



Appeal Decision

Site visit made on 3 October 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/P5870/W/23/3314410

Land Rear Of 28-40 Elm Way, Worcester Park, Sutton KT17 4PX

- 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 Mr Derek Avery, Peacock Homes Ltd, against the decision of the Council of the London Borough of Sutton.
- The application Ref DM2022/00706, dated 8 April 2022, was refused by notice dated 14 July 2022.
- The development proposed is the construction of 2 no. 2 storey blocks consisting in total of 4 no. 2 bedroom houses and 4 no. 1 bedroom houses.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has confirmed that the site address above, which is taken from the appeal form, is the most accurate address which should be used for this appeal.
3. The description of development above is taken from the planning application form. However, the appellant has also confirmed that the amended description used in the decision notice and appeal form is the most accurate. It describes the proposal as the erection of two blocks of 4 attached two-storey dwellings with parking and refuse stores. I have proceeded accordingly.
4. The appellant has provided amended plans with this appeal. Whilst the Council and other interested parties have not commented on this matter, I note that the amended plans include very minor alterations to the site layout and landscaping. Having regard to the Wheatcroft¹ principles, I consider that the amendments would not materially alter the proposal such that to grant it would result in a development substantially different from that previously consulted upon. As such, I find that no party would be prejudiced by me taking the amended plans into consideration.

Main Issues

5. The main issues in this case are:
 - (i) The effect of the proposal on the character and appearance of the area;

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL 1982]

- (ii) Whether satisfactory living conditions would be provided for future occupiers, with particular regard to internal and external living space, privacy and outlook;
- (iii) The effect of the proposal on biodiversity;
- (iv) The effect of the proposal on climate change; and
- (v) The effect of the proposal on the living conditions of occupiers at 28-40 Elm Way, with particular regard to outlook and privacy.

Reasons

Character and appearance

6. The appeal site is a parcel of land within a predominantly residential area. I note that it previously formed part of the rear gardens of properties on Elm Way. However, given its frontage onto a highway, Trent Way, within a well-established residential area, it is not a typical back garden land site and is no longer read as such.
7. The site is surrounded by residential properties and development of the site would not be seen as the erosion of rear gardens but rather would ensure it does not become a void in the otherwise built-up street scene. I find that the site does not therefore make a positive contribution to the character of the area and am not convinced that it did even prior to site clearance.
8. Further, I note that the appeal site is within an area identified as an Area of Potential Intensification and that it previously formed part of the larger approval of residential development at Trent Way. Indeed, it is suggested that the appeal proposal largely reflects the original design rationale for Trent Way and is in keeping with the existing development.
9. That being said, the buildings would be arranged in such a way which would fail to relate well to the street scene. The entrances to units 50-53 would face into the central courtyard area between the two buildings. Given the very close relationship of the buildings, which causes the development to appear cramped, the front doors would not be readily apparent.
10. The ground floor entrances to units 48, 49, 54 and 55 would be the only features on the side gables of the buildings. The elevations fronting Trent Way would also have a prominent front gable and would be of a generous width. They too would have an excessive void to fenestration ratio.
11. This significant lack of detailing which one would expect to see on prominent elevations would cause each building to appear as a bulky and dominant mass when viewed from the public realm and would give them very poor legibility.
12. Furthermore, the fenced garden areas would be prominent in the street scene, thus further causing the development to be a dominant addition which lacks architectural characteristics, liveliness and interest. Overall, the proposal would be bland and uninspiring, rather than a beautiful and successful place of high-quality buildings which bring delight.
13. I appreciate that other properties in the locality are arranged and orientated in a similar way to the appeal proposal. However, it seems to me that those examples are located in a street scene where buildings are sited in a variety of

ways, which results in interest and movement. To the contrary, the appeal development would add to a very lengthy stretch of built form which lacks an active frontage to the highway, taking into consideration the garages and flank gables of properties opposite, thus harming the visual appearance of the street scene.

14. The Council has raised concern that landscaping details have not been provided. However, I am satisfied that the site has capacity to incorporate an appropriate mix of hard and soft landscaping, including tree planting. I consider that this could be satisfactorily addressed via a condition, were the appeal to be allowed.
15. Nevertheless, taking all the above into consideration, the proposed development would harm the character and appearance of the area. It would therefore conflict with Policies D3 and D4 of the London Plan: The Spatial Development Strategy for Greater London (March 2021) (the London Plan) and Policies 13 and 28 of the Sutton Local Plan 2016-2031 (February 2018) (the SLP). Collectively, these seek to ensure that developments are of a high-quality design that responds to their locality and creates a sense of place.
16. The proposal would also fail to accord with the guidance on design as set out in the Supplementary Planning Document 14: Creating Locally Distinctive Places, Sutton's Urban Design Guide (January 2008).

Living conditions of future occupiers

17. The Council raised concern that the proposed one-bedroom units would not have dedicated, private outdoor space. I note that the amended plans submitted with this appeal indicate that areas enclosed by fencing or hedging could be provided. Nevertheless, it seems to me that these areas would not be good quality private spaces which could be easily used by virtue of their size, method of enclosure, location and the layout of main habitable rooms on the upper floors.
18. Further, the proposed one-bedroom units would fall short of the minimum gross internal floor areas for new dwellings as set out in the Technical Housing Standards – Nationally Described Space Standard (March 2015) (the NDSS) by a considerable amount.
19. Whilst I appreciate that a functional internal layout and the provision of commonly required furniture could nevertheless be achieved, the NDSS represent minimums and it is encouraged that they are exceeded. Moreover, along with the single aspect of these units and the poor quality private outdoor space, this leads me to find that, overall, the one-bedroom units would not provide a high quality, comfortable home.
20. Additionally, there would be a very close relationship between habitable room windows of the units fronting into the central courtyard. This would create an overbearing sense of enclosure in those rooms for future occupiers and would allow significant overlooking.
21. Accordingly, the proposed development would fail to provide satisfactory living conditions for future occupiers and thus it conflicts with Policy D6 of the London Plan and Policies 9 and 29 of the SLP. Together, these seek to ensure that housing is of a high-quality design and which provides adequately sized rooms and external space.

