



Appeal Decision

Site visit made on 24 January 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/Z3635/W/23/3323562

Land to rear of 176 and 178 Feltham Road, Ashford, TW15 1AD

- 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 G Murphy Ltd against the decision of Spelthorne Borough Council.
 - The application Ref. 23/00212/FUL, dated 21 February 2023, was refused by notice dated 21 April 2023.
 - The development proposed is erection of 2 no. two storey semi-detached houses with parking and amenity space.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 2 no. two storey semi-detached houses with parking and amenity space on land to rear of 176 and 178 Feltham Road, Ashford, TW15 1AD, in accordance with the terms of the application, Ref. 23/00212/FUL, dated 21 February 2023, and subject to the conditions listed in the Annex to this decision.

Application for Costs

2. An application for costs was made by the Appellant against Spelthorne Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have adopted the description of development as it appears on the decision notice as this more accurately describes the proposal.
4. Since the appeal was lodged a revised version of the National Planning Policy Framework (Framework) was published in September and then in December 2023. However, the relevant design and amenity policies of the Framework remain unchanged, albeit some of the paragraph numbering is different. Whilst some of the housing policies have also changed, I am satisfied that these do not affect the main issues raised by the appeal proposal and I have not, therefore, sought any further comments from the parties.
5. Paragraph 4.10 of the Council's Appeal Statement (CAS) states that substantial weight should be accorded the saved policies of the 2001 Local Plan. However, paragraph 4.2 of the CAS appears to contradict this by stating that the development plan only comprises the Spelthorne Core Strategy & Policies Development Plan Document (February 2009) (SCS&P). In relation to the Council's Delegated Report and reason for refusal, there is no reference to any saved policies of the Local Plan. Moreover, paragraph 4.10 of the CAS does not

refer to any specific saved policy and neither have I been provided with any relevant extracts from the 2001 Local Plan. In view of this, I have not attached any weight to the saved policies of the 2001 Local Plan.

6. The Council also refer in their submissions to policy PS2 of the Pre-Submission Spelthorne Local Plan (June 2023) and state that it can only be accorded limited weight given that the plan has only reached the Examination Stage, which has since been put on hold to address matters raised by the Inspector and Secretary of State. Whilst I concur with that finding, I have not been provided with a copy of policy PS2 but understand that it is a reworking and update of policy EN1 (Design of New Development) of the SCS&P, which the Council refer to in its reason for refusal. I have determined the appeal on that understanding.
7. The appeal was accompanied by revised plans showing changes to the scale and design of the rear elevation of the proposed development. The Appellants Statement of Case (ASOC) requested that these plans be substituted for those originally submitted. The Council had refused to accept these revised plans during the determination of the application and in their CAS reaffirmed their view that the appeal should be determined on the basis of the original plans.
8. Having compared the original plans with the revised plans, the latter show, in my view, material changes to the original scheme. I note that a number of objections were submitted to the application raising concerns over the impact of the development on local character and the living conditions of neighbouring occupiers. The changes shown on the revised plans have not been advertised and interested parties have not been given a further opportunity to comment or to indicate whether these changes address their concerns. In view of this and in applying the 'Wheatcroft Principles' (*Bernard Wheatcroft Ltd v SSE* [JPL 1082 P37]), the determination of this appeal on the basis of the revised plans would prejudice the interests of interested parties as they have not been consulted on or had an opportunity to comment on the revised plans. It is essential that the appeal process remains fair and open to all parties. For the above reasons, I find that my consideration of the appeal should relate to the plans that were originally considered by the Council and formed the basis of their decision to refuse planning permission.
9. I have, therefore, proceeded to determine the appeal on the basis of the original plans.

Main Issues

10. The main issues are the effect of the proposed development on: (a) the character and appearance of the area, and (b) the living conditions of the neighbouring occupiers of 174 Feltham Road.

Reasons

Character and appearance

11. The appeal site is located on the western side of Sandell's Avenue and to the rear of 176 and 178 Feltham Road. The surrounding area is predominantly residential and comprises two storey semi-detached properties, as well as detached chalet style bungalows. The majority of the frontages to these properties are used for off-street parking. A number of properties have been altered or extended and there is no uniform style, with properties varying in

- terms of their form (including roof form), age, scale, ridge heights, detailing (including fenestration) and pallet of materials.
12. The appeal site itself comprises what appears to be the rear sections of the gardens that once served 176 and 178 Feltham Road (No's 176 & 178). As I observed on site, the section to the rear of No. 178 is separated from the rear garden to that property by a timber fence and the evidence before me suggests that the rear part of the site has remained unused and vacant for a number of years. The appeal proposal involves the construction of a pair of two storey semi-detached dwellings, with parking to front, accessed from Sandell's Avenue and with separate gardens at the rear.
 13. Although the limited depth of the appeal sites results in the proposed dwellings having shorter rear gardens than on adjoining properties, I am not convinced that this factor alone leads to any material harm to the character and appearance of the area or is an indication that the proposal would not make a positive contribution to the streetscene. As I observed on site, there are examples of properties in the area with similar sized gardens to that proposed and there is no suggestion that those developments have had any harmful impact on the streetscene. A good example of the latter is the pair of semi-detached properties located opposite the appeal site on Sandell's Avenue.
 14. The proposed development would provide an appropriate transition from the side elevation of No.178 to the pair of semis to the south of the appeal site (1 and 2 Sandell's Avenue). The appeal building would be set back on a similar building line to 1 and 2 Sandell's Avenue and would maintain the built rhythm of the avenue. As such, it would not appear out of keeping with the character of the area or visually prominent within the streetscene. That finding is supported by the design of the development, which draws on some of the detailing, features and pallet of materials found within the surrounding area.
 15. I acknowledge that the new plot sizes are smaller than those of surrounding properties, but as I confirmed there are examples of plots in the area that are of a similar size to that proposed. In view of this and mindful of the densely built up nature of the area, I am not convinced that plot size or the length of gardens should be a deciding factor. As I observed on site, plot sizes and the depth of individual gardens are not a feature that is readily apparent or visible from public vantage points on Sandwell's Avenue, largely due to the small gaps that exist between the semis and detached properties, and the screening provided by side extensions, porches, fencing and gates to those properties.
 16. Moreover, the proposed layout shows the ability to accommodate off-street parking, pedestrian access, landscaping, refuse and cycle storage, side access and separate gardens for both new dwellings. The Council have not raised any objections to the proposed level of parking or amenity space. The submitted layout also shows a reasonable amount of space being retained around the new building. Overall, the proposal would, in my judgement, sit comfortably on the appeal site and the footprint and scale of the new building and plot sizes would not appear out of character or result in any harm to the streetscene.
 17. The above findings equally apply to the proposed parking layout. As I mentioned earlier, the frontages to surrounding properties are mostly used for off-street parking and in a large number of cases they are not enclosed and thus completely open, revealing large areas of hardstanding with no planting. Whilst I accept that the proposed layout would include large areas of pavements,

the submitted plan also shows large areas of landscaping, either side of the proposed central pedestrian access, as well as other landscape margins. The submitted layout also shows new 800mm high fencing on parts of the frontage. There is, therefore, the potential to secure a high quality landscaping scheme, which could also include additional margins for planting, as is shown on the revised layout plan that the Appellant prepared.

18. Given the above, I am satisfied that the proposed parking layout would be acceptable and would not result in any harm to the streetscene. On the contrary, a high quality hard and soft landscaping scheme, which can be secured by an appropriate condition, would make, in my view, a positive contribution to the area when compared to the poor quality parking layouts that currently exist on Sandell's Avenue. In relation to paragraph 4.33 of the Council's Design of Residential Extensions & New Residential Development Supplementary Planning Document (April 2011) (SPD), the proposed layout would thus be broadly in accord with the requirement that *"Parking areas should not normally exceed 50% of the width of the frontage."*
19. In support of the above findings it is important to emphasise that the SPD and the SCS&P predate the policies in the Framework. Whilst paragraph 135 (previously 130) of the Framework refers to new development being sympathetic to local character, it also states that this should not prevent or discourage appropriate innovation or change. The National Design Guide (NDG) (January 2021) reinforces the Framework, for example, at paragraph 44 by emphasising that well designed places do not need to copy their surroundings and that it is appropriate for new development to include innovation and change to reflect how we live today.
20. Paragraph 123 (previously 119) of the Framework also states that planning decisions should promote the effective use of land in meeting the need for housing, reinforced by paragraph 129 (previously 125) which states that in locations where there is a need for new homes and an anticipated shortage of land to meet those needs, decisions should ensure that developments make optimal use of the potential of each site, with minimum density standards for locations that are well served by public transport. Combined, these policies provide strong support for maximising the development potential of the appeal site given that it is located within a highly accessible and sustainable location.
21. Accordingly, I find that the appeal proposal would not be out of character and would make a positive contribution to the streetscene in accord with the aims and objectives of policy EN1 of the SCS&P, the guidance within the SPD and the corresponding policies in the Framework and NDG.

Living conditions – neighbours

22. The Council contend that the appeal proposal would have an overbearing impact on 174 Feltham Road (No.174). The Council's Delegated Report and CAS appear to indicate that this relates to the impact on the rear garden of No.174, with reference also made to the loss of light to that garden. I do not share the Council's concerns. Having observed on site the relationship of the proposed development with the rear garden to No.174, I accept that there would be some visual impact and overshadowing of its rear garden. However, I am satisfied that the level of impact would be modest and not so significant as to justify the refusal of planning permission. The proposed building would be sited towards the frontage of the appeal site with Sandell's Avenue resulting

in a large gap being retained between the rear of the proposed building and the common garden boundary with No.174. That boundary is currently formed by a high timber fence. The proposed building would also be sited to the east of the rear garden to No.174 and as such the latter would still benefit from a good level of sunlight and daylight. As such, the building relationships that arise are those that you would commonly see in such densely built up areas. Moreover, there is no substantive evidence before me to support the statement that the proposal would result in any loss of light and even if it did, that this would amount to significant harm to the living conditions of the occupiers of No.174.

23. For the above reasons, the proposed development would not, in my view, have any harmful impact on the outlook from or light to the garden of No.174, and neither would it appear overbearing. The proposed building would be sited well away from the common boundary to the garden of No.174 and its stepped rear elevation and hipped roofed design would assist in reducing the bulk of the new building. All of these findings are supported by the 3d images within the ASOC. I accept that such images should be treated with caution, but they do point to, as I observed on site, the acceptability of the building relationships that would arise in this case.
24. The Council have referred to paragraph 3.14 and Diagram 1 of the SPD which sets out various separation distances to be applied when determining whether a development would have an overbearing impact on neighbouring properties. The Council contend that the distance from the rear of the proposed building to the common garden boundary with No.174 is just over 8 metres whereas the requirement is for 10.5 metres. Whilst the ASOC refers to examples of where the Council have approved development with a distance less than 10.5 metres, I am not convinced that this standard is, in fact, directly relevant.
25. As I interpret it, the 10.5 metres forms part of the 'back to back' distance of 21 metres sought between the back of a new development and the back of an existing property. It does not appear to relate to, as in this case, to the distance from the back of the new development to the common rear garden boundary of No.174. This appears to be supported by part 'a' of paragraph 3.14 which states that "*Back to back: 21m total distance with a minimum 10.5 metre garden length for each property*" and the example given in Diagram 1.
26. Even if my interpretation is not correct, the distance from the back of the new development to the common boundary with No.174 would only be some 2.5 less than that set out in Diagram 1. That difference is, in my view, modest. Moreover, the proposed building would be sited much closer to the boundary of the rear gardens to No's 176 and 178 and whilst I acknowledge that would be from the new buildings side elevation, the Council have not raised any concerns or objections to this building relationship.
27. Accordingly, I find that the appeal proposal would not appear overbearing or have any harmful impact on the outlook and light to the rear garden at No.174 and would not result in any significant harm to their living conditions. The proposal would thus comply with part b) of policy EN1 of the SCS&P, the guidance within the SPD and paragraph 135 f) of the Framework.

Other Matters

28. Concerns have been raised regarding road safety/parking, pressure on local infrastructure, noise and pollution and loss of privacy. There is no detailed

evidence before me to suggest that any of these concerns would result in material harm and I note they are not matters that the Council have raised in their reason for refusal. In terms of road safety and parking, the Delegated Report states that the Highway Authority raised no objection to the proposed development subject to various conditions. In relation to the loss of privacy, no windows are proposed on the side elevations to the new building and the proposed first floor bathroom windows at the rear are shown as fixed casement windows with obscure glazing, which can be controlled by condition.

Planning balance

29. The Delegated Report and CAS accept that the Council cannot identify a 5-year supply of housing land, with paragraph 5.33 of the CAS indicating a supply (with 20% buffer) of 3.52 years. As such, paragraph 11 d) of the Framework states that where the relevant policies of the development plan are out of date (which footnote 8 states includes, for applications involving the provision of housing, where the local planning authority cannot identify a 5-year supply of housing land and where, as in this case, paragraph 226 does not appear to apply), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole or where policies in the Framework that protect areas/assets of importance provide a clear reason for refusing permission. There are no protected areas/assets of importance on the appeal site and as I have already found the appeal proposal would not result in any significant adverse impacts.
30. Turning to the benefits, the proposed two dwellings would secure a small contribution to future housing provision; there would be economic investment both from their construction and subsequent occupation; the site is in a highly sustainable and accessible location; and the proposal would make effective use of land. Whilst individually, these benefits are small, combined they carry, in my view, significant weight in favour of the development.
31. In the context of paragraph 11 d) of the Framework the appeal proposal would not result in any significant adverse impacts and the presumption in favour of sustainable development applies, which combined with the benefits of the scheme, points towards the grant of planning permission.

Conditions

32. The Council has suggested several conditions which I have considered against the advice in the Framework and the Planning Practice Guidance (PPG) chapter on the use of planning conditions. I have also had regard to the Appellants Final Comments dated December 2023.
33. Conditions requiring details of materials and parking areas, to be submitted and approved and the provision of parking, visibility splays and electric charging points, are reasonable and necessary in the interests of securing a high quality development, to reflect the details included in the application and in the interests of highway safety. However, I agree with the Appellant and have deleted the reference to the requirement for on-site turning facilities. The Council's Delegated Report states that the Highway Authority raised no objection to the application subject to three conditions, namely provision and maintenance of visibility splays, maintenance of car parking and provision of electric charging facilities.

34. Similarly, I am satisfied that conditions requiring the submission and approval of a desk top study of any on site contamination and remediation are also reasonable and necessary to protect residents from any harmful substances and landfill gas. Whilst I have noted the Appellants comments, I also consider that a condition seeking approval of renewable energy and associated measures is necessary and reasonable in line with local and national policies seeking to ensure that new development is sustainable and responds to the impact of climate change.
35. Whilst the PPG advises that permitted development rights should only be taken away in exceptional circumstances, I am satisfied that those circumstances exist here and that a condition to prevent new extensions and outbuildings is necessary in order to protect the living conditions of neighbouring occupiers, to ensure a high quality layout and the retention of functional and usable amenity space. I am also satisfied that, notwithstanding the details shown on the approved plans and as I found earlier, that conditions seeking the submission and approval of a detailed scheme for hard and soft landscaping and means of enclosure, are necessary and reasonable to ensure that the development is of a high quality and makes a positive contribution to the streetscene.
36. I have also added conditions requiring the development to be carried out in accordance with the approved plans and for the first floor bathroom windows on the rear elevation of the proposed building to be obscure glazed and fixed shut to the height specified, to reflect the details shown in the application and to protect the living conditions of the neighbouring occupiers.

