



Appeal Decision

Site visit made on 10 July 2023

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2023

Appeal Ref: APP/L5240/W/22/3313103

50 Bishops Park Road, Norbury, London, SW16 5TS

- 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 Ms Pamela Vega against the decision of the London Borough of Croydon.
 - The application Ref. 22/02557/FUL, dated the 7 July 2022, was refused by notice dated the 7 September 2022.
 - The application is for a development comprising the demolition of existing building and the erection of a three storey building providing 9 residential units for social housing purposes with associated landscaping and access.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by the Appellant against the London Borough of Croydon. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council's decision notice refers to eleven (11) reasons for refusal. I have sought, where possible, to group some of these reasons under the same main issue to avoid duplication and for ease of reference.
4. The Appellant's Statement of Case (SOC) refers to a revised scheme to address the Council's objections that would retain the host property together with a new development of seven (7) units. The Appellant has requested, should it be preferable, that this revised scheme be considered as part of the appeal. Other than the description of this alternative scheme in section 6 of the SOC, I have not been provided with any plans showing this revised scheme. The Council's Appeal Statement (CAS) states that they have also not been provided with a copy of this revised scheme. In the absence of any revised plans it is not possible for me to consider this alternative development. Moreover and as the Council state in their CAS, the appeal process should not be used to evolve a scheme in this way. The correct process for considering an alternative scheme is through the submission of a fresh planning application to the Council.
5. Even so, it is apparent that this alternative scheme would involve substantial changes and differences to the development which is the subject of this appeal. Those changes would need to be advertised in the usual way and interested parties given a further opportunity to comment, bearing in mind the large

number of objections received in response to the planning application. Both statutory and non-statutory consultees would also need to be reconsulted. In view of this and in applying the 'Wheatcroft Principles' (*Bernard Wheatcroft Ltd v SSE* [JPL 1082 P37]), the determination of this appeal on the basis of an alternative scheme would, in my view, prejudice the interests of interested parties as they have not been consulted on or had an opportunity to comment on the revised scheme. It is essential that the appeal process is fair and open to all parties, including interested parties. In this respect, I find that my consideration of the appeal can only relate to the scheme that was considered by the Council, and on which interested parties and other consultees views were originally sought. I have, therefore, proceeded to determine the appeal on the basis of the scheme refused planning permission on 7 September 2022.

6. In response to a matter raised in the Appellant's Planning, Design & Access Statement, I invited the parties to comment on the current housing land supply position. The Council's email dated 25 July 2023 confirmed that, as set out in their March 2023 Annual Monitoring Report and as of 1 April 2023, the Council was able to meet its five year housing supply, with a supply of 11,893 units equating to a 5.3 year supply. The Appellant's email dated 26 July 2023 confirmed that they agreed and did not challenge the position set out by the Council in its email of 25 July 2023.

Main Issues

7. The main issues are the effect of the proposed development on: (a) the character and appearance of the area; (b) the living conditions of neighbouring occupiers; (c) whether the proposal secures an adequate mix of units, a good standard of accommodation and meets accessible housing requirements; (d) whether the proposal protects and enhances biodiversity and mitigates for any loss including trees; and (e) whether the proposal includes measures to mitigate for any impact on highway safety, and includes appropriate provision for refuse storage, cycle parking and fire safety.

Reasons

Character and appearance

8. The appeal site is located on a bend in Bishops Park Road, which results in a large and irregular shaped plot at the rear. The site includes a two storey end of terrace property with a small garden at the front and a shared side access which leads to a single storey garage. To the rear is a large garden, which partly backs onto an embankment that rises to the main railway line and partly onto a Medical Centre, accessed from Fairview Road. Bishops Park Road is predominantly residential and its built form comprises similar two storey terraced and semi-detached properties with a largely uniform character, design and layout. The rear garden to the appeal site contains fifteen trees which are visually prominent from neighbouring properties and from the road. Together with the trees on the railway embankment they provide an important green backdrop to the site and are a positive feature of the character of the area.
9. Within this context, the appeal proposal involves the demolition of the existing property and the construction of a three storey building on the frontage that would link via a single storey element to a building of two and three storeys within the rear garden. The development would provide nine residential units, which the application states would be for social housing purposes.

10. Whilst the new building on the front would largely replace the host property, the appeal proposal would introduce a substantial amount of new building into the rear garden. Other than the link, the new building would be two and three storeys and would extend well above existing boundary fencing and would thus be highly visible from surrounding properties. This significant mass of building would be introduced into a location where there is currently no development and as such it would be completely out of keeping with the prevailing pattern and rhythm of development on the road. Notwithstanding the presence of the trees, the proposal would impact adversely on the sense of openness and greenery that prevails, both of which are positive features of the site that contribute to the areas local distinctiveness and character.
11. The proposed building, together with new hardstanding, would occupy a large part of the rear garden. Built development, extending to two and three storeys would be sited close to and abutting the common boundaries with 48 Bishops Park Road (No.48) (to the south) and 54 Bishops Park Road (No.54) (to the north west). In the latter case, the two storey flank elevation to the new building would run along a large length of the side boundary to its rear garden. Although there are currently trees on this boundary, they still allow light to permeate through and their soft appearance would bear no comparison to the substantial solid two storey wall proposed. The new building would also be sited close to the boundaries with the railway embankment and Medical Centre. As a consequence, the proposed layout would appear cramped and contrived, it would be completely out of character with its surroundings and would lead to an overdevelopment of the appeal site.
12. The Appellant refers to the alterations and extensions that have taken place within the road. I accept that some properties have been extended at the side, rear and at roof level, but as I observed on site the level of change that has occurred is very modest. I also acknowledge that some properties benefit from outbuildings in their rear gardens, but again these buildings are small scale and my attention has not been drawn to any new buildings on garden land within the road that are in any way comparable to the significant scale, mass and footprint of the proposed development.
13. The Appellant contends that the proposal would provide much needed housing accommodation on previously developed land. Whilst I acknowledge the housing benefits of the proposal, which I return to later, Annex 2 to the National Planning Policy Framework (July 2021) (Framework) excludes rear gardens from the definition of previously developed land. I also acknowledge the contribution that small windfall sites can make to housing provision and to making efficient use of land, but paragraph 71 of the Framework also states that plans should consider the case for setting out policies to resist inappropriate development of residential gardens "*for example where development would cause harm to the local area*". Similar advice is set out in paragraphs 124 (d) and 130 of the Framework. As I have found, the appeal proposal would result in significant harm to the character and appearance of the area and would erode the positive contribution that the appeal site makes to the green infrastructure and openness of the area.
14. The Appellant refers to the new housing at 32-34 Fairview Road and contends that this represents a precedent as it is a similar form of development. I do not agree. Whilst I have not been provided with the detailed background to this scheme, the evidence before me suggests that it replaced a garage and

storage units and did not involve the development of garden land. Even so, I have, as is required, considered the appeal proposal on its individual merits having regard to the particular circumstances of the case and its local context. Consequently, this example does not affect my findings on this issue.

15. As to the condition of the rear garden, which the Appellant suggests, due to poor management and neglect, is overgrown, that is a matter that is completely within the control of the Appellant. Moreover, as I observed on site, the garden still appears to be in use and whilst it was partly covered in black tarpaulin and some areas are overgrown, these could be quickly and easily improved.
16. Accordingly, I find that the appeal proposal would cause significant harm to the character and appearance of the area contrary to policies D3 and D4 of The London Plan (March 2021) (TLP) and policy DM10 of the Croydon Local Plan (February 2018) (CLP). These seek, amongst other requirements, to ensure that new development follows a design led approach, that its form and layout responds to local distinctiveness and character, and that it respects existing development patterns as well as scale and appearance.

Living conditions - neighbours

17. As I confirmed above, the proposed building would extend close to and along the side boundaries to the rear gardens of No's 48 and 54. Whilst the new building would be stepped, it would be 2 and 3 storeys high extending across most of the width and length of the rear garden to the host property. As a consequence, it would be highly visible from the rear windows and private amenity areas to No's 48 and 54, as well as those of the properties further south east and north west on Bishops Park Road. From these viewpoints the combined height, massing and scale of the proposed development would be visually dominant and would have any overbearing impact on neighbours living conditions. Notwithstanding the findings of the Daylight & Sunlight Assessment, the height, extent and rearward projection of the proposed development would overpower and overshadow neighbouring properties, significantly harming their living conditions.
18. Whilst there would be no windows on the proposed side elevation of the new development facing No.54, there would be south facing windows in close proximity to the common boundary offering oblique views into that property, where no such views exist at present. On the south eastern side, a proposed first floor balcony and windows would overlook the rear garden of No.48 resulting in an unacceptable loss of privacy to occupiers of that property.
19. I also agree with the Council that the introduction of a development of nine flats with the associated increase in comings and goings and other activity, over and above that currently generated by the host property, would result in a significant increase in noise and disturbance that would again be harmful to the amenities of neighbouring occupiers and result in an unneighbourly form of development. I accept that there is background noise particularly from the railway line, but the proposal would increase the noise and disturbance in a location where neighbouring occupiers would reasonably be entitled to expect to be able to enjoy the level of amenity that their rear gardens currently afford.
20. Accordingly, I find that the proposed development would result in significant harm to the living conditions of neighbouring occupiers contrary to policy D3 of

TLP, policy DM10 of the CLP and paragraph 130 f) of the Framework. These seek to ensure, amongst other requirements, that new development does not cause unacceptable harm to the living conditions of existing occupiers.

