



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: 16th August 2023

Appeal Ref: APP/L5240/W/22/3310527

Land adjoining 54 Beulah Hill, Upper Norwood, London, SE19 3QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by DPA Architects against the London Borough of Croydon.
 - The application Ref. 22/02647/OUT was dated the 7 July 2022
 - The application is for the erection of 7 residential detached dwellings. Outline application with all matters reserved apart from 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. I have referred to the Appellant as DPA Architects, as that is the only name that appears on both the Application Form and Appeal Form.
4. During the determination of the application, the Appellant sought to respond to the Council's Transport Planners (Highways) consultation through the submission of revised plans and an itemised response from Entran (the Appellant's highway consultants). The Council advised the Appellant that as the changes shown in the revised plans and response were significant they would not agree to their receipt or substitution. The Council suggested that the application be withdrawn and a new application submitted with the revised information, following, if required, further pre-application discussions. As the Appellant disagreed with that approach, they submitted an appeal against non-determination.
5. I invited both parties to comment further on this issue. The Council's email of 27 July 2023 stated that at the time of the submission of the application its caseloads were high and there were delays to the service. Consequently, Highways comments were not received until September 2022, after the statutory determination deadline in August 2022. As these comments recommended refusal, they were forwarded to the Appellant in October 2022 with advice that as the issues with the application were significant the Council would not accept revised plans. Whilst revised plans were submitted, they were not accepted by the Council and the application was not re-advertised.

As such, the Council's view was that the revised plans should not form part of the determination of this appeal.

6. The Appellant's email of 28 July 2023 confirmed that the revised plans were submitted with the intention that they superseded those submitted with the original application. Also, that the Appellant had asked for an extension of time so that the Council could consider their response to Highways comments, but that the Council declined to agree an extension. As such, the Appellant's view was that the revised plans should form part of the determination of this appeal. The application had already been delayed and a further delay for Highways to review the Appellant's response to their comments would, they contend, have made no difference in terms of timescales.
7. In the same way as the appeal process should not be used to evolve a scheme it also cannot, in my view, be used as a replacement for the process whereby revised plans and supporting information is formally accepted, substituted and re-advertised as part of the planning application process. In this case, I agree with the Council that the revised plans and Entran response include substantial changes and differences to the original plans and documentation submitted with the application. Both the revised plans and Entran response would have needed to be re-advertised in the usual way to enable formal consultees to be reconsulted and specifically, in this case, for a response to be obtained from the Highways given their original objection.
8. Interested parties should also been given a further opportunity to comment, bearing in mind the large number of objections received in response to the outline application and the fact that a number of these raised similar highway safety issues. In view of this and in applying the 'Wheatcroft Principles' (*Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]), the determination of this appeal on the basis of the revised plans and information would, in my view, prejudice the interests of interested parties as they have not been consulted on or had an opportunity to comment on these submissions. 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 original plans and documentation considered by the Council, and on which interested parties and other consultees views were originally sought.
9. The application seeks outline planning permission for the erection of seven detached dwellings with only 'access' submitted for determination. Even so, a number of 'indicative' plans have been submitted and I have only had regard to these in reaching a finding on whether the appeal site would be capable of accommodating the quantum of development for which outline permission is sought, namely seven detached dwellings. In relation to 'access', Article 5 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMP) defines this as meaning the accessibility to and within the site (for which outline permission is sought) for vehicles, cycles and pedestrians, in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network. I have therefore determined the appeal proposal on this basis.

Main Issues

10. The main issues are: (a) whether the proposed development would be acceptable having regard to local and national planning policies on the location of new housing; (b) whether sufficient detail and information has been submitted of the proposed access arrangements to demonstrate that it would operate acceptably in relation to highway safety, that there is appropriate provision for servicing and fire safety, and the effect of the proposed access on neighbours living conditions; and (c) whether the proposal has adequately considered the implications for ecology and trees.

Reasons

Suitability for housing

11. The appeal site comprises an elongated strip of land that fronts onto Beulah Hill and backs onto the rear gardens of the properties in Ellery Road. It also includes a small return frontage onto Harold Road. The site is enclosed by timber fencing. Whilst I understand that the site has previously been managed and cut back, it is currently overgrown with large areas of brambles, shrubs and grass. There are also a number of mature trees on the site which are visually prominent from surrounding public vantage points and in particular when traveling in either direction on Beulah Hill. These mature trees are a positive feature of the character of the area and contribute to a sense of openness and greenery on the appeal site, that visually links with similar open areas of grassland and mature trees found along Beulah Hill.
12. The Council's Delegated Report (CDR) and the Appellant's Design & Access Statement (D&AS) state that the whilst the appeal site is currently a green space, it is not allocated for any purpose or use on the Policies Map to the Croydon Local Plan 2018 (February 2018) (CLP). As such, the appeal site is effectively shown as 'white land' and is thus undesignated space that the public do not have access to. Both parties have also referred to the need for new housing within the Borough, set out within the housing targets of the CLP and The London Plan (March 2021) (TLP), including targets for net completions from smaller sites. For these reasons, the CDR confirms that the Council have no in principle objection to the development of the site for residential use, subject to compliance with other relevant development plan policies.
13. Based on the above and the evidence before me, I concur with the Council's findings in this respect and find that there is no in principle objection to the development of the appeal site for residential use. There is no substantive evidence before me that would lead me to reach a different finding, albeit as the CDR confirms this support is subject to compliance with other relevant development plan policies. This finding of principle is supported by, amongst others: paragraph 60 of the National Planning Policy Framework (July 2021) (Framework), which sets out the Government's objective of significantly boosting the supply of homes and for a variety of land to come forward where it's needed; also paragraph 69 of the Framework which identifies the important contribution that small and medium sized sites can make to meeting the housing requirement of an area; and, paragraph 119 of the Framework which states that decisions should promote the effective use of land in meeting housing needs while safeguarding and improving the environment, and ensuring safe and healthy living conditions.

14. Accordingly, I find that, in principle, the development of the appeal site for residential use is acceptable, subject to compliance with other relevant development plan policies. It would thus be compliant, in this respect, with policies H1 and H2 of TLP, policy SP2 of the CLP, and the corresponding policies of the Framework.

Highway and fire safety, and neighbours living conditions

15. Beulah Hill is a Classified Road (A215), is part of the strategic highway network and is not a Controlled Parking Zone. There is a bus stop in front of the site on Beulah Hill and a further stop just beyond the return frontage of the appeal site on Harold Road. The appeal proposal involves a new pedestrian access onto Beulah Hill, with a separate new vehicle and pedestrian access from Harold Road. The latter would provide access to a parking area for residents and access for service and delivery vehicles, as well as a link to the circulation routes for pedestrians within the site as shown on the indicative plans.
16. These accesses are shown on drawing No. 1515_310, albeit the plan is not, in my view, that clear in that only the new access from Beulah Hill is highlighted. It does show a crossover from Harold Road, but this is not annotated on the plan and it is only from the indicative plans that it's possible to confirm that the latter would provide the main vehicular access to the development. Moreover, the Application Form, under the heading 'Pedestrian and Vehicle' access only refers to drawing No. 1515_310. Whilst the Appellant states that the Entran plans, drawings No. SK01 and SK02, were also submitted for approval, they are not referred to on the Form and the only copies of these plans that I have been provided with are appended to Entran's Transport Statement. As such, it's possible that interested parties would have been unaware that these plans were also submitted for approval.
17. Even so and based on the evidence before me, I concur with the Council's assessment in paragraphs 5.19 – 5.25 of their CDR in relation to the deficiencies and inadequacies of the original plans and documentation submitted in support of the proposed access from Harold Road. These include: the failure to fully demonstrate pedestrian and vehicular sightlines for the new access; failure to show whether the proposed access would meet the Council's dropped kerb access policy in terms of proximity to the bus stop on Harold Road and the junction with Beulah Hill; whether all vehicles would be able to access and exit via the proposed access in forward gear; whether the proposed access and turning area would be sufficient to allow all types of servicing vehicles to access and egress in forward gear; and whether the site could be safely serviced by refuse, delivery vehicles and emergency vehicles.
18. All of these deficiencies raise highway impact and safety issues. They are all based on the concerns raised by Highways in their objection to the application, to which I attach significant weight. In relation to sightlines and the bus stop on Harold Road, as I observed on site, other than the double yellow lines on the corner of the junction with Beulah Hill, vehicles appear able to park in front of the appeal site on Harold Road right up to the bus stop cage, as well as park on the opposite side of the road. This arrangement already reduces visibility and increases the potential for vehicle pedestrian conflicts to arise. The proposed access is also close to the junction with Beulah Hill and as I again observed when the bus stop is in use, which is frequently, vehicles quickly back up towards the junction with the potential to further compromise road safety.

19. I also agree with the Council that in terms of refuse collection and servicing this should take place, where possible, from within the application site and not from the public highway. The Appellant contends that the latter arrangement reflects that which currently exists in the area and was permitted within a new development nearby. In relation to the latter, I have not been provided with any plans or background to that proposal or the circumstances that led to the approval of that development. Consequently, it's not possible for me to determine whether it is relevant or comparable to the appeal proposal. Moreover, the linear nature of any proposed development on the appeal site could lead to refuse and servicing vehicles stopping at various points on Beulah Hill, if no on site provision for servicing was made. As this road is busy, with frequent bus services, and with the presence of other road junctions and a central road island providing further obstacles, refuse collection and servicing from the public highway would obstruct the free flow of traffic on this strategic road and compromise safety by, for example, increasing the potential for vehicle pedestrian conflicts to arise.
20. Turning to the proposed access plans and bearing in mind the points raised above, these should, in my view, be provided at a larger scale and include sections as well as details of gradients and ground levels. The plans I have been provided with do not include a site survey and if no survey has been undertaken then there would be merit in doing so to ensure that any revised plans are accurate. These revised plans should also demonstrate how the proposal would meet the development plans policies and guidance on fire safety. The proposed access for emergency vehicles should, in my view, be considered in conjunction with the 'access' arrangements, a view that is supported by policy D12 of TLP and its text at paragraph 3.12.1 which states that the fire safety of developments should be considered at the outset. Furthermore, it is unclear whether the proposed access, leading to the parking area, would be controlled or restricted to prevent unauthorised access and/or parking. Those details should also be provided as part of the approval of 'access', as, for example, a gated access, if proposed, could have further implications for highway safety.
21. As to the Council's concerns over the alleged impact of the proposed access and car parking/servicing area on the living conditions of residents in Ellery Road, whilst there is often some overlap between the DMP definitions of 'access' and 'layout', I am not convinced that the car parking layout falls within the definition of 'access'. Even so, the proposed access and turning area would fall within this definition and I agree with the Council that as it would be used frequently the resulting increase in noise and disturbance would have a harmful impact on the living conditions of the occupiers of 1 and 3 Ellery Road.
22. The proposed access and turning area would directly back onto the boundary to the short rear gardens to those properties, and thus all of these activities would take place in close proximity to those occupiers private amenity areas and rear windows, in a location where no such similar activities take place at present. Notwithstanding background noise levels, based on the evidence before me and my observations on site, the proposed access would result in increased noise and disturbance that, without mitigation, would be harmful to the living conditions of neighbouring occupiers.
23. Accordingly, I find that the appeal proposal would fail to fully comply with the requirements of policies T6, D3, D6 and D12 (car parking, design led approach,

housing quality, fire safety) of TLP and policies DM10, SP8 (not SP6), DM29 and DM30 (design & character, transport & communication, promoting sustainable travel & reducing congestion, car & cycle parking in new development) of the CLP, and paragraphs 111 and 130 f) of the Framework.

Ecology and trees

24. 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 ecology and trees and would be contrary to policy DM27, as well as policies G6 and G7 of TLP.
25. Policy G6 of TLP states that development proposals should aim to secure net biodiversity gains, informed by the best available ecological information and addressed at the start of the development process. Policy G7 states that, where possible, existing trees of value should be retained within development proposals, in particular where Category graded trees are considered to be of importance to amenity and biodiversity, as defined in BS 5837:2012.
26. The documents I have been provided with do not include a Tree Report or a Tree Constraints Plan or an ecological assessment. I note from the Appellant's D&AS that whilst some visual survey of existing trees took place, no technical tree survey/assessment appears to have been undertaken. In relation to ecology, the D&AS states that following the Council's critique of an ecological assessment submitted with a previous application, that a new ecological appraisal would be submitted with the appealed application. Again, I have not been provided with a copy of any new appraisal or indeed a copy of the original ecological assessment.
27. 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 required at the outset to understand the significance of any existing interests and the impact, if any, the development would have on them. This view is supported by policies G6 and G7 of TLP. Consequently, I agree with the Council that the application has failed to adequately consider the impact of the development on ecology or trees. This is not matter that could be reserved for future approval as these assessments are required to inform and support the proposed quantum of development sought in this outline application.
28. Turning to existing trees, as I found earlier these make a positive contribution to the character of the area in that they are highly visible from neighbouring properties and from public vantage points, specifically those traveling, in either direction, on Beulah Hill. They also make an important contribution to maintaining the green character of this part of Beulah Hill and to providing a visual link with other similar green spaces bordering onto the road. As I confirmed above, there is no Tree Report or Tree Constraints Plan to identify those trees of value and their Category grading. In relation to the indicative proposed site plan, drawing No. 1515_308_A, this does not identify which, if

any, trees would be retained, even though the Application Form confirms that there are trees on the appeal site and also on adjoining land that could influence the development or might be important as part of the local landscape character.

29. There is therefore no evidence before me that identifies and assesses the value of existing trees and if they are higher Category trees, whether they would be retained and if not, the justification for their removal and any consequent impact on amenity and biodiversity. As I observed on site, some of the existing mature trees appear to fall within the proposed access and turning area, and others within the circulation routes and indicative footprints of the proposed detached dwellings. As a consequence, in addition to the harm to amenity and the environment that would result from the loss of any existing trees of value, I am not convinced that the indicative plans provide confidence that an acceptable development, as described in the proposal for which outline consent is sought, could be devised at the reserved matters stage and thus accommodated on the appeal site.
30. Accordingly, I find that the appeal proposal has failed to adequately consider the impact on ecology and trees contrary to the requirements of policies G6 and G7 of TLP and policy DM27 of the CLP.

Planning balance and conclusions

31. I accept that there is no objection, in principle, to residential development on the appeal site, subject to compliance with other relevant development plan policies. The sites development for residential use would boost the supply of housing 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.
32. However, based on the evidence before me the proposed access, including accessibility to and within the site, would have an adverse impact on highway safety, fire safety and the living conditions of neighbouring occupiers. The submitted application has also failed to adequately consider existing ecology and trees and their implications for the quantum of development being sought through this outline application. Consequently, I am not convinced that a development of seven detached dwellings, as shown on the indicative plans, could be accommodated on the appeal site in accordance with the relevant development plan policies.
33. In view of above, 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 conflict with the Framework and the development plan, when read as a whole.
34. 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