Conclusion

37. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR

Annex - Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) No development shall take place until:-
 - (i) A comprehensive desk-top study carried out to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site, has been submitted to and approved in writing by the Local Planning Authority.
 - (ii) Where any such potential sources and impacts have been identified, a site investigation shall be carried out to fully characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until the extent and methodology of the site investigation have been agreed in writing with the Local Planning Authority.
 - (iii) A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be agreed in writing with

the Local Planning Authority prior to the commencement of remediation. The method statement shall include an implementation timetable and monitoring proposals, and a remediation verification methodology.

The site shall be remediated in accordance with the approved method statement, with no deviation from the statement without the express written agreement of the Local Planning Authority.

- 3) Prior to the first occupation of the development, and on completion of the agreed contamination remediation works, a validation report that demonstrates the effectiveness of the remediation carried out, including the 'installation and verification' report of any gas protection measures, shall be submitted to and agreed in writing by the Local Planning Authority.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 2746/PL/01C; 2746/PL/02B; 2746/PL/03C; 2746/PL/04A;
- 5) Construction of the dwellings hereby permitted shall not proceed above damp course level until details of the materials and finishes to be used in the construction of the external surfaces of the building hereby permitted and in the surfacing of the car parking area, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) Construction of the dwellings hereby permitted shall not proceed above damp course level until a report is submitted to and agreed by the Local Planning Authority which includes details and drawings demonstrating how 10% of the energy requirements generated by the development as a whole will be achieved utilising renewable energy methods and showing in detail the estimated sizing of each of the contributing technologies to the overall percentage. The detailed report shall identify how renewable energy, passive energy and efficiency measures will be generated and utilised for each of the proposed buildings to meet collectively the requirement for the scheme. The agreed measures shall be implemented with the construction of the building and thereafter retained.
- 7) No part of the development hereby permitted shall be first occupied unless and until the proposed vehicular access to Sandell's Avenue has been constructed and provided with visibility zones in accordance with the approved plans and thereafter the visibility zones shall be kept permanently clear of any obstruction over 0.8m high.
- 8) No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with drawing No. 2746/PL/01C for four vehicles to be parked on site. Thereafter, the parking area and spaces shall be retained and maintained for their designated purpose.
- 9) The development hereby permitted shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order), no extensions or outbuildings shall be erected to the residential development hereby permitted other than that expressly authorised by this permission.
- 11) Notwithstanding the details shown on the approved plans, a detailed scheme for soft and hard landscaping works shall be submitted to and approved by the Local Planning Authority prior to the first occupation of any part of the development hereby approved. The approved scheme of tree and shrub planting shall be carried out prior to first occupation of the dwellings. The planting so provided shall be maintained as approved for a minimum period of 5 years, such maintenance to include the replacement in the current or next planting season, whichever is the sooner, of any trees or shrubs that may die, are removed or become seriously damaged or diseased, with others of similar size and species, unless the Local Planning Authority gives written permission to any variation.
- 12) The first floor bathroom windows on the rear elevation of the development hereby permitted, as shown on drawing No. 2746/PL/01C and 02B, shall be obscure glazed and no part of the windows that are less than 1.7 metres above the finished floor level of the room in which they are installed shall be capable of being opened. The windows shall be retained as such thereafter.
- 13) Notwithstanding the details shown on the approved plans, prior to the occupation of the development hereby permitted details of a scheme for means of enclosure shall be submitted to and approved in writing by the Local Planning Authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied. Development shall be carried out in accordance with the approved details and maintained as approved.

End of Annex.