Biodiversity

22. With this appeal, the appellant provided a Preliminary Ecological Appraisal, a bat Preliminary Roost Assessment and a Biodiversity Net Gain feasibility assessment² as well as a further Reptile Report³ which was identified as being required.
23. I note that the habitat condition assessment was undertaken at a sub-optimal time of year. However, the survey indicates that a suitable number of species were recorded to be able to assess the habitats present, and that the habitats identified are likely to support protected species or species of conservation concern.
24. The date of the reptile survey was also found to be sub-optimal and thus reptiles cannot be considered likely absent from the appeal site, despite the results of the survey.
25. Nevertheless, suitable measures could be adopted so as to mitigate against any loss of ecological function of the appeal site as a result of the proposed development. Also, a number of ecological enhancements could be secured into the proposal, along with conditions mitigating against any potential harmful effects during construction, amongst other things.
26. With regards to biodiversity, I note that no detailed landscaping plans were provided at the time of the survey thus the biodiversity net gain assessment may need updating as a number of assumptions were made.
27. Nevertheless, based on the information before me, the proposed development would involve the loss of all existing habitat types on site. The mitigation hierarchy indicates that impacts must be avoided altogether, where possible, through careful design. It seems to me that there may be scope to retain some of the neutral grassland on site.
28. Furthermore, the submitted survey indicates that the proposed development cannot achieve a measurable biodiversity gain on site. There is no mechanism before me through which off-site mitigation measures could be secured.
29. Accordingly, the proposed development would result in harm to biodiversity and therefore conflicts with Policy G6 of the London Plan and Policy 26 of the SLP which together seek to conserve biodiversity and secure net biodiversity gain.

Climate change

30. Policies SI2, SI3 and SI5 of the London Plan and Policies 31 and 33 of the SLP collectively seek, amongst other things, to ensure the water consumption and energy emissions of developments are appropriately managed so as to address the causes and impacts of climate change.
31. I have not been provided with evidence, including an energy statement, which indicates how the proposed development would satisfy the criteria regarding carbon emissions and water efficiency. In the absence of such information, I

² Preliminary Ecological Appraisal, Bat Preliminary Roost Assessment & Biodiversity Net Gain Assessment, Surrey Wildlife Trust Ecology Services, Project number 6057-1, Version 1.0 (2022)

³ Reptile Report, Surrey Wildlife Trust Ecology Services, Project number 6057-1, Version 1.0 (2022)

am not satisfied that the requirements of these policies would be met. Given this uncertainty, conditions would not be reasonable.

32. Consequently, the proposed development would not accord with the Council's strategy for climate change, with particular regard to carbon emissions and water efficiency. Therefore, in this respect, it would conflict with Policies SI2, SI3, and SI15 of the London Plan and Policies 31 and 33 of the SLP.
33. Policy 32 of the SLP has been referred to in the Council's reason for refusal however this relates to flood risk and sustainable drainage, which I note are not of concern in this main issue.

Living conditions of neighbouring occupiers

34. The separation between the nearest rear facing habitable room windows of properties on Elm Way and the rear elevations of the proposed buildings would be of a sufficient distance to ensure the proposal does not appear as an overbearing addition or a harmful intrusion to the outlook of existing occupiers.
35. I also consider that the single window which would be present on the upper floors of the rear elevation of each building would not create a feeling of being overlooked, given their very limited number and size, along with the ability to condition them to be obscurely glazed should permission be forthcoming.
36. Accordingly, the proposal would not harm the living conditions of occupiers of 28-40 Elm Way and thus it accords with Policy 29 of the SLP which aims for development which does not adversely affect the amenities of nearby occupiers.

Balance and Conclusion

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposal is in conflict with the development plan as a whole, given the harm and the resultant conflict with the policies that I have identified above. It is therefore necessary to consider whether there are material considerations which indicate that permission should be granted.
38. The evidence before me suggests that the Council missed their housing target between 2020-2021. However, the detail on up-to-date figures and the exact extent of the shortfall, should there be one, is extremely lacking and the Council has not provided any comments in this regard.
39. Nonetheless, the provision of eight additional homes weighs heavily in favour of the proposal. The development would also result in some economic and social benefits through employment during construction and on subsequent spending in the local area by future occupiers. The appeal site is also within an area with good levels of accessibility.
40. Collectively, I afford these benefits limited weight due to the small scale of the proposal. Even if the shortfall was large, this position would elevate the weight to be afforded to the benefits to no more than moderate at best.
41. However, the National Planning Policy Framework (the Framework) clearly sets out the aims of achieving well-designed places, creating places which retain a high standard of amenity for existing occupiers, ensuring developments meet

the challenge of climate change and ensuring proposals conserve and enhance the natural environment. The proposal would fail to accord with these aims and I afford this collective harm very substantial weight.

42. Thus, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The scheme would not therefore be sustainable development for which the presumption in favour applies.
43. Consequently, the proposal fails to accord with the development plan when read as a whole and there are no other considerations, including the approach in the Framework, which indicate that a decision should be made other than in accordance with it. Therefore, the appeal should not succeed.

H Ellison
INSPECTOR