



Appeal Decision

Site visit made on 5 September 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2023

Appeal Ref: APP/L5810/W/22/3298282

39 Second Cross Road, Twickenham TW2 5QY

- 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 Mr and Mrs A Bianchi against Richmond Upon Thames London Borough Council.
 - The application Ref 22/0252/HOT, is dated 3 February 2022.
 - The development proposed is construction of new 2 bed dwelling to rear of 39 Second Cross Road.
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Decision

1. The appeal is allowed and planning permission is granted for construction of new 2 bed dwelling to rear of 39 Second Cross Road, Twickenham TW2 5QY in accordance with the terms of the application, Ref 22/0252/HOT, dated 3 February 2022, subject to the schedule of conditions attached to this Decision.

Background and Main Issues

2. Although there is no formal decision from the Council, it has offered putative reasons for refusal. Based on these, the main issues are:
 - The effect of the proposal on protected trees and the character and appearance of the Twickenham Green Conservation Area ('CA');
 - The effect of the proposal on biodiversity;
 - Whether the proposal can make acceptable provision for cycle storage and refuse and recycling facilities;
 - Whether the proposal would exacerbate demand for on street parking;
 - Whether the proposal can be designed to achieve sufficient water efficiency;
 - Whether the proposal can provide for electrical vehicle charging points;
 - Whether the proposal makes adequate provision against flood risk; and,
 - Whether the proposal makes adequate provision for fire safety.

Reasons

Loss of trees and impact on the character and appearance of the CA.

3. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention should be paid to the desirability that the character or appearance of the conservation area should be preserved or enhanced. Paragraph 195 of the National Planning Policy Framework ('the Framework') requires me to assess the particular significance of any heritage asset that may be affected by a proposal.
4. The CA is formed around the important historic open recreational space of Twickenham Green. The busy Hampton and Staines Roads and the quieter First Cross Road define the distinctive triangular shape of the green. Second Cross Road and the appeal site are located on the edge of the CA with older cottages on First Cross and Second Cross Roads having distinctive historic long narrow garden plots. The existing dwelling at the appeal site is also identified as a locally listed building.
5. The appeal site backs onto a small terrace of four properties at Chilvers Close. Vehicular access to the site is via Chestnut Road, a relatively narrow road.
6. The appeal site includes the long rear garden of 39 Second Cross Road. This garden has been physically divided by the above-mentioned vehicular access, with a more formal garden laid out to the side and rear of the existing dwelling, and a less formal area to the rear which includes a garage and car parking area and vegetable plot. The proposed dwelling would occupy the less formal part of the garden.
7. The Council has not specifically raised any, in principle, objection to the general scale and design of the proposed dwelling or its siting within an existing garden in respect of the CA and the locally listed building. Having visited the appeal site and in considering the proposal, I have no strong reason to disagree. Even so, and notwithstanding that some details of materials are provided, given that the proposed dwelling would be visible from the highway and is within a CA, it is important that to ensure the quality of the development, that details of external surfaces and finishes are agreed with the Council by a condition if the appeal were to succeed.
8. However, the Council has raised concerns regarding the impact of the proposal on a number of established trees located in the appeal site and adjacent property 27 Second Cross Road and the effect of this on the character and appearance of the CA.
9. There are views from the end of Chestnut Road of mature trees and landscaping within the rear gardens of properties on First and Second Cross Roads, including the much larger and mature Sycamore and Ash trees within the garden of 27 Second Cross Road. Due to their heights, these are also visible from the wider area, including Chilvers Close. Thereby, these larger trees positively contribute to the verdant character in this part of the CA.
10. Although the submitted Arboricultural Method Statement Implications Assessment and Tree Protection Report ('the Tree Report') was prepared to support a previously withdrawn application, this includes an assessment of the trees within and adjacent to the appeal site. Whilst the Council argues that the Tree Survey is unrealistic and unlikely to represent the true root protection

areas (RPAs), I have no technical evidence to support this. Therefore, I attach some weight to the Tree Report.

