



Appeal Decision

Site visit made on 30 October 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2023

Appeal Ref: APP/P5870/W/22/3313214

Carmel Close (access between 241 and 243 Church Hill Road), R/O 243-257 Church Hill Road and 354-356 Malden Road, North Cheam, Sutton SM3 8LB

- 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 J Hannah, Church Hill Holdings, against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2022/01153, dated 19 June 2022, was refused by notice dated 30 September 2022.
 - The development proposed is the erection of 4 no. three bed two storey, semi-detached houses, widening of existing vehicular access and associated car and cycle parking, refuse collection facilities and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address in the heading above from the appeal form and decision notice as this provide a more accurate reflection of the site location than that given on the application form.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the site and surrounding area;
 - The effect of the proposed development on biodiversity;
 - Whether the proposal would be acceptable in terms of carbon emissions, sustainable drainage and water efficiency, having regard to development plan policies; and
 - The effect of the proposed development on the living conditions of the occupants of 241 and 243 Church Hill Road, with particular reference to potential for noise and disturbance.

Reasons

Character and appearance

4. The appeal site is located towards the rear of dwellings on Church Hill Road, Malden Road and D'Arcy Road. The site comprises parts of the rear gardens of properties on Church Hill Road and Malden Road, and land formerly used for

housing horticultural machinery. The site would be accessed from Carmel Close, which is off Church Hill Road, and is a shared access with a restricted carriageway width.

5. Carmel Close contains two pairs of semi-detached dwellings. Towards the north-west of the site is a group of garages located to the rear of dwellings. Backland development therefore forms part of the established character of the area. Nevertheless, backland development is restricted to small areas of development and the surrounding area is primarily characterised by two-storey, semi-detached dwellings which benefit from long rear gardens.
6. The appeal site is largely overgrown and is not prominent from public vantage points due to the extent of built development surrounding the site. Some of the trees (which are not subject to a Tree Preservation Order) and vegetation within the appeal site are visible from public vantage points. The appellant, and some residents, assert that the site incorporates unwanted and unmanaged parcels of land. Whilst that may be the case, there is nothing to prevent existing or future occupiers of the dwellings to maintain the gardens.
7. The long rear gardens are an important feature and contribute to the overall character, appearance, and distinctiveness of the area. The site provides a verdant and undeveloped area in an urban setting. The regular two-storey, semi-detached dwellings with long rear gardens results in the area benefiting from a strong pattern of development. Thus, the appeal site makes an important contribution to the character and appearance of the surrounding area.
8. In the previous planning applications¹, relating to the dwellings on Carmel Close, the Council stated that the land does not make an important contribution to the character and appearance of the surrounding area. Additionally, they stated that the accessway and site are an original feature of the area and the site has not been manufactured utilising land of residential back gardens. It is not contradictory to find that the appeal site makes an important contribution to the character and appearance of the surrounding area. A significant amount of the appeal site comprises parts of the rear gardens of numerous dwellings, and the appeal site is larger than the adjoining developed site. In contrast, the adjoining developed site related to a disused plot of brownfield land and an established backland site forming the established character of the area.
9. It is likely that glimpsed views of the development would be possible between the nearby semi-detached dwellings, for example between 245 and 247 Church Hill Road. Having said that, the proposed development would not be prominent from public vantage points due to its location behind the existing dwellings. Nonetheless, development should respect its local context and character, regardless of whether it is visible from public vantage points or not.
10. The proposed development by reason of its siting within back garden land would harmfully erode the undeveloped and green character of the site. Furthermore, the cumulative impact of the proposed development and the recently built Carmel Close dwellings would result in the gradual degradation of the character of the area. The extent of backland development proposed, and cumulative impact of the adjoining backland development, would not

¹ A2015/72990/FUL and A2014/70692/FUL

complement or respect the established form and pattern of development in the locality. Whilst new planting and landscaping would help to mitigate the proposal, the introduction of four two-storey dwellings along with hardstanding areas would significantly erode the character of the site.

11. For the reasons given above, the proposed development would cause harm to the character and appearance of the site and surrounding area. Consequently, it would conflict with Policies D3 and D4 of the London Plan 2021 (LP) and Policy 13 of the Sutton Local Plan 2016-2031 (2018) (SLP). These seek, amongst other things, promote good design and seek to ensure development proposals respond to the existing character of a place and state that the council will not grant planning permission for the development of back garden land where the site makes an important contribution to the character and appearance of the surrounding area. In addition, it would conflict with the Council's Creating Locally Distinctive Places: Sutton's Urban Design Guide Supplementary Planning Document 14 (2008). This promotes good design and seeks to ensure development respects and improves local character.

