and with several windows facing in that direction.
22. While there is some existing boundary planting and fencing, this is not continuous and is of limited effectiveness in terms of maintaining privacy. In combination with the higher ground level within the appeal site, this results in a relatively high degree of inter-visibility across the boundary, which would be exacerbated by the removal of existing vegetation.
23. The proposal would introduce several new buildings in close proximity to the boundary with Woodhurst and 72 Welcomes Road. As a result of their three-storey design, proximity to the boundary and elevated position, they would be both prominent and imposing. Their principal elevations would face into the most private areas of the adjacent properties. For these reasons, the proposed dwellings would have an intrusive and overbearing presence in the outlook from Woodhurst and 72 Welcomes Road, to a degree which would materially undermine living conditions for the occupiers.
24. The large bay window at the rear of Woodhurst is particularly close to the boundary, as are the first floor windows above it. Although the larger portion of the bay window does not face directly into the appeal site, this is a substantial opening, with an outlook that encompasses much of the southern portion of the site. There is a similar outlook from the first floor windows above. As such, this

part of Woodhurst is particularly susceptible to being overlooked from a variety of viewpoints within the site.

25. 72 Woodhurst Road is set further from the boundary, providing adequate separation between the proposed development and its habitable rooms. However, its rear garden is overlooked at close proximity from elevated parts of the site and susceptible to a loss of privacy as a result of the proposed development.
26. Design measures are proposed to direct views from upper floors away from these adjacent properties, through deployment of obscure glazing. The proposed dwellings would also be cut into the slope, which would prevent overlooking from their ground floor windows, subject to appropriate screening.
27. Evidence has been provided that the closest and most direct views from the proposed dwellings could be screened by close boarded boundary fencing. However, the proposed cross sections show that the access road and external areas would follow the generally rising ground levels towards the south and west. Since the boundary fence would also follow the sloping topography, it would be less effective in relation to views from higher land.
28. Although several cross-sections have been provided, these do not fully demonstrate that the boundary fence would prevent neighbouring properties being overlooked from these more elevated outdoor areas. Furthermore, there would be limited space to establish increased boundary screening, based on the application layout. In any case boundary planting would take time to become established and its height could not reliably be controlled.
29. For the above reasons, given the particularly close relationship across the boundary and the steeply sloping topography of the site, I am not satisfied that an adequate level of privacy could be maintained for occupiers of the adjoining properties. Even if it had been clearly demonstrated that adequate boundary screening would be in place, this would not overcome the harm arising from the intrusive and overbearing presence of the proposed dwellings.
30. I conclude that the proposal would be unacceptably harmful to living conditions within neighbouring properties, with particular regard to outlook and privacy for the occupiers of Woodhurst and 72 Welcomes Road. As such, it would conflict with relevant requirements in Policy DM10 of the CLP and policies D3 and D4 of the London Plan. These policies, amongst other things, require that the amenity of occupiers of adjoining buildings are protected and that development delivers appropriate outlook and privacy.

Biodiversity

31. The appeal site is an established residential curtilage and no issues have been raised in relation to any effect on sites designated for their nature conservation value. However, when the application was determined, there were outstanding concerns about the effect on biodiversity, based on the findings of the Preliminary Ecological Appraisal⁵, Bat Emergence Survey⁶, and advice from the Council's ecology adviser⁷.

⁵ The Ecology Partnership Preliminary Ecological Appraisal dated June 2021

⁶ The Ecology Partnership Bat Emergence Survey dated August 2021

⁷ Place Services at Essex County Council, initial consultation response dated 26 October 2021 and updated response dated 20 November 2021

32. Further evidence⁸ has been provided with the appeal in relation to potential habitat for reptiles and dormice, tree retention, tree planting and biodiversity enhancements. In each case, this indicates that satisfactory avoidance, mitigation and enhancement measures could be secured through the reserved matters and planning conditions including an Ecological Mitigation Plan. Additionally, a Lighting Scheme⁹ is proposed, which purports to address potential impacts on bat foraging and commuting routes through the site.
33. The Council confirms that the additional ecological evidence would address the issues raised in the fourth reason for refusal, subject to the imposition of appropriate conditions. For the most part, based on the evidence before me, I have no reason to disagree with this conclusion. However, I have reached a different conclusion in relation to the effect on bats.
34. The evidence on safeguarding of bat foraging and commuting routes relies on an ecological light spill assessment, which informed the Lighting Scheme. This in turn is based on an amended window layout, relocating rear-facing windows to end elevations and altering the size of several openings. The evidence confirms the underlying purpose was to reduce light spill, to maintain a dark corridor along the western boundary of the site, for the benefit of foraging and commuting bats.
35. For reasons explained above, I have not had regard to the amended window layout when considering the appeal. Consequently, the evidence does not clearly demonstrate that the proposal would avoid harm to bat foraging and commuting routes. While there is evidence that this matter could be resolved through amendments to window openings, that is not the proposal which is before me. Neither could this issue be adequately addressed through the submission of reserved matters.
36. I therefore conclude that the proposal would not adequately protect biodiversity, with specific regard to its effect on bat foraging and commuting routes. While other ecological impacts could be addressed through appropriate conditions, this outstanding matter brings the proposal into conflict with policies DM10 and DM27 of the CLP and Policy G6 of the London Plan. These policies, amongst other things, require that development proposals should manage impacts on biodiversity, retain natural habitats and avoid adverse impacts on protected species.
37. CLP Policy DM28 and London Plan Policy G7 relate to the retention and protection of existing trees. Since I have concluded that this aspect of the proposal could be addressed through the imposition of suitable conditions and the reserved matters, the proposal would not conflict with these particular policies referred to in the fourth reason for refusal.