11. Within the Tree Report, the only trees recommended for removal are T5 and T8. T8 is a Cotoneaster tree, which is relatively small and of limited ornamental value. This is located near the footprint of the proposed dwelling and would not survive as a consequence of the development.
12. T5 is a Pear tree, identified as suffering decay and some mechanical damage. Whilst this tree is shown to be removed on the proposed site plan, on 'Topographical Drawing - Proposed footprint with RPZs overlaid - TB2019LS' this tree is shown as retained. Because of its modest size and overall condition, the contribution this tree makes to the verdant character of the CA is limited and therefore whether or not it is retained does not alter my findings on this main issue. Still, if the scheme were to proceed, it would be for the appellants to clearly demonstrate in the discharge of the condition requiring a revised Arboricultural Method Statement, that this tree cannot be retained.
13. Even if both trees (T5 and T8) are required to be removed, these would facilitate the new dwelling, which is of a scale, form and appearance that would complement dwellings in the area. In addition, new landscaping is proposed. Together, these would enhance the street scene and the CA. More significantly, all the larger trees which positively contribute to the visual amenity and verdant character and appearance of the CA are being retained.
14. Based on the Tree Report and 'Topographical Drawing - Proposed footprint with RPZs overlaid - TB2019LS' there would be very limited encroachment into the RPAs for the retained trees. In addition, the submitted Heritage Design and Access Statement says that a pad and beam or pile and beam foundation system is to be utilised. This type of foundations would further mitigate the effects of the development on RPAs. The proposal also includes the installation of fencing and ground cover to safeguard the trees during the construction works.
15. For the above reasons, I am satisfied that the proposed dwelling can be sited and constructed without any unacceptable harm to the retained trees and overall verdant character of the CA. As such, the proposal would not harm the significance of the CA. Nonetheless, limited detailed information has been provided in respect of the proposed foundations, service runs and drainage associated with the proposal. Therefore, it is necessary that a revised Arboricultural Method Statement is submitted as part of any conditions, should the appeal succeed.
16. Accordingly, I find no conflict with policies LP 1 and LP 3 of the Richmond Local Plan (2018) ('LP') and London Plan Policy HC1. Together, these policies require all development to be of high architectural and urban design quality, and that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets. Consequently, I also find no conflict with similar aims of the Framework for securing high quality design and safeguarding heritage assets.
17. I also find no conflict with LP Policy LP 16 which seeks to ensure that new development protects, respects and contributes to and enhances trees and landscapes, along with the similar aims of London Plan policy G7(A).

Biodiversity

18. Because the appeal site comprises a mature garden with established trees and is in part, bound by similar gardens, it is unsurprising that there is evidence of bat activity in the area.
19. I have found that most of the existing trees within and near the site are to be retained and would be safeguarded. Also, the majority of the undeveloped parts of the appeal site would be retained as garden and a condition could be imposed to control external lighting in the interests of safeguarding biodiversity. The requirement for a Construction Environmental Management Plan as suggested by the Council would also assist in safeguarding the biodiversity of the site and area. For these reasons and given that there is other legislation to safeguard protected species, I am satisfied that the proposal is unlikely to unacceptably effect biodiversity.
20. In addition, the proposed landscaping and a requirement for Ecological Enhancements, which could be secured by conditions can be used to support biodiversity enhancements.
21. For the above reasons, I find no conflict with the aims of LP Policy LP 15 and Policy G6(D) of the London Plan which seek to protect and enhance biodiversity.

Cycle Storage and refuse and recycling facilities.

22. On the evidence before me, the appellants intend to provide cycle storage and refuse and recycling facilities. However, the details for these are very limited. Nonetheless, based on the location and size of the proposed dwelling and the land associated with it, there appears to be sufficient space to make suitable arrangements for refuse and recycling facilities and cycle storage and these could be secured through planning conditions.
23. Therefore, the proposal can be designed to make acceptable provision for cycle stores and refuse and recycling. As such, the scheme would achieve the objectives of LP Policy LP 24, which requires that secure storage be provided on-site for refuse and recycling bins and Policy T5 of the London Plan in respect of the design and layout for cycle parking.

