



Appeal Decision

Site visit made on 11 January 2024

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/P5870/W/23/3317467

74 Park Hill Road, WALLINGTON, SM6 0RQ

- 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 Hasan Mirza against the decision of the London Borough of Sutton.
 - The application Ref DM2021/00526, dated 15 March 2021, was refused by notice dated 31 August 2022.
 - The development proposed is the erection of 1no. 3 bedroom dwelling with associated access and landscaping works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A number of new documents were submitted with the appeal. These are an arboricultural appeal statement, biodiversity impact assessment, energy statement, water calculation compliance summary and a flood risk assessment and sustainable drainage report.
3. In considering whether to accept the new documents I have had regard to the tests in the judgment in *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin). The documents do not propose any fundamental changes to the scheme which was considered by the Council, but instead add further detail on how the development would be carried out in terms of matters such as the protection of trees, the provision of drainage systems and its appliances and fixtures. Thus, the information provided in the additional documents would not cause unlawful procedural unfairness to anyone involved in the appeal. Accordingly, I have formally considered them in my decision.
4. In refusing permission for sustainability reasons the Council partially relies on Policy SI 4 of the London Plan (2021) (the LP). The policy concerns the management of heat risk. However, the evidence does not sufficiently demonstrate how the appeal scheme is considered to conflict with this policy. As a result, I consider that it is not directly relevant to the reasons for refusal. Accordingly, I have not considered the policy further in determining the appeal.

Main Issues

5. The main issues are:

- The effect of the proposed development on the character and appearance of the area, including its effect on the Woodcote Avenue Area of Special Local Character non-designated heritage asset and its effect on trees;
- Whether the proposed development would incorporate satisfactory sustainable drainage, water efficiency and carbon emissions measures;
- Whether development plan policy provides support for the proposed development's location; and
- The effect of the proposed development on biodiversity.

Reasons

Character and appearance

6. The borough of Sutton's heritage assets and protected areas include locally-designated Areas of Special Local Character (ASLC). The appeal site lies towards the centre of the Woodcote Avenue ASLC (designated in 2003). The significance of the ASLC is partially derived from a spacious appearance arising from wide residential streets lined with dwellings which are generally substantial and well-spaced, within large grounds. Significant areas of hedgerow, trees and roadside verge contribute to a leafy appearance. Rear gardens have generous levels of trees and vegetation, providing both a spacious backdrop and a verdant appearance, which make a significant positive contribution to the appearance of the ASLC.
7. The proposed development would be constructed on garden land to the rear of the host dwelling. The site is fringed by particularly densely treed borders, comprising deciduous and evergreen specimens both within and outside its boundaries. These include mature sycamore, walnut and fir trees which are substantial in size and make a considerable and positive contribution to the appearance of the area (as recognised by the inclusion of the sycamore in a Tree Preservation Order (TPO)).
8. Policy 28 of the Sutton Local Plan (2018) (the SLP) sets out that the significance of trees which are important within the local landscape may derive from their size, form and maturity, or because they are rare or unusual. It is consequently not necessary for a tree to be subject to a TPO in order for it to be considered important according to the policy. The size, form and maturity of each of the three trees give rise to a significance in the local landscape which means that they should be considered important according to Policy 28.
9. The sycamore is one of a number of mature trees which form a green avenue along the adjacent private road Glen Road End. It was found to be a Category A tree of normal vitality with a life expectancy of at least forty years in an arboricultural assessment. The walnut and fir trees were both assessed as Category B trees of fair-normal vitality, with life expectancies of 20-40 years. All three trees consequently have a reasonable life expectancy so that their positive contribution is likely to endure for many years.
10. The proposed dwelling would be located close to the canopies of the three trees and parts of the garden and driveway areas would be under their spreads. The single storey element of the house would lie underneath the walnut (T3) and fairly close to its canopy, with a minimum of 1.5 metres between the building and tree. It would contain a garage, bathroom and utility room. The garage

and rooms would form lesser-used areas without roof lights, and windows in the two rooms would not face the walnut tree, with the bathroom window facing the sycamore likely to be obscure-glazed. Occupier concerns due to matters associated with the two trees such as shade and seasonal debris are consequently unlikely to arise in respect of the single storey section alone.