Biodiversity

12. The proposal includes areas of landscaping and amenity spaces. An Ecological Appraisal has been submitted which sets out that the site consists of rear gardens comprised of amenity grassland, dense scrub, several trees, non-native hedgerow and one small woodshed. No protected species or evidence of protected species were found on site at the time of the survey. The report sets out recommendations, including mitigation measures. In relation to protected species, the report is acceptable and a planning condition could ensure that these are implemented.
13. Figure 2 of the Ecological Appraisal shows the site's proximity to Sites of Importance for Nature Conservation. It shows that the appeal site is located within an area of deficiency. This increases the value of existing back garden land to provide ecological habitat for declining wildlife. The proposed planting includes a good range of species of known value to wildlife, but the Council's Biodiversity Strategy requires a minimum of 60% native species within any new planting schemes to support local wildlife that require native plants to breed and forage.
14. The main parties dispute whether it is a requirement to provide a Biodiversity Net Gain Assessment (BNGA). On the basis of the information before me, although the proposal relates to a minor planning application, 100m² vegetation would be lost as a result of the development and therefore a BNGA is required. Without a BNGA it is not possible to determine whether the proposed development would achieve a net gain in biodiversity. Small areas of garden planting do not provide the same habitat value as the existing native scrub and there is a lack of information regarding the habitat value of the proposed gardens. Consequently, it has not been robustly demonstrated that the proposal would protect and enhance biodiversity at the site.
15. The appellant has drawn my attention to the tree survey information and has suggested planning conditions relating to this reason for refusal. I agree that the comments made by the Tree Officer can be addressed by a condition. However, I am not satisfied that conditions would satisfactorily address my findings above, and the Biodiversity Teams objection comments, as the

information provided does not provide adequate confidence that biodiversity would not be adversely affected.

16. For these reasons, based on the evidence submitted, the proposed development would have an unacceptable effect on biodiversity. Consequently, it would conflict with Policy G6 of the LP and Policy 26 of the SLP. These seek, amongst other things, to protect and enhance the borough's biodiversity. Furthermore, development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain, and this should be informed by the best available ecological information and addressed from the start of the development process. In addition, it would conflict with chapter 15 of the National Planning Policy Framework (the Framework) which seeks to protect and enhance biodiversity.

Carbon emissions/ sustainable drainage/ water efficiency

17. As part of the appeal submission, and during the consideration of the application, the appellant provided a revised Flood Risk Assessment & Surface Water Drainage Strategy. The Council has failed to consider the revised document. The site is in Flood Zone 1. Nearby residents have highlighted drainage and flooding issues in the area, including since the Carmel Close development was built.
18. The report sets out that the site is currently a greenfield site. Rainwater harvesting and permeable paving are proposed to provide SuDS measures, and the revised report sets out that bioretention rain gardens would offer an element of infiltration. The report goes on to state that the proposed runoff from the controlled network shall be restricted to 2.4l/s for the 1:100 year storm event including climate change, which is in line with the requirement to ensure the peak runoff rate is no greater than 3 times the greenfield runoff rate for the same event.
19. However, I disagree as Policy 32 of the SLP sets out that for greenfield sites developments should ensure that peak run-off rates and volumes for the 1 in 100 year rainfall event never exceed greenfield run-off rates for the same event. The proposed development would increase run-off from the existing site and no substantive reasons are put forward to justify why greenfield rates cannot be achieved for this development.
20. Furthermore, whilst the Council's infiltration SuDS suitability map indicates that infiltration measures are potentially unsuitable at this location, it appears that no infiltration testing (e.g. BRE Digest 365) has been undertaken to confirm this. It also has not been robustly demonstrated that the proposed development would ensure that the site drainage strategy can contain the 1 in 30 year event (+ climate change) without flooding and that any flooding occurring between the 1 in 30 and 1 in 100 year event (+ climate change) would be safely contained on site. Thus, the Sustainability Officer's objection, in this regard, has not been adequately addressed.
21. The appellant's appeal submission includes an Energy Statement which was provided during the consideration of the application. This has also not been considered by the Council. The statement demonstrates that the proposed build specification would ensure that the overall development has a reduced energy demand in comparison to the minimum requirements of Approved Document L1 2021 of the Building Regulations. It also demonstrates that the development

minimises CO2 emissions through the Mayor's energy hierarchy and provides details of the proposed renewable technology. Provided that the build specifications detailed within the statement are followed and MCS Approved Air Source Heat Pumps are installed (as a means of providing the dwellings with a low carbon source of heating and hot water), the development would comply with the requirements set out in Policy 31 of the SLP.

22. The appellant's case sets out that the dwellings would be fitted with a water meter, and would incorporate water saving and efficiency measures that comply with the upper level of performance of Regulation 36(2)(b) in Part G 2 of the Building Regulations. This would assist in reducing water consumption to a maximum of 110 litres of water per person per day in accordance with SLP Policy 33.
23. For the reasons given above, adequate evidence has been provided to demonstrate that the proposal would provide a satisfactory reduction in carbon emissions and in relation to water efficiency measures. I am satisfied that these matters can be secured by planning conditions. However, insufficient evidence has been provided to demonstrate that the proposal would incorporate effective sustainable drainage measures. I am not satisfied that this matter could be conditioned as it is unclear how the appellant would meet the requirements of policy.
24. Consequently, the proposed development would comply with Policies SI 2, SI 4, and SI 5 of the LP and Policies 31 and 33 of the SLP but would conflict with SI 12 and SI 13 of the LP and Policy 32 of the SLP. These collectively seek, amongst other things, to cut pollution and address the causes and impacts of climate change by promoting low carbon and environmentally sustainable developments, and to reduce flood risk to and from new development.

Living conditions

25. An OS map has been provided to demonstrate that vehicular access has always existed between Nos 241 and 243 Church Hill Road. The access was previously used in association with the previous lawful use of the site for storing horticultural machines, and that was accepted in the previous applications and appeal².
26. At present the access is used by occupiers/visitors of the dwellings on Carmel Close. Nos 241 and 243 have windows which face onto the access road. The information before me highlights that these are non-habitable rooms. The gardens of the dwellings have a high timber fence running adjacent to the access.
27. The addition of four dwellings, with 8 parking spaces, would undoubtedly increase the number of vehicle movements along Carmel Close, including deliveries. However, given the scale of the development, the proposal would not result in a significant number of vehicle movements, on top of the existing vehicle movements associated with the four existing dwellings using the access road.
28. In addition, the appeal site is located within walking distance of local shops, services, and public transport. Thus, future occupiers would not be reliant on a vehicle to meet their everyday needs.

² APP/P5870/W/16/3143010

29. Furthermore, I observed on my site visit that when stood next to the side windows of Nos 241 and 243 there was background noise from vehicles travelling along Church Hill Road due to the frequency of vehicles. I recognise that this was only a snapshot in time, but my observations are consistent with the letter from the occupier of No 243. They state that most vehicle noise and disturbance arise from the traffic on Church Hill Road, to the front of the dwelling. They go on to state that generally they don't notice any activity along Carmel Close.
30. For these reasons, the proposal would not result in an unacceptable increase in vehicle movements. The proposed development therefore would have an acceptable effect on the living conditions of the occupants of 241 and 243 Church Hill Road, with particular reference to potential for noise and disturbance. Consequently, in this regard, it would comply with Policies 13 and 29 of the SLP. These seek, amongst other things, to ensure developments do not adversely affect the amenities of nearby occupiers.

Other Matters

31. Paragraph 119 of the Framework promotes an effective use of land in meeting the need for homes. Small sites can make an important contribution to meeting the housing requirements of an area, and this is supported in development plan policies. My attention has been drawn to SLP Policy 1, and the appellant states that had the appeal site not been suitable for residential development or intensification then the site should have been excluded from the Area of Potential Intensification.
32. The Council's Authority Monitoring Report 2020-21 sets out that the housing delivery for properties with three or more bedrooms is not being met. The appellant has set out the benefits of the development and has drawn my attention to the Rt Hon Michael Gove MP statement relating to the proposed reform of the planning system. The proposal was also found to be acceptable in other regards.
33. A large amount of the site is not previously developed land, and a lack of harm and compliance with planning policy in other regards does not amount to a positive consideration in support of the appeal. The proposal would provide social and economic benefits. The development would also contribute to the Council's housing need and provision of 3-bedroomed dwellings in an area suitable for new housing. Given the scale of the development, the benefits would be limited. In addition, the Council has highlighted that they have identified sufficient housing sites to demonstrate that it can meet its minimum 5 year housing target for the five year period from 1 April 2021 to 31 March 2026, including a 5% buffer. I recognise the benefits of the scheme, but on balance the other matters would not outweigh the conflict with planning policy and harm I have found.

Conclusion

34. I have found that the proposed development would have an acceptable effect on the living conditions of the occupants of 241 and 243 Church Hill Road, with particular reference to potential for noise and disturbance. Furthermore, subject to planning conditions, the proposal would be acceptable in terms of carbon emissions and water efficiency. Nonetheless, the proposed development would cause harm to the character and appearance of the site and surrounding

area, would have an unacceptable effect on biodiversity, and would not incorporate effective sustainable drainage measures, to which I attach significant weight. The other matters raised (including benefits), would not outweigh the conflict with planning policy and harm I have found.

35. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR