



Appeal Decision

Site visit made on 8 August 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2023

Appeal Ref: APP/Z5630/W/22/3311060

The Bungalow, Browns Road, Kingston Upon Thames, Surbiton KT5 8ST

- 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 Nadezhda and Georgie Popcheva-Zhelyazkova and Zhelyazkov against the decision of the Council of the Royal Borough of Kingston Upon Thames.
- The application Ref 22/01199/FUL, dated 8 April 2022, was refused by notice dated 15 June 2022.
- The development proposed is demolition of existing dwelling and erection of replacement dwelling of similar scale and footprint.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and erection of replacement dwelling of similar scale and footprint at The Bungalow, Browns Road, Surbiton KT5 8ST in accordance with the terms of the application, Ref 22/01199/FUL, dated 8 April 2022, subject to the conditions in the schedule at the end of the decision.

Preliminary Matters

2. I have amended the description of development in the banner heading and decision above. I have used the Council's description of the development in reaching my decision as it more clearly describes the details of the development than that given on the original planning application form. The appellants appeal form also makes reference to the updated description.
3. The appellants have provided an updated Arboricultural Impact Assessment (AIA) and Arboricultural Method Statement (AMS) with the appeal, as well as further measures pertaining to a fire statement for the proposal. As the revised plans and additional documents do not change the substance of the proposed development that was considered by the Council, having regard to the "Wheatcroft" principles¹ and other case law² the Council and interested parties would not be prejudiced by my consideration of them. The Council has subsequently had the opportunity to review and comment on these as they were submitted with the appellant's statement of case.

Main Issues

4. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the Fishponds Conservation Area (CA);

¹ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- the effect of the proposed development upon trees; and
- whether the proposal can demonstrate compliance with fire safety standards.

Reasons

Character and appearance

5. The dwelling proposed for demolition is a single storey detached red brick hipped roof property called The Bungalow. Set in its own grounds surrounded by vegetation and trees, it is sited at the periphery of Fishponds Park, which is also within Fishponds Park CA and Local Open Space. It is surrounded by the suburban residential area of Surbiton. There is an existing gate and pedestrian access from Browns Road, which runs at the rear of dwellings facing Mayberry Place.
6. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 establishes a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. The National Planning Policy Framework (the Framework) states that in the consideration of development proposals great weight should be given to the conservation of heritage assets in accordance with its significance.
7. The significance of the Fishponds Park CA, insofar as it is relevant to the appeal is derived from the historic evolution from a mid-18th century estate to park and surrounding urban development. Its aesthetic contribution to the character of the area is derived from the open space and landscape features consisting of a significant numbers of trees, pathways and ponds within what is predominantly urban surroundings, and its use for public enjoyment.
8. Both parties agree the existing bungalow is of limited architectural merit which has a neutral impact upon the CA. I see no reason to disagree with this view as the bungalow is of a distinctly separate architectural character than the nearby traditional terraces seen within the context of the appeal site as well as the other buildings which occupy a place in the park. It is low in height and surrounded by landscape features. However, the building and site in its current condition is boarded up and in need of repair and currently detracts from the appearance of the CA, and the entrance to the park.
9. The proposed new contemporary development would have a distinct and different roof shape. Marginally higher than the existing bungalow, the gable ends would also increase the bulk of the roof. However, the elongated ridge and additional height would be relieved by the detail of glass cladding along the main roof axis. The aluminium stairwell on the eastern elevation would account for the increase width, but this component would be noticeably set down from the ridge, lower in height than the existing bungalow and a subservient element that would contribute little to perceived additional width. Furthermore, the front elevation being positioned on the existing building line prevents encroachment into the space on the approach from Browns Road.
10. The western elevation would appear taller and wider, and it would be more noticeable than the existing building. It would also be punctuated with fenestration and consist of vertical timber cladding, thus avoiding a blank or stark appearance. The use of natural materials proposed would also successfully integrate with its natural park setting. Furthermore, this elevation

would remain set back from the park pathway with no diminution of space to that side.

11. The eastern elevation features an aluminium clad rectangular stair-well. Whilst this is a solid feature, it is well concealed by the surrounding and robust evergreen vegetation. As a subservient addition, this would ensure the main bulk of the built development, positioned on the existing line of the bungalow is off set from the boundary. Space to the site boundary is evident and sufficient to ensure that the dwelling would sit comfortably in its plot without creating any sense of overdevelopment.
12. The heights of the buildings in the surrounding area feature a wide variety of roof forms, which include large dormer windows and are predominantly two storeys and therefore higher than the proposed development. By contrast being excavated into the site, the scale of the development would be markedly lower than surrounding taller properties. Cladding is evident at the rear of properties also visible from within the CA. Although the Council refers to the Boroughs character study, I have not been provided with this document, and the use of materials would be complementary to the area. Taking these aspects into account, the proposal would not detract from the special character of the surrounding terraced properties.
13. Although a driveway is proposed, Fishponds Park is already punctuated with wide tarmac paths to allow vehicular access to the properties within it. The existing area of land facing Browns Road, does not readily reveal the park landscape beyond due to the position of bungalow and alignment of current pathways. From Browns Road this appears more as an uncharacteristic plot between a built-up frontage. The Highway Authority have raised no concerns about the safety of the proposed entrance, and whilst it is acknowledged that the access may be used by dog walkers, families and children, the proposal provides for a separate pedestrian pathway. The access is straight and would not be difficult to navigate for pedestrians and vehicles, and existing trees within this area would be retained and protected.
14. I am conscious that at the time of my site visit the trees were in full leaf. However, I have been provided with photographs of the appeal site during autumn and winter. As such, the proposed development would still be sited behind mature hedging and vegetation, which would afford varying, but satisfactory levels of screening. It is envisaged that these would remain as established and important features of the site and wider locality. Furthermore, some of the trees that provide the surroundings in which the development would be appreciated are beyond the appeal site and protected by virtue of being within the CA. The appellants have also advised they are within the remit of the Council to maintain. Based on this information, I have no convincing evidence that the general treed presence would not be retained in the future.
15. The design of the development is contemporary in appearance. With the limited architectural merit of the existing building, the scheme would add to the overall quality of the area as a result of good architecture. Even if the trees were to be removed the overall composition of the dwelling would appear unified and coherent and would not appear incongruous in its landscape setting. The proposal would have a limited effect on the CA as its key character features of the historic park landscape would be unaltered. The surrounding area is characterised by differing vernacular, massing and height of buildings. The

proposed building would be consistent with the surrounding buildings and architectural styles evident in the area. I agree with the comments from the Surbiton Conservation Areas Advisory Committee that this is judged to be a well-balanced development of reasonably attractive modern architecture which does not cause harm to the CA. Therefore, I find that despite having a larger Gross Internal Area than set out within the London Plan, the character and appearance of the CA would be unharmed and preserved, ensuring that its significance as a heritage asset would be unaffected, accordingly the proposal would also not result in harm to Local Open Space.

16. Consequently, the proposal would not conflict with policies CS8, DM10, DM11 and DM12 of the Royal Borough of Kingston Upon Thames Core Strategy (2012)(the CS). The proposal would also accord with Policies HC1, and D3 of the London Plan (2021) (the LP) with respect to matters of character and appearance and ensuring that development be sympathetic to local character and history, including the built environment and landscape setting. In this respect there would be no conflict with paragraph 202 of the Framework and the scheme would accord with the Framework intention to achieve well-designed buildings and places and make efficient use of land. The proposal would also adhere to the expectations of Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 and being well designed, would preserve the character and appearance of the CA.

Trees

17. The Council are concerned that the development could not demonstrably be carried out without causing harm to the health and viability of the protected trees on the appeal site. In turn, damage to or loss of the trees would harm the visual amenity of the CA and would reduce the ecological benefits associated with the trees.
18. Alongside some tree removals and various works, the dwelling would marginally encroach into the Root Protection Area (RPA) of some trees including where fence posts and access to the dwelling are proposed. Although, the Council contends that insufficient arboriculture information was submitted, it has not made any further comment upon the updated AIA and AMS provided with the appeal, which I consider addresses the comments made by the Council's Tree and Landscape Officer.
19. The AMS sets a clear sequence of works and includes the protection of retained trees to be undertaken prior to any site clearance and monitoring. In relation to the Ash tree (T20), the appellants propose hand digging trial trenches, which if significant tree roots are discovered will require specific construction measures. I am satisfied that this sequence and the final foundation design and tree protection measures can be addressed by the imposition of appropriate conditions. I appreciate the Council's concerns that ideally such information would be preferable up front, as this could require amendments to the AMS, and it would be preferable to understand the exact foundation methods that would be employed. However, the initial advice provided by the Council's Tree officer advises that a pre-commencement condition could secure the additional information, and that the build was achievable.
20. The appellants have provided the details of a landscape scheme. The appellants method statement has been updated to include the Cellweb access road weight calculations, which can accommodate heavy construction traffic and vehicle

weights of 60,000kg. It has also provided further information in respect of a methodology for installing fencing and clarification that the Corten wall is outside the RPA of all trees.

21. I am satisfied that the level of assessment accords with BS5837:2012, while the proposed works would be carried out in accordance with BS3998:2010. Besides, the Council has not submitted any evidence which challenges the appellant's findings in the updated AIA and AMS.
22. Based on the evidence before me, the effect of the development upon the trees could be satisfactorily dealt with by condition, and the health of retained trees on site preserved in accordance with Policies G4, G6 and G7 of the LP Policies DM5, DM6, DM10 and DM12 of the CS. The proposal would also not conflict with the advice Paragraph 180 of the Framework.

Fire safety

23. Policy D12(A) of the LP requires all development to achieve the highest standards of fire safety and provides criteria which should be met. The submitted fire statement addresses criteria of D12 (A) 1,2,3,4 and 6. Although not specifically referred to, the information provided in respect of emergency access provides similar detail to that required by criterion 5.
24. Whilst the Council has raised concerns regarding a dead-end route, the appellant have identified that there is also an existing emergency route across Fishponds Park, from Ewell Road, which would also be suitable for emergency vehicles, which the Council has not disputed.
25. This information demonstrates that the appellant has considered in detail the issues of fire safety before the Building Control application stage, as required in the guidance notes to Policy D12. The appeal proposal is not a major development, and the site is already in residential use. Thus it is considered that the proposal has in a proportionate manner considered the requirements of D12. It would also offer an improvement upon the current situation should the existing dwelling be repaired and occupied.
26. As the explanatory text to LP policy D12 clarifies the matter of fire safety is covered by Part B of the Building Regulations. Therefore, a condition, which incorporate the additional measures outlined by the appellants, can be imposed to ensure the Council is aware of the fire safety measures within the building and can make appropriate comments and suggestions, if necessary, when considering the submission required under the terms of the condition imposed.
27. The appellants have considered issues of fire safety before the Building Control application stage as required in the guidance notes to Policy D12. I therefore conclude in respect of the third main issue that sufficient information to demonstrate compliance with the aims of Part A of Policy D12 of the LP in terms of fire safety has in this case been provided.

Other Matters

28. The site has a Public Transport Accessibility Level (PTAL) of 1b (Very Poor); however, the development replaces an existing dwelling, and there is no dispute that the level of car or cycle parking is acceptable. There is a separate pedestrian pathway provided for users of the park, and maintenance secured via a suitably worded planning condition can be imposed. Furthermore, the

access is straight, visibility would be good and vehicular users of this path are likely to be travelling at very low speeds. The Council's Neighbourhood Traffic Engineer raises no objection to the proposal and as such there is no substantive evidence that parking provision, pedestrian or vehicle access arrangement would harm highway safety.

29. London Plan GIA requirements are minimum standards and are not intended to provide strict controls or limitations on development. This does not mean that development that exceeds the standards is unacceptable. The Council has suggested that a single storey rear extension, built using permitted development rights, would be less harmful than the proposed development. However, for the reasons set out above I have the development to be acceptable.
30. I have paid regard to comments received from other interested parties. Where they relate to the main issue comments have been considered as part of the discussion above. I have also been referred to in the Council's Pre-application advice which I have read in full. However, these aspects do not change my consideration of the above scheme.
31. The disputes between the appellants and the Council in relation to changing advice regarding trees, fire safety and the decision-making process are material considerations to which I can attach only limited weight in making this decision.
32. The Council acknowledges that it cannot demonstrate a 5 year housing land supply. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development, and that, under criterion 11d(ii), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
33. Although the contribution of this replacement dwelling is modest, the Framework indicates that small and medium sized sites can make an important contribution in delivering homes and that the development of windfall sites should be supported. Furthermore, there would be short-term economic benefits during the construction phase, and future occupiers would contribute to the local economy and be likely to use and support local services and facilities in the long term.
34. There would be clear benefits arising from the proposal, although these are modest given the scale. I have however identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

Conditions

35. The Council has provided a list of conditions. I have considered these in line with the relevant tests set out at paragraph 56 of the Framework. Where necessary I have amended the Council's suggested conditions in the interests of clarity and brevity and included new conditions which the appellants have agreed to.
36. Alongside the standard time limit condition for commencement of the development [1] I have imposed a condition listing the approved drawings in the interests of certainty [2]. Conditions requiring an updated ecology [3], Ash

tree assessment [4] and tree protection measures [5] are required in relation to the protection of wildlife and trees. Following this I have imposed an amended construction management plan [6] in the interest of the living conditions of nearby residents and those who use the park which would address the requirements of construction traffic.

37. I have imposed a condition requiring an updated fire statement in the interests of safety and the living conditions of future occupants [7]. Ecological enhancements are necessary to improve the nature conservation value of the site [8]. Conditions requiring the development to be constructed in accordance with the specified materials [9] are required in the interests of the visual appearance of the area.
38. Water efficiency measures are imposed [10] due to the site being in an area of high-water stress. In the interests of encouraging non car modes of transport a condition requiring cycle parking is imposed [11]. A scheme for the maintenance of the path and access [12] is required to ensure that it remains suitable for its intended use. A condition in relation to the direction of any external lighting [13] is imposed in the interests of the visual appearance of the site.

Conclusion

39. For the reasons given above, having had regard to the development plan and the Framework take as a whole and all other matters raised, I conclude that the appeal should be allowed.

K Williams

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan Sheet No:1 Ref:0
 - Site Location Plan Block Plan Dwg No.1 of 5 Rev A
 - Existing Plans Existing Elevations Dwg No.2 of 5 Rev A
 - Proposed Plans Dwg No.3 of 5 Rev A
 - Proposed Sections Proposed Roof Plan Dwg No.4 of 5 Rev A
 - Proposed Elevations Dwg No.5 of 5 Rev A
 - Existing Site & Boundary Dwg No:P01 Rev No:03
 - Landscape Proposals Dwg No:P02 Rev No:03
 - Planting Plan Dwg No:P03 Rev No: 03
 - Fencing Dwg No:P04 Rev No: 03
 - Levels Markup Dwg No:P05 Rev No:03
 - Enabling Works Dwg No:P06 Rev No:04
- 3) Prior to the commencement of any development, including demolition and site clearance an updated Preliminary Ecological Appraisal (PEA) and Bat Emergence/Re-Entry Surveys must be carried out and submitted to the Local

Planning Authority for approval in writing. The development must thereafter be carried out in accordance with the recommendations of the updated surveys and any additional mitigation measures contained therein.

- 4) No development including any demolition or site clearance shall take place until an updated Arboricultural Impact Assessment and Method Statement has been submitted to and approved in writing by the Local Planning Authority. This shall include the results of the recommendations in relation to tree T20 Ash contained in Paragraph 6.6.1 of the MM Arboriculture Arboricultural Impact Assessment and Method Statement Rev 5 dated 7 July 2022, and methodology for any subsequent foundation, construction and tree protection to be employed in the construction of the development hereby approved. Once approved the development shall be carried out in accordance with the agreed details and adhered to throughout the construction period and lifetime of the development.
- 5) Tree protection shall be implemented prior to the commencement of development, including demolition and site clearance and in accordance with the updated Arboricultural Impact Assessment and Method Statement agreed under condition [4] of this permission and adhered to throughout the construction period for the development.
- 6) No development shall take place including any works of demolition until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:
 - i. How the proposed development will be built;
 - ii. Hours of working (which shall be limited to 08.00 to 18.00 Mondays to Fridays and between 08.00 to 13.00 on Saturdays and not at all on Bank Holidays and Sundays);
 - iii. The procedures and routes for managing traffic to and from the site;
 - iv. Temporary site access;
 - v. Whether it is anticipated that statutory undertaker connections will be required into the site;
 - vi. The storage of plant, materials and operatives vehicles;
 - vii. The parking of vehicles of site operatives and visitors;
 - viii. The potential for impacts from dust and emissions during the demolition and/or construction phase upon local air quality and surrounding residents;
 - ix. Measures for the laying of dust, suppression of noise and abatement of other nuisance arising from development works;
 - x. The location of all ancillary site buildings;
 - xi. The means of enclosure of the site, its erection and maintenance;
 - xii. Wheel washing equipment;
 - xiii. Meeting the requirements of the Low Emission Zone for Non-Road Mobile Machinery; and
 - xiv. The method of recycling and disposing of waste resulting from the demolition and/or construction phases;The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 7) Prior to the commencement of the dwelling hereby approved, the William Martin Compliance Fire Statement dated 5 October 2022 shall be updated to include a robust strategy for evacuation shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in

accordance with the approved statement prior to the first occupation of the development and thereafter be kept in working order for the lifetime of the development.

- 8) No development shall take place above slab level until a scheme to enhance the nature conservation interests of the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme prior to first occupation of the development and thereafter retained and maintained for the lifetime of the development.
- 9) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing Material Proposal P 05 of 05 date 10/03/2022 and thereafter retained.
- 10) Prior to the occupation of the development hereby approved, details demonstrating that the dwelling hereby approved will not exceed 105 litres per person per day mains water consumption shall be submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the approved details and thereafter maintained as such in perpetuity.
- 11) Prior to occupation of the development hereby approved, details of secure bicycle parking facilities for the occupants of, and visitors to the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for such use at all times.
- 12) Prior to occupation of the development the path hereby approved on plan Enabling Works Dwg No P06 Rev No.04 shall be completed and an ongoing schedule of maintenance shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be maintained in accordance with the approved schedule.
- 13) Any external lighting installed at the site shall be angled so as to prevent any spillage or glare beyond the site's boundaries.

End Of Schedule