11. Nevertheless, the main two-storey element of the dwelling would be subject to greater levels of use, and would be bounded on three sides by a significant number of trees. Windows to habitable rooms within the dwelling's front elevation are likely to admit the least light due to their northerly aspect. The sycamore lies within a row of trees which would be likely to reduce light levels to the rooms concerned further due to their proximity, height and density, although they would be less likely to cast shade on the dwelling on sunny days due to their position to the north of the dwelling. The location of the walnut to the west of the building's front elevation would reduce levels of sunlight to the development in the evening, when in leaf.
12. The conical shape of the fir tree may give rise, in isolation, to a lesser area of shading than some other species. Nevertheless, when considered together with trees in the neighbouring garden, the fir tree forms part of a group with relatively dense foliage which is likely to cast a significant amount of shade over the scheme from the south. The evidence before me does not indicate that the layout of the dwelling's fenestration would serve to overcome any shading to rooms at the rear of the building.
13. Thus, the proximity and density of trees, which would be attributable in no small measure to the presence of the sycamore, walnut and fir, would be highly likely to contribute to shading or a gloomy atmosphere to the house and garden, and this would increase in the summer months when the deciduous specimens would be in leaf. Occupier concerns in this regard are likely to give rise to requests to prune or remove the trees, which would be exacerbated if issues such as leaf loss and seasonal debris from the trees additionally caused concern.
14. Whilst the evidence does not suggest that the construction phase of the development would be likely to result in harm to the trees referred to, my concerns relate to its occupation phase. Having trees in close proximity to a dwelling can additionally give rise to safety concerns, which would be unlikely to be adequately addressed by pruning alone. As it is substantial in size and would lie close to the dwelling's front elevation, the sycamore would be the most likely of the trees within its row to be the subject of requests for removal on the grounds of lack of light and/or safety concerns. Whilst the tree is subject to a TPO and hence the Council would have the ability to assess and reject any applications to prune or fell, these can be difficult to resist particularly where safety is at issue.
15. Although the presence of trees within a development can contribute to climate change resilience, for such a benefit to arise it is necessary for the relationship between trees and buildings at the site to be sustainable in order to ensure the future of those trees. I have identified that the density and proximity of the three trees in question to the built form would be likely to give rise to concerns that result in requests for pruning or felling, demonstrating an unsuitable juxtaposition of trees and buildings at the site. Furthermore, the proposal consequently does not provide sufficient assurance that trees of value will be

retained and protected, so that it does not demonstrate the suggested compliance with Policy G7 of the LP. In view of the above considerations, the scheme would be likely to cause material harm to the area's verdant appearance due to its effect on important trees.

16. Turning to the effect of the use of garden land for the proposal, the appeal site is the last in a row of rear gardens of a generous size. Backland residential development is not apparent within these gardens, so that they provide characteristic separation between dwellings on Park Hill Road and properties behind them which lie at the end of an adjacent cul-de-sac, Glen Road End. This separation is evident both from various public vantage points and from surrounding properties. Together the row of gardens consequently make an important and positive contribution to the spacious appearance of the ASLC.
17. Outline planning permission was granted for the erection of a detached dwelling at the site on appeal (ref. APP/P5870/A/06/2010458) in 2006, with approval of the reserved matters in 2009. That permission has now lapsed. Policy 13 of the 2018 SLP was subsequently adopted. Its supporting text sets out that "in recent years, back garden land has come under increasing pressure for new housing development and it could be argued that the cumulative impact of back garden loss is causing gradual degradation of the open and green character of the borough". The policy consequently aims to "minimise dwellings on back garden land in the Suburban Heartlands", with the appeal site lying in the Suburban Heartlands of Wallington according to local policy.
18. The supporting text consequently assists in the interpretation and application of Policy 13, providing a clear indication that specific concerns about the cumulative effect of the development of rear garden land on the area's appearance have given rise to the policy. Such concerns are not apparent from the policies of the former Unitary Development Plan (the UDP) against which the 2006 decision was assessed. The context of the current development plan is consequently different in this regard.
19. Former local policies HSG1 and BE38 of the UDP concerned development and the residential environment in ASLCs. They formed the policies against which the 2005 scheme was assessed in the 2006 appeal decision in terms of its effect on the character and appearance of the area. They required the character and appearance of existing residential areas to be safeguarded, and set out that applications which respected the key elements which contributed to the character of an ASLC would be considered favourably.
20. Policy 13 of the current SLP concerns back garden land, and sets out that permission will not be granted for the development of such land where the site, either individually or as part of a larger street block, makes an important contribution to the character and appearance of the surrounding area. Policy 30 of the SLP concerns heritage, and states that development within an ASLC will be expected to conserve and, where practicable, to enhance those elements which contribute to the ASLC's particular character or appearance, which may include gardens.
21. In introducing a requirement for consideration of a site's role within a "larger street block" and for the specific consideration of whether gardens contribute to the significance of an ASLC, Policies 13 and 30 of the SLP consequently expand upon the more generalised aims of the former UDP policies, requiring a greater focus on specific matters than has previously been necessary. This is further