Transport Options

38. The site is within an area classified as having a Public Transport Accessibility Level of 0 (the lowest level). A railway station and local shops are within a feasible walking distance. However, absence of pavements and cycle facilities along the surrounding road network is likely to increase reliance on private motorised transport, with associated consequences for air quality and reliance on fossil fuels.

⁸ Appendix 3 of Trinity Square Developments Statement of Case

⁹ Strenger Lighting Assessment dated April 2022

39. Policy SP8 of the CLP identifies a requirement for new development to contribute towards electric vehicle (EV) infrastructure, car clubs and car sharing schemes. Based on advice from the Council's Transportation Team, the Officer Report identifies a required financial contribution for these measures, along with improvements to walking and cycling facilities. While I have been provided with limited justification for the specific sum of £2000 per dwelling, the appellant has expressed willingness to make a financial contribution on that basis and has provided a Unilateral Undertaking (UU) to that effect.
40. Given the site's poor accessibility to public transport and the barriers to walking and cycling, a contribution towards lower carbon transport initiatives is justified in principle, to comply with Policy SP8. Development at the scale proposed would materially increase the need for future occupiers to travel, with associated reliance on the private car, while not being of sufficient scale to deliver meaningful improvements to transport options on site. Therefore, notwithstanding the absence of evidence to justify the specific sum sought by the Council, a UU to make an appropriate contribution towards transport initiatives would in principle meet the tests for planning obligations as set out in the National Planning Policy Framework.
41. However, although the UU is signed by the landowner, there is no evidence that the appropriate consent has been obtained from a mortgagee who has a charge over the appeal site. Therefore the UU is incomplete. In addition, although evidence has been provided of engagement between the appellant and the Council, this does not explicitly confirm that the Council is satisfied that the UU would be effective. Therefore, while I acknowledge that the appellant is agreeable to making the contribution requested by the Council, no effective legal mechanism to secure such a contribution is before me.
42. The appellant proposes imposition of a Grampian condition to secure the required agreement prior to commencement of development. National Planning Practice Guidance advises that such conditions should be used only in exceptional circumstances, such as to support the rapid delivery of a proposed development which is otherwise acceptable. There is no evidence of any such exceptional circumstances in this case. In addition, there remains some uncertainty about whether the UU can be successfully completed. On that basis, I cannot be confident that the proposed condition would be enforceable or effective in this case.
43. Had I been otherwise minded to allow the appeal, these are matters which I could have raised with the parties. However, since resolution of this issue would not overcome the other harm identified above, there would have been little benefit in doing so in these circumstances.
44. Therefore, for the reasons set out above, I conclude that, based on the evidence before me, the proposal would not make adequate provision for lower carbon transport options. As such, it would conflict with policies SP8 and DM29 of the CLP and policies T4, T5, T6, T6.1 and T9 of the London Plan. These policies, amongst other things, require that new residential development contributes towards the provision of enhanced off-site infrastructure for walking, cycling, EV charging and car clubs.
45. CLP Policy DM30, also referred to in the fifth reason for refusal, relates to car and cycle parking. Subject to the imposition of appropriate conditions, the proposal would address these requirements. Therefore, I have not identified

any conflict with this particular aspect of the development plan. However, this does not mitigate the conflict with other relevant policies, as set out above.

Other Matters

46. The Council has confirmed that the measures in the Fire Strategy Report would address the third reason for refusal. This includes confirmation that the site layout which is before me would provide adequate access for emergency vehicles. Based on the evidence before me, I have no reason to reach a different conclusion.
47. The proposal would contribute seven additional homes to the supply of housing, providing accommodation which would address or exceed local requirements in terms of housing mix, internal accessibility, space standards and outdoor amenity space. It would make more efficient use of the site and would be within an area where additional housing, including backland development, is appropriate in principle.
48. However, given the area's poor Public Transport Accessibility Level, the appeal site is not in a particularly well-connected location. Therefore, the proposal's contribution towards the environmental and social objectives of sustainable development would be inherently limited. Nor has any evidence been presented that the Council lacks a five year supply of housing land. These factors weigh against the scale of the proposal's beneficial effect on the supply of housing.
49. While the existing dwelling on the site is in a somewhat poor state of repair, it is not particularly prominent within the street scene and does not materially detract from the character of the area. In any event, there is no substantive evidence that the dwelling is incapable of refurbishment independently of the proposed development.
50. Evidence that adequate car and cycle parking would be provided, additional traffic could be accommodated and energy efficiency, refuse storage, drainage and construction impacts could be managed through conditions are neutral factors which weigh neither for nor against the proposal.
51. My attention has been drawn to several other developments, which illustrate that backland and more intensive development has been permitted in the surrounding area. Based on my observations on site, these sites differ in a number of respects from the appeal site, notably in terms of their topography and layout in relation to adjacent properties and the wider street scene. I have considered the proposal on its merits and the presence of these nearby developments does not outweigh the harm I have identified in relation to the main issues as set out above.
52. While the guidance in the SDG would have reflected the Council's approach to interpretation of Policy DM10, this guidance has subsequently been revoked. As a result, I have not had regard to it and the extent to which the proposed development responded to detailed guidance in the SDG is no longer relevant. Given the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, it was not inappropriate for the Council to exercise its planning judgement based on the wording of the development plan itself, including policy DM10, having regard to any other material considerations.
53. I acknowledge that there was engagement with the Council prior to submission of the application and the proposal was amended in response to advice at that

stage. However, such advice is not binding on the Council's formal consideration of the application, including through exercise of delegated powers, taking account of all matters raised. Neither the timeliness of the Council's decision-making process, nor the quality of communication while the application was under consideration have a bearing on my consideration of the main issues, as set out above.

Conclusion

54. For the reasons set out above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR