



Appeal Decision

Site visit made on 30 August 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2023

Appeal Ref: APP/L5240/W/22/3312647

18 Pollards Hill West, Norbury, London SW16 4NS

- 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 M Bernard - Bernard Construction UK LLP against London Borough of Croydon.
 - The application Ref 19/04117/FUL, is dated 14 August 2019.
 - The development proposed is demolition of the existing detached house and redevelopment to provide 9 x four-bedroom detached houses with associated amenity space, vehicle parking, refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is against the Council's failure to determine the planning application within the relevant statutory period. The Council has provided a report from its 'Delegated Business Meeting week of 1st February 2023' which sets out the reasons on which it contests the appeal. I have had regard to these reasons in defining the main issues.

Main Issues

3. The main issues are:
 - (i) the effect of the proposal on the living conditions of occupiers of Compass Yard and No 14 Pollards Hill West with particular regard to outlook; and
 - (ii) whether the proposal would meet the accessible housing requirements of the development plan.

Reasons

Living conditions for neighbouring occupiers

4. Compass Yard is a bungalow which is situated at a lower level to the appeal site. Its rear elevation faces and sits in close proximity to the boundary with the appeal site. This elevation includes clear glazed patio doors serving a bedroom. There is tall mature planting along the shared boundary. The southern elevation of Compass Yard faces the intervening garden at Hemmingfold. This elevation also contains windows, one of which serves the same room as the aforementioned patio doors. The garden serving Compass

Yard also extends around its southern elevation thereby complementing outlook for this property.

5. Due to their height and position on higher land, proposed 'Houses 5 and 9' would inevitably be highly perceptible from Compass Yard. Even so, given the siting of these dwellings away from the boundary, the existing boundary planting could be retained and potentially reinforced. This would retain soft landscaping to the immediate foreground. Due to the line of sight from the lower ground to the rear of Compass Yard, the boundary planting would also substantively screen the lower floor levels of the nearest proposed dwellings.
6. Moreover, there would be a substantial gap between the front elevations of 'Houses 5 and 9'. This would ensure that there would be an acceptable degree of space between the proposed buildings in views over the shared boundary from Compass Yard. The intervening garden at Hemmingfold would also continue to supplement outlook along the southern aspect of Compass Yard. Overall, I find that these factors would ensure adequate means of outlook would be retained for occupiers of Compass Yard.
7. No 14 Pollards Hill West is a two-storey detached dwelling with a single storey rear projection. Its rear garden steps up towards the boundary with the appeal site and there is tall mature planting within the appeal site along the shared boundary. These factors provide a pleasant spaciousness and verdancy to the rear aspect of this neighbouring dwelling.
8. Proposed 'House 6' would have an angled relationship with the rear boundary of No 14. However, it would be situated on higher land and in very close proximity to this boundary. Together with its depth, height, mass and general alignment with the rear boundary of No 14, these factors would combine to give 'House 6' an imposing presence when experienced from the rear windows and garden of this neighbouring property. The effect would be particularly stark given that substantial parts of the existing mature planting would be removed in the vicinity of this boundary, as is confirmed in the appellant's tree survey. Any replacement planting would be likely to take a considerable period to mature. For these reasons, I find that the proposal would have an unacceptable effect on outlook for occupiers of No 14.
9. The appellant's case primarily focusses on matters of privacy and quotes text from the Mayor of London's Housing Supplementary Planning Guidance (SPG) (2016) which suggests that minimum separation distances of 18 – 21 metres between facing homes can be useful yardsticks for visual privacy but can sometimes unnecessarily restrict density. Whether or not that be the case, any such privacy considerations are a separate matter and do not alter my conclusions in respect of the effects on outlook having regard to the site-specific factors described.
10. I conclude, the development would have a significantly harmful effect on the living conditions of 14 Pollards Hill West with particular regard to outlook. In this regard it would conflict with the outlook and amenity requirements which include of Policy DM10 (Design and character) of the Croydon Local Plan (2018) (CLP) and Policy D3 (Optimising site capacity through the design-led approach) of the London Plan (2021) (LP 2021). For the same reasons, the proposal would also conflict with Paragraph 130 of the National Planning Policy Framework which states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

11. The Council has also referred to Policy D6 (Housing quality and standards) of the LP 2021. Given that particular policy does not refer to outlook considerations, it has not been material to my findings. Even so, this does not diminish the conflict identified with other policies of the development plan and the Framework.

Accessible housing

12. Policy SP2.8 (Quality and Standards) of the CLP requires that new homes meet the needs of residents over a lifetime and meet minimum design and amenity standards, including those in the London Plan.
13. In this regard, Policy D7 (Accessible housing) of the LP 2021 requires that residential development must ensure that at least 10 per cent of dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings' and that all other dwellings meet Building regulation requirement M4(2) 'accessible and adaptable dwellings'.
14. The appellant suggests that, as the first requirement of Policy D7 requires 'at least 10 per cent', this only relates to major development of 10 dwellings or more, otherwise it would not be mathematically possible. The appellant has provided an extract from a committee report relating to a planning application¹ in the Borough suggesting that the Council has previously applied such an approach.
15. However, the same could be said of major developments where 10 per cent of the number of houses proposed doesn't equate to a whole number. It would be reasonable to expect that in such cases the number would be rounded to the nearest whole number. In the case of the appeal proposal 10 per cent would equate to 0.9 dwellings or 1 dwelling when rounded to the nearest whole number.
16. Moreover, the supporting text to Policy D7 confirms that the policy should apply to all dwellings which are created via works to which Part M volume 1 of the Building Regulations applies, which at the time the LP was published generally limited the application of the policy to new build dwellings. From what I have seen the Policy and supporting text does not therefore limit the application of its requirements to major developments.
17. My attention has been drawn to paragraph 2.3.12 of the supporting text to Standard 11 of the Mayor of London's Housing Supplementary Planning Guidance (2016) which suggests that market units can only be required to meet the standards for wheelchair adaptable homes and not wheelchair accessible homes.
18. The adopted policies of the LP 2021 post-date the guidance in the SPG and the 'Accessible and adaptable housing' section of the Planning Practice Guidance (PPG) confirms that planning policies for housing can set out the proportion of new housing that will be delivered including in respect of M4(3) wheelchair user dwellings². Therefore, I attach more weight to the specific requirements within Policy D7.

¹ LPA ref 23/00155/FUL

² PPG Paragraph: 009 Reference ID: 63-009-20190626

19. The appellant contends that 'Houses 6 – 9' could be made compatible with M4(3) through conversion of the entrance level space to living and kitchen space or that a stair lift could be introduced. Notwithstanding that only one of these dwellings would need to be suitable for a wheelchair user to meet the policy requirement, I am unaware whether these provisions alone would be sufficient to meet M4(3). For example, it has not been explained whether M4(3) requires the widths of corridors and door openings to be suitable for wheelchair users on all floors and if so whether the proposal would be compatible. In the circumstances, a condition requiring the submission of such details would not provide sufficient certainty that a dwelling meeting the M4(3) requirements could be achieved.
20. Moreover, the Council contends that 'Houses 1 -5' would fall short of Building Regulation M4(2). The appellant has not contested this or sought to explain how these dwellings would be capable of meeting the policy requirement for all other dwellings to meet Building regulation requirement M4(2) 'accessible and adaptable dwellings'. Conditions requiring such information would not provide sufficient certainty that the policy requirements could be achieved without alterations to the design and layout of the proposed dwellings. Therefore, even if I had accepted the appellant's position that no M4(3) compatible dwellings are required in this instance, this would not resolve the overall conflict with the accessible housing requirements of the development plan.
21. I conclude, it has not been demonstrated that the proposal would provide accessible housing which would accord with the specific requirements Policy SP2.8 of the CLP and Policy D7 of the LP 2021. For the same reason, the proposal would also conflict with Paragraph 130 of the Framework which includes that decisions should ensure that developments are inclusive and accessible.

Other Matters

22. Third-parties have raised several other issues including but not limited to the effects of the proposal on the character and appearance of the area, neighbouring privacy, biodiversity, land stability and drainage. It has not been necessary to consider such matters any further as any finding in those respects would not overcome my concerns on the main issues.
23. The appellant has detailed several other considerations within the conclusions to their statement of case. I accept that the proposal would add to the housing offer in the area, including the provision of new family sized housing. Tree planting and bat and bird boxes would be incorporated. There would also be job opportunities through the construction period. However, even if the proposal would accord with other planning requirements and there would be some benefits derived, these matters do not overcome the harm identified under the main issues and the conflict with the development plan in those respects.
24. Even though the scheme was previously supported by the Council's officers, a formal decision was not made. Having regard to the clear position of the Council in respect of this appeal and from my own observations in respect of the main issues, the proposal would be unacceptable.

Conclusion

19. The proposal would have a significantly harmful effect on the quality of outlook for occupiers of No 14 Pollards Hill West and it has not been demonstrated that the proposal would meet the accessible housing requirements of the development plan. The proposal conflicts with the development plan taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

M Russell

INSPECTOR