evidenced by the assessment within the 2006 appeal decision of the plot size of the proposed dwelling compared with those of development on Glen Road End, Woodcote Avenue and the host dwelling, rather than of any visual contribution of the site as part of the row of rear gardens on Park Hill Road. The current development plan consequently places a greater requirement on the decision maker to consider the contribution of the garden site as part of a whole.

22. The 2006 appeal decision additionally concluded that the position of the proposed dwelling "behind the belt of trees and shrubs along Glen Road End means that it would have little impact on the character and appearance of the wider area because it would not be readily seen". The seasonal deciduous vegetation in leaf at the time of the June 2006 site visit which informed the subsequent appeal decision may more readily have suggested a level of screening of the development. Furthermore, vegetation may have restricted views of the site to a greater extent at that time. However, my assessment indicated that glimpses of the proposed two-storey house would be possible from public vantage points outside the host dwelling, and that views would be widely available from surrounding properties.
23. Furthermore, the previous appeal decision concluded that the more closely-spaced plots on Glen Road End largely formed the site's context at that time. Properties on Glen Road End are set well back from Park Hill Road behind built form or mature vegetation and trees, so that they are not readily visible from the public domain. Trees now form a distinct boundary between the site and residential development on Glen Road End, contributing to a clear break up of built form. The position of the proposed dwelling closer to Park Hill Road and in front of some of these trees would mean that it would be more visible, both from the highway and from surrounding dwellings, than properties on Glen Road End. As a result of these considerations, the site's visual context is now formed by properties and rear gardens on Park Hill Road, rather than those on Glen Road End.
24. The previous decision was taken almost twenty years ago, so that vegetation growth in the intervening period (including a group of relatively fast-growing coniferous specimens which would largely be retained post-development) is likely to have contributed to this alteration in the site's visual context. In summary, my assessment both of the potential visibility and of the visual context of the appeal proposal results in materially different conclusions from those which were reached in the 2006 appeal decision.
25. The appeal scheme would introduce two-storey backland residential built form which would erode the spaciousness of rear gardens within its row. The proposal would consequently directly affect the ASLC, reducing the separation between dwellings on Park Hill Road and those on Glen Road End and thereby causing harm to the important and positive contribution which the row of gardens makes to the spacious appearance of the ASLC.
26. An application (reference D2009/61362/ARM) for the approval of reserved matters relating to design, external appearance and landscaping (pursuant to a condition imposed on the permission granted in the 2006 appeal decision) was granted by the Council in 2009. Its report found that the reserved matters proposal was "not considered to adversely affect the character of the surrounding ASLC or the visual amenities of the streetscene".