On street parking

24. The proposed scheme incorporates parking spaces for both the existing dwelling and proposed dwelling at the appeal site. Based on the information before me, this level of off-road parking provision is acceptable.
25. However, the appeal site is situated within Controlled Parking Zone. Therefore, the Council and neighbours are concerned that an additional dwelling would result in increased demand for parking permits, adding to existing parking stress in the area.
26. However, during the appeal, a unilateral undertaking ('UU') signed and dated 19 December 2022 was submitted by the appellants which would prevent certain occupiers of the proposed dwelling from obtaining parking permits. The UU also incorporates a financial contribution towards a monitoring fee.
27. On the information before me, the UU is necessary in order to make the development acceptable in planning terms, directly related to the development,

and reasonable in scale and kind. This accords with the tests for legal agreements, as set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended).

28. As such, the proposal would not increase demand for on-street parking and therefore accords with LP Policy LP 45, which outlines that the Council will require new development to make provision for the accommodation of vehicles in order to provide for the needs of the development while minimising the impact of car-based travel including on the operation of the road network and local environment.

Water efficiency

29. An Energy Statement for the proposed dwelling has been prepared by C80 Solutions. This shows that the proposed development meets the minimum requirements set out in the LP and London Plan, for a 35% reduction in CO2 emissions. The same company has also provided a Water Efficiency Calculator. This demonstrates that the development would incorporate water conservation measures to achieve maximum water consumption of 110 litres per person per day (including an allowance of 5 litres or less per person per day for external water consumption). Therefore, I see no reason why these requirements cannot be required by a planning condition.
30. The proposal would therefore be consistent with LP Policy LP 22, which says that developments will be required to achieve the highest standards of sustainable design and construction to mitigate the likely effects of climate change and that a new dwelling will be required to incorporate the above water conservation measures. Consequently, the proposal would be consistent with the similar aims Policy SI 5(C) of the London Plan.

Electrical Vehicle Charging Points

31. Although no details have been provided, the submitted Sustainable Construction Checklist confirms that the development would include provision for electric vehicle charging point(s). Given the appellant's intentions, I am satisfied that proposed parking spaces could support electric vehicle charging point(s) and this could be secured by a condition.
32. Therefore, the proposal meets with the requirements of Policy T6.1 of the London Plan, which says that where car parking is provided in new developments, provision should be made for infrastructure for electric or other Ultra-Low Emission vehicles.

Flood risk

33. The appellants have stated that they will use sustainable drainage methods for the proposed dwelling, including rainwater harvesting and infiltration methods. However, they have not detailed how they would incorporate these techniques into the development and have not provided evidence of a suitable infiltration rate (greater than 1×10^{-6} m/s). Nonetheless, the appeal site is not located in a high flood risk zone and there is no objection from the Council's Consultee on matters relating to flooding and drainage. Therefore, on balance, I am satisfied that details of site drainage could be dealt with by way of a planning condition.
34. Consequently, the proposal would accord with LP Policy LP 21 and policies SI 12 and SI 13 of the London Plan, which require that all developments should

avoid, or minimise, contributing to all sources of flooding and without increasing flood risk elsewhere.

Fire safety

35. The submissions include a Fire Safety Assessment, this shows that the proposed dwelling would be constructed from materials and incorporates measures to prevent fire spread. Also, at ground floor there would be multiple egress points to an external place of safety and all windows would provide emergency egress. Furthermore, throughout the building mains smoke/heat alarms will be fitted and interlinked.
36. Given that the appeal site is located at the end of a highway, the proposed dwelling would also be accessible by fire appliances.
37. Overall, and taking a proportionate approach to the scale of the proposal (single dwelling) and given that this would also need to satisfy building regulations requirements in respect of fire safety, I am satisfied that the proposed development can be designed to achieve the highest standards of fire safety, in accordance with Policy D12 of the London Plan.