Housing mix, standard of accommodation and accessible housing

21. Policy SP2.7 of the CLP seeks to secure a strategic target for 30% of all new homes to have 3 beds or more. The proposal includes two 3-bed flats, a level of provision of 22%. No evidence has been provided to justify a level of provision that falls below the strategic target and thus the proposed mix would conflict with policy SP2.7.
22. Although the proposed residential units would meet the minimum floor space requirements of the National Housing Space Standards (2015), I concur with the Council that there are a number of deficiencies in the submitted layout. These include: the level and nature of assessable housing, with none of the upper floor units being wheelchair accessible due to the absence of a lift; the floor to ceiling heights of the new units which fall below the required height; and, the poor aspect, light and outlook of some of the new units that are constrained by the proximity of their windows to the common boundaries or to the mature trees on the railway embankment or to the two storey Medical Centre, which appears to sit at a higher level to the appeal site.
23. Moreover, the proposed rearmost units, which include various balconies and windows facing the railway line would suffer from the constant noise and disturbance that the line generates. In the absence of any Noise Assessment it is not possible to determine the level of impact that this would give rise to or what potential mitigation might be required. Furthermore, the fact that a large part of the rear of the host garden would be developed leaves little scope for amenity space to serve the proposed units. I accept that a number of the new units would have a small dedicated amenity area and/or balconies, but in relation to the rearmost units the functionality and usability of those spaces would be severely compromised by the embankment trees and Medical Centre. Whilst a communal recreational area is shown on the submitted plans, due to its location, size, proximity to the road and new bedroom windows, it would not be of a high quality and I am not convinced that it would be usable or functional.
24. The Appellant contends that a number of these matters could be controlled by appropriate conditions. I do not agree. The application seeks full planning permission and as such I would expect these matters to be properly addressed at the application stage. Addressing all of these requirements could require amendments to be made to the proposed internal and external layout, which I am not convinced are matters that should be controlled through conditions. Moreover, there is no evidence before me to indicate why these matters could not have been addressed at the application stage.
25. Turning to the issue of housing, permission is sought for 9 new units for social housing purposes. Whilst the Appellant refers to discussions with a Registered Provider, no further details have been provided and no mechanism put forward that would secure affordable housing in the event that I was minded to grant planning permission. The Appellant's SOC refers to entering into a section 106 Agreement (planning obligation), albeit precisely what for is unclear. Even so, no such Agreement or obligation has been submitted with the appeal.

26. Accordingly, I find that the proposal would be contrary to policies D3, D6 and D7 (design led approach, housing quality & standards, accessible housing) of TLP, policies SP2.7, SP2.8, DM1.1, SP4.1 and DM10 (mix of houses, quality & standards, housing choice, urban design, design & character) of the CLP and the Mayors Housing Supplementary Planning Guidance (March 2016).

Biodiversity and trees

27. Policy DM27 of the CLP seeks, amongst other requirements, to protect and enhance local biodiversity, and to incorporate biodiversity measures within proposed buildings and site layouts. This approach is consistent with that in paragraph 180 of the Framework, which requires various principles to be applied, including resisting development that would result in significant harm to biodiversity where it cannot be avoided, mitigated or compensated for, and to integrating opportunities to improve biodiversity as part of a developments design. The Council contend that the appeal proposal fails to consider the potential impact of the proposed development on the sites biodiversity and would thus be contrary to policy DM27.
28. In order to assess the effect of an application for new development on any existing or potential biodiversity and ecological interests, sufficient supporting information is, in my view, required at the outset to understand the significance of any existing interests and the impact, if any, of the development on them. As such, I agree with the Council that the application should have been accompanied by appropriate biodiversity and ecological assessments, albeit it is unclear from the evidence before me whether such assessments were sought during the determination of the application. Even so, whilst I acknowledge the inclusion of green roofs within the proposed design, as no such assessments, even preliminary reports or surveys, have been undertaken it is not possible to identify whether there are any biodiversity or ecological interests on the site of any value, and if there are the impact of the development on these and what mitigation might be required. For these reasons, this is again not a matter that could be controlled by conditions as those assessments are required to inform and support the proposed quantum and layout of the development.
29. Policy DM28 of the CLP also seeks to protect and enhance the Borough's trees and to prevent development that would result in the avoidable loss of trees that contribute to the character of the area. As I found earlier, the existing trees on the appeal site, together with those on the embankment, make a positive contribution to the character of the area in that they are highly visible from neighbouring properties and from public vantage points.
30. Whilst I note that the application was accompanied by a Tree Report this initially sought to identify, by reference to a Tree Constraints Plan, the number, type and condition of existing trees and was prepared without reference to the proposed layout. A subsequent Tree Protection Plan was prepared with the proposed layout overlaid and showed all 15 existing trees to be removed, with protection only afforded the trees on the railway embankment. In relation to the submitted plans, there is a 'Hard and Soft Landscape Plan', but this only identifies small areas for soft landscaping with no indication of any new tree planting, landscaping or margins.
31. The 15 trees to be removed include 13 Category B and C trees, which the Tree Report found to be in good condition and with a potential lifespan of 10 – 20