27. Notwithstanding this, as it considered a reserved matters application, the report's scope was limited to the consideration of the effects of aspects of the approved scheme such as architecture, materials, lighting, fencing and hedgerow. The report consequently did not assess matters which currently fall for consideration such as the proposal's effect on the spaciousness of the ASLC or the effect of the development of a section of rear garden, other than by reference to the conclusions of the previous appeal decision. Furthermore, in its initial assessment of the outline application the Council had concluded that the proposal failed to respect the degree of separation of houses and large gardens which contributed to the character of the ASLC. Thus, the assessments of the 2009 report do not provide support for the appeal proposal.
28. My attention has been drawn to a number of other residential developments in the vicinity. These include development on Glen Road End and the nearby Woodcote Avenue. Some of these form examples of apparent "backland" development of the type currently proposed, notably Nos 23A, 27A, 37A, 37B and 59/61 Woodcote Avenue. The proposed development would take access from the adjacent cul-de-sac Glen Road End, so that it would resemble development on the nearby cul-de-sacs Oakwood, Wood End and The Woodlands in layout.
29. I have limited details on the circumstances of these developments. Nevertheless, even if the other schemes and circumstances were similar, they would not inevitably provide an example that should be followed even if harm results, particularly as the other properties appear to have been present for some considerable time in every case and hence are likely to have been considered against a previous development plan, so that different considerations applied. Furthermore, established schemes for rear garden development in the borough are consistent with more recent concerns regarding the cumulative visual effect of the development of rear garden land which Policy 13 and its supporting text later sought to address. Accordingly, the other developments do not alter my conclusions on the current scheme.
30. Thus, the effect of the proposed development on the character and appearance of the area, including its effect on the Woodcote Avenue ASLC and its effect on important trees, would be harmful. This harm would be limited due to the small scale of the development proposed. Nevertheless, the scheme would consequently conflict with Policy 30 of the SLP, which states that the Council will conserve and, where practicable, enhance the borough's historic environment, including ASLC; that great weight will be given to the conservation of Sutton's heritage assets; that any harm to the significance of a heritage asset must be justified; and that the Council will expect development within an ASLC to conserve and, where practicable, enhance those elements which contribute to the ASLC's particular character or appearance, which may include gardens and trees.
31. Further conflict exists with Policy 28 of the SLP, which states that, where important trees are present on a proposed development site, a landscaping scheme should be submitted with the planning application which makes provision for their retention. Additional conflict exists with the section of Policy 13 of the SLP which sets out that permission will not be granted for the development of back garden land where the site makes an important contribution to the character and appearance of the surrounding area. Further conflict exists with Policy D3 of the LP, which requires new development to

enhance local context by delivering buildings and spaces that respond to local distinctiveness.

32. As an asset identified by the local planning authority, the ASLC forms a non-designated heritage asset. The National Planning Policy Framework (2023) (the Framework) sets out the differing considerations which apply to designated and non-designated heritage assets in determining proposals which affect them. In respect of designated heritage assets only it states, amongst other things, that:
- (i) Great weight should be given to the asset's conservation when considering the impact of a proposed development on significance;
 - (ii) Any harm to, or loss of, the significance of the asset should require clear and convincing justification;
 - (iii) Permission should be refused where a proposed development would lead to substantial harm to (or total loss of significance of) the asset, unless specific circumstances apply, and
 - (iv) Where a development proposal will lead to less than substantial harm to the significance of the asset, this harm should be weighed against the public benefits of the proposal.
33. The Framework sets out that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
34. Policy 30 of the SLP states that great weight will be given to the conservation of Sutton's heritage assets; that any harm to the significance of a designated or non-designated heritage asset (or its loss) must be justified; and that proposals will be weighed against their public benefits, whether it has been demonstrated that all reasonable efforts have been made to sustain the existing use, find new uses or mitigate the extent of the harm to the significance of the asset, and whether the works proposed are the minimum required to secure the long-term beneficial use and retain the significance and conservation of the asset.
35. In attaching great weight to conservation and requiring any harm to significance to be justified, in both cases whether a heritage asset is designated or non-designated, Policy 30 of the SLP is consequently partially inconsistent with the Framework. The Framework applies these considerations in respect of designated assets only.
36. The weighing of all proposals against their public benefits required by Policy 30 of the SLP is likely to be similar to the weighing of an application, including its effect on a non-designated heritage asset, which is set out in the Framework. Factors against which proposals will be weighed are subsequently set out in Policy 30. These are similar to those which are likely to be considered in an assessment according with the Framework's provisions in respect of enabling development. These elements of Policy 30 are consequently broadly consistent with the Framework.

37. The Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, and that the closer the policies in the plan to those in the Framework, the greater the weight that may be given. The overall aims of Policy 30 are consistent with those of the historic environment provisions of the Framework, however the prescribing of great weight to the conservation of non-designated heritage assets forms a limited divergence from the Framework, which does not advise that any particular weight should be attached in this regard.
38. Whether or not there were local reasons for this difference in the development plan position, I have considered the asset's significance for the purposes of the appeal, and the proposal's effect on that significance, which is harmful. This amounts to limited harm and, recognising that heritage assets are an irreplaceable resource, I accordingly attach great weight to the asset's conservation.

Sustainability

39. The development plan contains a number of policies which seek to respond to climate change.
40. Turning first to the issue of sustainable drainage, Policy 32 of the SLP states that developments should incorporate sustainable drainage systems (SuDS) measures as part of their design and layout in order to manage surface water run off and achieve minimum SuDS performance standards.
41. Policy SI 13 of the LP sets out that development proposals should aim to achieve greenfield run off rates and to ensure that surface water run off is managed as close to its source as possible.
42. Whilst the site lies within Flood Zone 1, and hence it would usually have a low probability of flooding, it appears to lie within an area identified by the Environment Agency to have critical drainage problems. It is consequently at risk of causing run off leading to flooding problems downstream, giving rise to the need for a site-specific flood risk assessment in accordance with the provisions of Policy 32 of the SLP and the Framework. Policy SI 12 of the LP states that development proposals should ensure that flood risk is minimised and mitigated, and that residual risk is addressed.
43. The Framework sets out that development should only be allowed in areas at risk of flooding where, amongst other matters, it can be demonstrated that it incorporates SuDS, unless there is clear evidence that this would be inappropriate.
44. Policy 32 of the SLP contains slightly different requirements in respect of SuDS performance standards for greenfield and previously developed sites. For greenfield sites, peak run off rates and volumes for the 1 in 100 year rainfall event should never exceed greenfield run off rates for the same event. For previously developed sites, peak run off rates and volumes for the 1 in 100 year event should achieve greenfield run off rates for the same event, unless particular circumstances can be demonstrated, in which case rates must not exceed 3 times the calculated greenfield rate. Policy SI 13 of the LP concerns sustainable drainage, and states that development proposals should aim to achieve greenfield run off rates.

45. The main body of the submitted Flood Risk Assessment and Drainage Strategy (FRADS) concludes that the development would result in a 95% reduction in surface water run off peak flow rate for a 1 in 100 year rainfall event at the site post-development. Nevertheless, the pre-development peak flow rate figure for such an event is not provided in the text, so that it is necessary to consult the appended surface water runoff calculations to assess this conclusion. However, these do not clearly indicate that the post-development 100 year rainfall surface water run off peak flow rate would not exceed greenfield run off rates for the same event, or demonstrate particular circumstances for any increase. As a result, the report does not clearly support the stated conclusions in terms of peak flow rates for a 1 in 100 year event. As the FRADS was submitted at appeal stage it has not been subject to full review by the local planning authority, so that confirmation of whether it is considered to meet the performance standards of Policy 32 is additionally not available.
46. The evidence consequently does not provide assurance that the requirements of Policy 32 of the SLP and Policy SI 13 of the LP are met, whether their provisions in respect of greenfield or previously developed land are applied to the proposal. Thus, the appeal does not demonstrate that the development would incorporate satisfactory sustainable drainage measures.
47. Policy SI 5 of the LP sets out measures which developments should use to reduce water consumption rates. It states that proposals should minimise the use of mains water in line with the Optional Requirement of the Building Regulations through the use of conditions, achieving water consumption of 105 litres or less per head per day (excluding an allowance of up to five litres for external water consumption).
48. Policy 33 of the SLP states that all new dwellings should limit domestic water consumption to 110 litres per person per day in line with the Government's higher "optional requirements" for water efficiency set out in Part G of the Building Regulations as amended.
49. The submitted Water Calculation Compliance Summary calculates the development's predicted water consumption to be 100.58 litres per person per day, excluding an allowance of 5 litres for external water consumption, based on the use of appliances and fittings with the stated flow rates or capacities. I see no reason to disagree with the calculation and its basis and therefore this aspect of the proposal appears most likely to comply with the local policy requirements.
50. The Council's reason for refusal on sustainability grounds includes concerns that the proposal would not provide a satisfactory reduction in carbon emissions. SLP Policy 31 and LP Policy SI 2 require a "net zero" carbon target for major residential developments. The target does not apply to minor developments such as that currently proposed. The Council has confirmed that the submitted energy strategy is acceptable (if implemented in full on site as part of the completed development, which could be conditioned) for the purposes of the two cited policies, and I see no reason to take an alternative view. Thus, no local policy requirement arises for a carbon offset contribution to be secured.
51. As a result, the development would provide satisfactory water efficiency and carbon emissions measures. It consequently complies with Policies 31 and 33 of the SLP, and with Policies SI 2 and SI 5 of the LP. However, the appeal does