Other Matters

38. In addition to the above matters, third parties have raised concerns in respect of the effect of the proposal on the living conditions of neighbours and highway safety. These matters were addressed in the Council's Report and did not form part of its putative reasons for refusing the proposal. I have also considered these matters. Because of the acceptable scale of the proposed dwelling, its careful siting and residential use, this would not unacceptably harm the living conditions of neighbours.
39. There is likely to be an increase in vehicular activity associated with the development. In particular, during the construction stage. Even so, this is likely to be for a limited duration because of the modest scale of the proposal. Nevertheless, this could be acceptably managed through a Construction Management Statement. Therefore, and on the evidence before me and subject to some of the suggested conditions, I see no reason why these factors, whether alone or in combination would justify resisting the scheme.
40. I am aware that previous proposals for development at the appeal site have either been refused or withdrawn. Irrespective, I have determined the scheme before me on its merits and found this to be acceptable for the reasons set out above.
41. The appellants have provided a separate UU signed and dated 19 December 2022 for a financial contribution towards off-site affordable housing provision and an associated monitoring fee. On the information before me, this is necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. This accords with the relevant tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended).
42. The Addendum to the Council's Planning Committee 12 October 2022 in respect of planning application 22/0252/HOT, refers to the Council wishing to enter into a S106 securing the payment of a monitoring fee of £1,920. However, it is

unclear what this relates to. Therefore, this unsubstantiated requirement does not meet with the relevant tests for legal agreements, as set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended).

Conditions

43. I have considered the conditions put forward by the Council in light of the requirements of the Planning Practice Guidance and the Framework. In addition to the standard timescale condition for the implementation of the planning permission, I have imposed a condition specifying the approved plans, drawing and documents in the interests of certainty.
44. For the reason already stated, it is necessary to require on external materials and finishes. A condition is also imposed to secure details and implementation of all proposed soft and hard landscaping and finished levels in the interests of the appearance of the site and CA. The requirement for soft landscaping is also necessary to enhance biodiversity.
45. For the reasons given above, I have specified a condition requiring a revised Arboricultural Method Statement.
46. To protect and enhance biodiversity, I have imposed conditions requiring a Construction Environmental Management Plan and an Ecological Enhancement Plan. Also, to safeguard biodiversity and the living conditions of neighbours, I have specified a condition requiring details of any external lighting.
47. Noting the concerns raised by local residents, a condition to minimise the disruption caused by construction activity on neighbours by requiring a Construction Management Plan is both necessary and reasonable.
48. Conditions requiring details and the provision of electric vehicle charging points, along with requiring the development to support reduction in carbon dioxide emissions and incorporate water conservation measures are necessary to promote sustainable development.
49. A condition requiring details of surface water drainage is necessary in the interests of securing satisfactory drainage of the site and managing flood risk.
50. For the reasons already given and to ensure the satisfactory functioning of the development, I have specified conditions requiring the details and provision of cycle storage and refuse and recycling facilities. A condition requiring the delivery of the proposed parking spaces is necessary to ensure that sufficient off-road parking is retained for the existing and proposed dwellings.
51. In the interests of safeguarding the living conditions of site operatives, neighbours and future occupants, a condition to investigate and deal with on-site contamination is necessary.
52. A condition removing permitted development rights for external alterations and extensions to the proposed dwelling is justified in the interests of safeguarding retained trees, the character and appearance of the CA and the living conditions of neighbours.
53. The Council's suggested condition to restrict parking permits is not necessary because this matter is addressed through a specific UU. Also, because of the modest scale of the proposal, the suggested condition requiring that all

non-road transportable industrial equipment or vehicles be run on ultra-low sulphur diesel is not proportionate or clearly substantiated.

54. Conditions 4-10 (inclusive) which prevent any development approved from commencing until they have been complied with, are considered fundamental to the development hereby approved. It is necessary for them to take the form of 'pre-commencement' conditions in order to have their intended effect. Where necessary and in the interests of flexibility, clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Conclusion

55. For the above reasons, I conclude that the appeal should be allowed and planning permission granted.

M Aqbal

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning on the date of this permission.
- 2) Unless modified under any of the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans and drawings:
Location plan – OS location Plan 1:1250,
Proposed Site Plan - SCR20-05,
Proposed ground floor Plan - SCR-20-06,
Proposed first floor SCR-20-07,
Proposed elevations - SCR-20-08,
Topographical Drawing - Proposed footprint with RPZs overlaid - TB2019LS,
Fire Safety Assessment.
- 3) Notwithstanding the notations on the submitted plans and documents and prior to the commencement of any works above foundation level, the details of all external facing materials including boundary treatments, fenestration, brickwork and pointing, shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be undertaken in accordance with the approved details.
- 4) The development hereby permitted shall not commence until:
 - a) a site-investigation has been conducted to consider the potential for contaminated-land, and details of the investigation have been submitted to and approved in writing by the local planning authority.
 - b) a remediation method statement, described to make the site suitable for intended use by removing unacceptable risks to sensitive receptors has been submitted to and approved in writing by the local planning authority.Prior to first occupation of the dwelling hereby permitted, the agreed remediation shall be completed and a verification report produced on completion of the remediation shall be submitted to and approved in writing by the local planning authority.
- 5) The development hereby permitted shall not commence until a revised Arboricultural Method Statement, together with a timetable for any works/measures including tree protection, has been submitted to and approved in writing by the local planning authority, Thereafter, the development shall be carried out in accordance with the approved Arboricultural Method Statement and timetable.
- 6) The development hereby permitted shall not commence, including any works of demolition, until a Construction Management Statement ('CMS') (to include any demolition works) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period.
- 7) The development hereby permitted shall not commence until details of hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. The details shall include proposed

finished levels, hard surfacing materials; planting plans; written specifications (including cultivation and establishment); details of the quantity, density, size, species, position and proposed planting programme together with a timetable for implementation and details for the maintenance of the proposed soft landscaping. Thereafter, the hard and soft landscaping shall be carried out in accordance with the approved details and timetable.

- 8) The development hereby permitted shall not commence until an Ecological Enhancement Plan, identifying proposals to enhance the biodiversity and ecology of the development site, along with a timetable for the delivery of the proposals has been submitted to and agreed in writing by the local planning authority. Thereafter, the development shall be undertaken in accordance with the approved Ecological Enhancement Plan and timetable.
- 9) The development hereby permitted shall not commence until a surface water drainage scheme based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The approved drainage scheme shall be implemented prior to the occupation of the dwelling hereby permitted.
- 10) The development hereby permitted, including any works of demolition, shall not commence until a Construction Environmental Management Plan ('CEMP') (to include any demolition works) has been submitted to and approved in writing by the local planning authority. The CEMP shall detail how the biodiversity of the area shall be safeguarded during construction. Thereafter, the construction of the development shall be undertaken in accordance with the approved CEMP.
- 11) The dwelling hereby permitted shall not be occupied until details of cycle parking facilities have been submitted to and approved in writing by the local planning authority. Thereafter, the approved cycle parking facilities shall be provided before the dwelling hereby permitted is occupied and retained for the life of the development.
- 12) The dwelling hereby permitted shall not be occupied until details for the storage and disposal of refuse and recycling have been submitted to and approved in writing by the local planning authority. Thereafter, the approved facilities for the storage and disposal of refuse and recycling shall be provided before the dwelling hereby permitted is occupied and retained for the life of the development.
- 13) The dwelling hereby permitted shall not be occupied until electric vehicle charging point(s) ('EVCPs') have been provided in accordance with detailed drawings to be submitted to and approved in writing by the local planning authority. The detailed drawings shall show the position, design and specifications for the EVCPs. Thereafter, the approved EVCPs shall be provided before the dwelling hereby permitted is occupied and retained for the life of the development.

- 14) The dwelling hereby permitted shall not be occupied until the approved parking spaces for the existing and proposed dwellings have been provided in accordance with the approved drawings. Thereafter, the approved parking spaces shall be retained for the life of the development.
- 15) The dwelling hereby permitted shall be designed to achieve a 35% reduction in carbon dioxide emissions beyond Building Regulations requirements (2013) as amended and incorporate water conservation measures to achieve maximum water consumption of 110 litres per person per day (including an allowance of 5 litres or less per person per day for external water consumption).
- 16) Any external lighting at the development site shall be in accordance with details that have been first submitted to and agreed in writing in by the local planning authority.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no development included within Schedule 2, Part 1, Classes A, B, C, D and E shall be carried out without express planning permission first being obtained from the local planning authority.