years. Even so, there is no evidence to justify the loss of all 15 trees or any assessment of the consequent impact on the character of the area. There is also no evidence to indicate how and where suitable replacement trees could be accommodated within the proposed layout or indeed any other forms of landscaping to mitigate for this loss. Even so, given the extent of new building and hardstanding proposed, I am not convinced that there would be suitable space available for any meaningful landscaping. The areas highlighted on plan for soft landscaping appear to fall within the amenity areas allocated to some of the proposed units, which are in themselves already small and constrained. Again, this matter could not, in my view, be addressed by conditions as it raises an issue that is central to the acceptability of the proposed layout. Moreover, the absence of any replacement tree planting and landscape margins accentuates, in my view, the cramped nature of the proposed development and further supports my finding that the proposal represents an overdevelopment of the appeal site

32. Accordingly, I find that the appeal proposal would fail to comply with the requirements of policies DM27 and DM28 of the CLP.

Highway safety, refuse provision and fire safety

33. I agree with the Council that the appeal site is located within a sustainable and accessible location. Even so, I also agree with the Council's assessment in its Delegated Report of the deficiencies in the submitted Parking Stress Survey, the absence of any mitigation to offset the impact of the development on traffic congestion and absence of any measures to promote sustainable transport, as required by the corresponding development plan policies. The Appellant has again suggested that these issues could be controlled by conditions, but I concur with the Council that that approach would not be appropriate given the issues that remain outstanding. As the Council indicate, any measures, for example, to secure improvements to sustainable transport, by way of contributions, would need to be secured through a planning obligation, and no such obligations (section 106 Agreement) have been put forward in support of the appeal.
34. As to the Council's contention that the proposed layout does not meet the development plan's guidance and policies in relation to refuse, cycling and fire safety, there is no evidence before me that would lead me to dispute the Council's findings in this respect, which are also set out in their Delegated Report. They are all matters that should, in my view, be addressed at the application stage and not via the imposition of conditions. The failure to address these matters adds further support to my findings that the siting, quantum and scale of development proposed is excessive.
35. Whilst I acknowledge that some of these requirements are dealt with through the Building Regulations, they are all matters that the relevant development plan policies require schemes of this nature to show compliance with. In this respect, as well as the above considerations, I am not convinced that it has been properly demonstrated how the access for fire appliances and pedestrians would work and could be separated, if required, from the existing access for the garage and crossover that serves No.54. This takes on more importance due to the apparent discrepancies on the drawings as to the correct application red line and the lack of detail of the proposed access arrangement on plan.

36. Accordingly, I find that the appeal proposal would fail to fully comply with the requirements of policies T4, T5, T6.1 and D12 (assessing & mitigating transport impact, cycling, car parking, fire safety) of TLP and policies DM13, SP8.3/15 & 16, DM29 and DM30 (refuse & recycling, pattern of development & accessibility & parking, promoting sustainable travel & reducing congestion, car & cycle parking in new development) of the CLP.

Planning balance and conclusions

37. I accept that the appeal proposal would boost housing supply in a sustainable and accessible location, make more effective use of land and generate short term employment during construction, benefits that are supported by other policies in the development plan and Framework. Whilst the Appellant also indicates that the proposed units would comprise social housing, no further evidence has been submitted to support the provision of affordable housing and no section 106 Agreement (or Unilateral Undertaking) or other mechanism has been put forward that would secure the provision of affordable housing in the event that planning permission was granted.
38. Even if the proposal did secure affordable housing, the Council have confirmed that they are able to demonstrate a 5-year supply of housing land, which has not been challenged. Furthermore, the adverse impact of the appeal proposal on the character and appearance of the area and on neighbouring occupiers living conditions would be significant. The failure of the proposed layout to also fully meet development plan policy and guidance requirements in relation to housing mix, standard of accommodation, accessible housing, highway safety, sustainable transport, refuse, cycling and fire safety, further accentuate the harm that would arise from the appeal proposal.
39. In view of this, the benefits that would accrue from the appeal proposal would not be sufficient, either individually or cumulatively, to outweigh the significant harm that I have identified and the clear conflict with the Framework and development plan, when read as a whole.
40. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR