



Appeal Decision

Hearing held on 13 December 2023

Site visit made on 14 December 2023

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2024

Appeal Ref: APP/T5720/W/23/3322144

81 Wimbledon Hill Road, Wimbledon, Merton, London SW19 7QS

- 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 Charterfield Homes Limited against the decision of London Borough of Merton.
 - The application Ref 22/P0812, dated 4 February 2022, was refused by notice dated 30 January 2023.
 - The development proposed is demolition of existing building and erection of a five storey residential block comprising 18 x self contained flats (1 no x 3 Bed, 15 no x 2 Beds & 2 no x 1 Beds), plus 1 no dwellinghouse arranged over 2 floors (ground floor and basement).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Charterfield Homes Limited against the London Borough of Merton. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the description of the development from the appeal form as, due to changes during the application process, this accurately describes the development proposed.
4. Following a discussion at the event it was agreed that three documents were to be submitted as late evidence: A bar graph showing a visual representation of the Vertical Sky Component and Daylight Distribution results on the bedroom window in Flat 2; An annotated version of section 13 and 14 of the Appellant's Final Comments; and views from Leeward Gardens shown side by side. These documents were available to the parties prior to the event, they related to matters which were to be discussed in detail at the event and in the case of the tables and comparison images provide an alternative presentation of the previously submitted evidence. As such the parties would not be prejudiced in my consideration of these documents and the appeal has been assessed on the basis of this evidence.
5. A Section 106 Agreement (S106) has been submitted which includes mechanisms which seek to provide early and late stage affordable housing

reviews, carbon offsetting and to restrict applications for parking permits. I will return to these matters later in this decision.

6. During the consideration of this appeal the revised National Planning Policy Framework (2023) (the Framework) and the 2022 Housing Delivery Test (HDT) results have been published. The main parties have had the opportunity to submit comments on the relevance of these documents to this case. I have taken any comments received into consideration.

Main Issues

7. The main issues are:

- The effect of the proposed development on the living conditions of existing occupiers with particular regard to daylight and sunlight and any overbearing effect.
- The effect of the proposed development on the character and appearance of the area.

Reasons

Living Conditions

Daylight and Sunlight

8. I have been provided with daylight and sunlight assessments where the closest neighbouring properties at Leeward Gardens, Bluegates and Harrowdene Court have been assessed against the tests in BR209 (2022) 'Site Layout planning for daylight and sunlight: A guide to good practice (the BRE Guide). The guidelines in this document are an indicator of whether an existing property would remain suitably well lit.
9. Where an existing building has windows that are unusually close to the site boundary and taking more than their fair share of light, the BRE guide suggests that a 'mirror image' approach can be adopted. Using this method, the four most affected windows would comply with the tests of Vertical Sky Component (VSC) and Daylight Distribution (DD) set out in the BRE Guide. However, although part of the side elevation is closer, the windows at Bluegates are around 6m from the boundary. The proposed building would be around 5m from the boundary. As such, in these particular circumstances, the windows at Bluegates are not unusually close and modelling a 'mirror image' mass would not be an appropriate approach in this case.
10. I am also provided with values that consider the effect on light taking into account existing trees and proposed tree works. In this situation the four windows tested would comply with the VSC and DD tests. The BRE guide explains that it is usual to ignore the effect of existing trees. This is because daylight is at its scarcest and most valuable in winter when most trees will not be in leaf. Consequently, I have not used this approach in this case.
11. Setting aside these alternative approaches, the effect of the proposed development would be that four windows in Bluegates would retain less than 80% of their existing VSC. These rooms are the kitchen to Flat 1 (a two bedroom property), which would retain around 75% of VSC. A bedroom and kitchen to Flat 2 (a two bedroom property), with around 71% and 75% retention respectively and the bedroom to the first floor, two-bedroom flat

which would have around a 79% retention. The ground floor windows were also tested for their DD. Two of these windows would retain less than 80% of their existing DD, With the kitchen to Flat 1 retaining 43%-45% DD and the bedroom to flat 2 retaining 33%-40% DD.

12. The kitchen to Flat 1 is galley-style and leads off the living area. All other rooms to Flat 1 would remain well lit. One bedroom and the main living room to flat 2 would remain well lit, whilst the other bedroom and kitchen would not. Bedrooms and kitchens are rooms where light is needed. The losses to VSC to these windows are within the range of 70-80%, however the loss of DD is much higher. The BRE Guide is not policy and its guidelines should be interpreted flexibly. Nevertheless, at these values the loss of light to these rooms would be noticeable to the occupants and more of these rooms, where light is needed, would appear poorly lit. Consequently, this would result in a substantially harmful effect on the living conditions of these occupants as a result of this development.
13. Aside from the windows discussed above, the detailed technical assessment shows that all other neighbouring properties would retain acceptable levels of daylight and sunlight and I agree with these conclusions. However, that does not overcome the harm to the rooms that would be affected.

Overbearing

14. I have been provided with various CGI images which are a static representation of a view from a single point, and are not taken from verified views. The CGI images provided by the appellant and interested parties differ. Consequently, whilst I have considered these as well as the submitted Waldram diagrams and my site visit observations, including ground levels, I have carefully considered the plans which would form part of any planning permission.
15. The rear elevations of 26-30 Leeward Gardens, which have main windows and gardens, face towards the appeal site. The existing building is visible from No 27 and likely from the adjoining properties. There is a pronounced change in ground levels and Leeward Gardens is below the level of 81 Wimbledon Hill Road.
16. The proposed development would result in a four storey plus basement development, on higher ground, directly to the rear of Nos 26-28. The main block would be around 20m from the rear windows and the proposed dwelling would be a minimum of around 2m from the rear boundary.
17. The outlook from the properties along Leeward Gardens would alter and there would be an increase in built form in the view from these windows. Given the change in ground levels, the proximity and the extent of the increase in bulk and mass, particularly towards the rear of the proposed building, the proposed development would be overbearing to these properties.
18. Details of boundary treatment could be secured by condition, however considering existing boundary treatments I am satisfied that it would be possible to provide a boundary in this location which would not be harmfully overbearing in itself. Landscaping could also be controlled by condition and therefore any details in this regard are indicative only.
19. The views from other properties including Harrowdene Court, would also change. However, given the distance from the proposed building along with the

orientation of the windows which do not face directly across the site, there would not be an overbearing effect to these properties.

20. A condition could be attached which would secure that the details of the screening to third floor balconies would need to be approved and permanently retained. This condition is enforceable and would prevent overlooking from unit 16 and 18's balconies. Given the locations of the windows at Bluegates and the potential angle of view from the balconies to the front elevation, screening should also be provided to the northern sides of these balconies. This could also be secured by condition.
21. Nevertheless, the lack of harm with regard to boundary treatment and overlooking does not alter that the proposed development would be unacceptably overbearing.

Summary

22. The proposed development would have a harmful effect on the living conditions of existing occupiers with particular regard to daylight and sunlight and an overbearing effect. Taken together this harm would be substantial. Consequently, in this regard, the proposed development would be contrary to Policy DM D2 of the Sites and Policies Plan (2014) (SPP) and Policy D3 of the London Plan (2021) (LP). Together these policies seek to ensure the provision of appropriate levels of sunlight and daylight, quality of living conditions, outlook and amenity amongst other things.

Character and Appearance

23. In the vicinity of the appeal site, Wimbledon Hill Road has a variety of building types. These include the Grade II listed White House, and some single dwellings. As well as more modern blocks in a variety of styles, some of which incorporate more traditional features including pitched roofs such as Powell House and Holly Lodge whilst some are a more contemporary design with flat and curved roofs, such as the adjoining Bluegates and Iona. In addition, there are terraces of two and three storey houses with pitched roofs along Leeward Gardens which are visible from Wimbledon Hill Road. The heights of buildings also range from two to five storeys. Consequently, the ridge line and roof type along this road is not particularly prominent nor an important feature of this area. Although the use of brick is a common feature. As such there is no overriding style or height to the properties along Wimbledon Hill Road.
24. The proposed development would be a contemporary flat roofed, four storey plus basement block, with projecting balconies and protruding bays. A single dwelling set across basement and ground floor level is also proposed. They would not appear as Edwardian buildings and would be clearly modern. The buildings would be in brick and would include brick detailing to the elevations, and window recesses.
25. The overall height and scale of the proposed development, with a recessed upper floor would not be visually jarring against the other large apartment blocks located nearby. Also, the proposed materials in brick and stone, including interest through their detailing, would complement other buildings nearby. The proposed development would be an appropriate addition to the varied character along Wimbledon Hill Road.

26. Therefore, the proposed development would be appropriate to the character and appearance of the area. As such it would be in accordance with Policy DM D2 of the SSP, Policy CS 14 of the LBF Core Planning Strategy 2011 (CS) and Policy D3 of the LP. Together these set criteria to achieve high quality design and respect the local distinctiveness and character of the area, using a design-led approach amongst other things.

Planning Obligation

Affordable Housing

27. Policy CS8 of the CS sets an affordable housing target of 40% of units to be affordable for this development. It states that off site or financial contributions in lieu of provision on site will only be considered in exceptional circumstances.
28. The appellant has submitted detailed viability information which demonstrates that the development could not viably provide any affordable housing (The AH106 report dated September 2022). I am provided with assessments of this evidence by two different assessors (The RPS report dated May 2022 and the Adams Integra Report dated January 2023), and whilst there are some differences between the assumptions in both, only the RPS report disagrees with the overall conclusion. However, the RPS report was based on a previous iteration of development on this site for 18 flats and 3 dwellings. Amendments to the scheme which were made after this was written mean that only a single dwelling is now proposed. As such the relevance of this document to the scheme before me now is limited.
29. Consequently, based on the evidence before me, I am satisfied that the development could not viably provide affordable housing at present. Given the sensitivity of the scheme, an early and late stage review mechanism should be sought. This would enable any uplift in sales values or decrease in build costs to be captured prior to above ground development, and also when final costs and values are known. The submitted S106 agreement would secure this with timings for the early review mechanism that reflect the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance 2017. The Council confirmed at the hearing that this overcomes their 2nd reason for refusal.
30. As such the development demonstrates the exceptional circumstances in which a financial contribution in lieu may be considered. The proposed development would not achieve the affordable housing target of 40% of units and therefore would not be in accordance with Policy CS8 of the CS in this respect. However, the considerations set out above are such that they indicate that the development would be otherwise acceptable in this regard.

Carbon

31. Policy SI1 of the LP seeks to minimise Greenhouse Gas emissions. It requires an on-site reduction and also, where the zero-carbon target cannot be achieved on site it allows any shortfall to be provided via a contribution to the carbon offset fund. The proposed development would achieve a 60% reduction in CO₂ emissions with the remainder via a carbon offset contribution. I am satisfied that this meets the tests and the amount is fairly related in scale and kind to the development proposed. The Council also agreed that this overcomes their 3rd reason for refusal.

32. Given the multiple trigger points and obligations the monitoring fee is also acceptable. By their nature such contributions are necessary to mitigate adverse effects and therefore any indirect benefits in this regard are minimal.

Car Parking

33. Policy CS20 of the CS and Policy DM T3 of the SSP support car parking permit free development in this area in order to encourage means of travel that have less environmental impact than the private car, amongst other things. The S106 agreement would ensure that, other than those with a disabled persons badge, residential occupiers would not be entitled to a residents parking permit. I am satisfied that this meets the tests. This would also have the effect of avoiding any overspill parking on the surrounding streets. The Council have confirmed that this overcomes their 4th reason for refusal. The lack of harm in this regard is a neutral factor.

Planning Balance

34. The 2022 Housing Delivery Test (HDT) Results indicate that the delivery of housing was below 75% of the housing requirement over the previous three years. This is disputed by the LPA.
35. If the published HDT figures are taken into account, paragraph 11(d) of the Framework would be engaged which requires that planning permission be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies within the Framework taken as a whole. Therefore, the policies that are the most important for the determination of the application would be deemed to be out of date. However, this does not mean they would not apply and overall, the proposal conflicts with the development plan as a whole.
36. The proposed development would provide a moderate sized development of 19 new homes which would contribute to the government's target to significantly boost the supply of homes. The proposed development would also bring the associated economic benefits of 19 dwellings, such as construction expenditure and jobs and spend in the local area from future occupants. These are important considerations and I afford significant weight to them. Whilst review mechanisms would be in place for affordable housing, given the lack of certainty as to whether and how this would be delivered, any benefits in this regard would be limited.
37. In a case where paragraph 11d) is engaged, the starting point is therefore that permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits. For the reasons already given the development would result in substantial harm to living conditions for nearby occupiers with inadequate light to existing occupiers and an unacceptably overbearing effect, when assessed against the policies within the Framework taken as a whole. These policies require developments to provide a high standard of amenity for existing users.
38. Consequently, the harm I have identified would have a serious effect on these occupiers, which would lead me to conclude that these substantial adverse effects attract greater weight that significantly and demonstrably outweighs the benefits set out above. As such, even if the published HDT figures are to be

considered correct, or the LPA could not demonstrate the relevant supply of deliverable housing sites, the presumption in favour of sustainable development would not apply in this case.

Conclusion

39. The proposal would not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

H Miles

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

M Cawthra
S Hinsley
A Lees
M Smith
R Staig

FOR THE LOCAL PLANNING AUTHORITY:

T Bryson
D Gardener
A Mundy

INTERESTED PARTIES:

T Anderson
C Braynion
P Fawell
D Holden
M-I Pousao-Smith
K Simpson

DOCUMENTS

- Email from CRAIG BRAYNION, Sent: 11 December 2023 14:17, Subject: APP/T5720/W/23/3322144 adverse effects on living conditions
- Sections 13 and 14 of the appellant's Final Comments with added remarks;
- Comparison 1 and Comparison 2