not demonstrate that the development would incorporate satisfactory sustainable drainage measures. Thus, it conflicts with Policy 32 of the SLP and Policies SI 12 and SI 13 of the LP, the aims of which are set out above, and with the provisions of the Framework with regard to flooding.

Location

52. Policy H1 of the LP seeks to increase housing supply and states that boroughs should prepare delivery-focused development plans which encourage development on other appropriate windfall sites not identified in those plans. It especially encourages boroughs to optimise the potential for housing delivery on all suitable and available brownfield sites, especially sites with existing or planned public transport accessibility levels (PTALs) 3-6 or which are located within 800m distance of a station or town centre boundary, amongst others. Policy H1 additionally provides support for the development of small windfall brownfield sites, in accordance with Policy H2 of the LP, which states that boroughs should pro-actively support well-designed new homes on small sites for several reasons.
53. No definition from the LP of the term brownfield is before me, however the Framework defines previously developed (or brownfield) land as land which is or was occupied by a permanent structure, including the curtilage of the developed land and associated fixed surface infrastructure. Land in built-up areas such as residential gardens is excluded from the definition.
54. The density and extent of development surrounding the appeal site indicates that it lies within a built-up area. Whilst the host dwelling and its front and side gardens are included within the site boundary in some of the plans, the proposal would not entail any changes to these areas, with the new boundary fence which would bisect the original rear garden halfway down forming the closest part of the development to the host dwelling. Therefore the appeal site comprises a single storey garage with surrounding hardstanding which lies at the foot of the garden, an area of lawn and other garden elements, and garden paths.
55. The garage is a permanent structure. The hardstanding in front of the garage forms its vehicular access and consequently serves the purpose of the building in a reasonably necessary manner. A path forms the main access to the garage from the house, and paths around the garage on its south and east sides provide access to it where they are immediately adjacent. All of these areas consequently form the garage's curtilage, where they are within the appeal site and the appellant's ownership. Thus, the garage building and its curtilage form previously developed land (PDL).
56. The remaining residential garden land forms the majority of the appeal site and, as it lies within a built-up area, is not PDL. As a result, the provisions of Policies H1 and H2 of the LP in respect of brownfield sites may apply only to the area of the site which is PDL.
57. The site lies 700 metres from the Wallington district centre boundary. The London Plan footnotes state that the term "town centre" includes district centres and therefore the PDL element of the site accords with the second part of the criteria within paragraph B)2)a) of Policy H1 of the LP, which I consider to apply equally whether a site is within 800 metres of a station or a town

centre boundary due to its use of the term “or”, indicating that either locational point may apply.

58. As it forms development on a windfall site the scheme attracts some support from the provisions of Policy H1 of the LP, which is tempered by the identified harm which the proposal would cause, as identified above. The small PDL element of the site attracts additional support from Policies H1 and H2 of the LP. However, the proposed residential development of the greater proportion of the site would not use PDL, so that the policies provide only limited support for the proposal.

Biodiversity

59. The Council’s statement of case indicates that a Biodiversity Net Gain Assessment and Biodiversity Offset Tariff are required in respect of the proposal, but have not been secured. However, a later view set out by the Council in an email to the appellant states that a contribution is not considered to be required in respect of biodiversity enhancements, and this view is supported by the Council’s biodiversity officer.
60. The Sutton Biodiversity Strategy 2020-2025 and the Local Validation Checklist and Validation Information for Biodiversity (2022) are relevant. They state that planning applications must be accompanied by an Ecological Assessment or Biodiversity Net Gain Assessment in two potential scenarios. These are (i) where a site lies within, adjacent to or within 100 metres of a Site of Importance for Nature Conservation, or (ii) where 100 square metres or more of natural habitat(s), vegetation or garden land would be lost to facilitate the development.
61. Whilst copies of these documents are not before me, their requirements, as set out by the appellant, are undisputed by the Council. Criterion (i) set out above is not applicable to the appeal site, and the appellant calculates that a total of 96.7 square metres of natural habitat(s), vegetation or garden land would be lost as part of the development. The Council does not dispute this. The evidence before me consequently does not suggest that the relevant criteria apply to the appeal proposal, so that the stated need for a supporting biodiversity assessment in the Council’s reason for refusal does not arise from local policy requirements.
62. Policy 26 of the SLP states that new development should incorporate opportunities to enhance biodiversity, wherever possible, and that permission will be granted for developments that create, conserve or enhance biodiversity and improve access to nature, subject to other policies in the plan. Policy 13 of the SLP sets out that permission will not be granted for the development of rear garden land where it is considered to be of local ecological value by the Council. These elements of the development plan policies are broadly consistent with the aims of the Framework in this regard.
63. The Council considers the site to be of local ecological value, in the absence of contradictory evidence, but minimal evidence is provided in support of this view. The reasons for this assessment are consequently unclear, so that it fails to clearly demonstrate the suggested conflict with the relevant section of Policy 13. Whilst the submitted Biodiversity Impact Assessment identifies that the proposal would result in a small net loss in on-site habitat, no mandatory national policy requirement for a net gain in biodiversity to be shown in respect

of developments of this scale currently exists. The finished development would retain areas of garden and vegetation and offers the potential for conditions to secure biodiversity enhancements in accordance with Policy 26 of the SLP.

64. Thus, on the basis of the small scale of the identified negative biodiversity impact and the potential for biodiversity enhancements by the imposition of relevant conditions, I conclude on the evidence before me that the proposal would have an acceptable effect in this regard. As a result, the proposal complies with the relevant elements of Policies 26 and 13 of the SLP, the aims of which are set out above.

Other Matters

65. I have had regard to other matters raised, including concerns about the proposal's effect on the living conditions of neighbouring occupiers and parking and access. However, as I am dismissing the appeal on the main issues for the reasons given above, I have not pursued these matters further.

Planning Balance

66. Development plan policies which concern the location of residential development provide limited support for the proposal. The Government's objective is to significantly boost the supply of housing and the proposal would provide a modern home in a location with access to services. Given the small scale of the proposal and the supply of deliverable sites in the borough, the provision of the additional housing attracts modest weight. The scheme would also lead to a small and time-limited economic benefit during the construction phase, which may give rise to extra local employment.
67. Conversely, the proposal would cause limited harm to the appearance of the area, including likely harm to important trees and harm to the significance of a heritage asset (the conservation of which attracts great weight), and the appeal fails to demonstrate that satisfactory sustainable drainage measures would be incorporated.
68. Policies 1 and 7 of the SLP support the provision of new housing in the area subject to the need for proposals to take into account the characteristics of ASLCs and to ensure that development respects the positive features of the borough's character. However, as I have identified that the scheme would result in harm in these regards, the two policies do not provide support for it.
69. Furthermore, whilst the proposal complies with policies concerning biodiversity, water efficiency and carbon emissions, these are neutral matters which do not attract weight.
70. The identified harm attracts great weight and outweighs the benefits associated with the proposed development. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

71. For the reasons given above I conclude that the appeal should be dismissed.

C Beeby - INSPECTOR