



Appeal Decision

Site visit made on 26 January 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal Ref: APP/L5240/W/23/3318890

15 Kingswood Lane, Warlingham, Croydon CR6 9AE

- 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 & Mrs Jeff & Brenda Morgan against the decision of the Council of the London Borough of Croydon.
 - The application Ref 22/03704/FUL, dated 30 August 2022, was refused by notice dated 16 February 2023.
 - The development proposed is demolition of existing 4 bedroom 2-storey dwelling and erect two rows of houses. All the properties will be two storey with accommodation in the roof space. The properties each rear gardens, with cycle storage, all integrated within landscaping. Car parking is distributed throughout the site. To the front, two 4 bed 6 person semi detached houses face towards Kingswood Lane, and to the rear, a small terrace comprises three 3 bed 5 person dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, following the deadline for final comments, a revised version of the National Planning Policy Framework (the Framework) was published. Both parties were consulted on the amended Framework, but neither provided comments.
3. The appellant submitted a 'Refuse Storage and Collection Point Proposed' drawing¹ which alters the siting of the refuse store for unit 1 and enlarges the refuse collection area, compared to the scheme that was before the Council when they determined the planning application. The Procedural Guide² sets out that the appeal process should not be used to evolve a scheme; however, I am mindful of the Holborn Studio judgement³. The amended refuse scheme would not fundamentally change the proposal. Furthermore, the Council has reviewed the drawing and provided comments on the proposed changes. Also, a condition requiring a refuse storage scheme to be submitted and approved by the local planning authority could be attached to any resultant planning permission. For these reasons, it would not be unfair to not reconsult on the drawing, and, therefore, I have considered it as part of the appeal.
4. It has been confirmed in correspondence that the appellant is Mr & Mrs Jeff & Brenda Morgan. This is replicated in the banner above.

¹ Drawing Ref. 318-001-700

² Procedural Guide: Planning appeals – England, January 2004

³ Holborn Studio Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823

Main Issues

5. The main issues of the appeal are:

- the effect of the proposal on the character and appearance of the area,
- the effect of the proposal on the living conditions of occupiers of 13 and 15a Kingswood Lane and 367 and 369 Limsfield Road, with regard to privacy, loss of daylight and sunlight, and outlook,
- whether the proposal would make an appropriate contribution towards improvements to sustainable transport modes,
- whether the proposal would satisfactorily address the potential loss, or otherwise, of habitat suitable for protected species, and
- whether the proposal would include appropriate refuse storage.

Reasons

Character and appearance

6. Properties on Kingswood Lane are of varying design and the road includes examples of large, detached properties as well as blocks of apartments. The appeal site currently accommodates a dormer bungalow, in the middle of a row of bungalows of varied design, all set within large plots. However, it backs on to a relatively dense development of terraced houses and an apartment block. Whilst surrounding properties tend to span most of the width of their plot, they appear spacious due to being set back from the road and accommodating large gardens. Due to the presence of verdant boundaries, grass verges and detached properties sited within spacious plots, the area has a suburban character.
7. The proposal includes two blocks of housing. Block A would be located to the front of the site, closer to Kingswood Lane, and comprise a pair of semi-detached four-bedroom houses. Block B would be located to the rear of the site and comprise a terraced block of three, three-bedroom houses.
8. Although properties in this area have a varied ridge height, the proposed dwellings would be significantly taller than other properties along this section of Kingswood Lane, given they would be two storeys and have steep roofs to accommodate living spaces. Policy DM10 of the Croydon Local Plan 2018 (CLP) advocates for a minimum height of three storeys but only where it respects the height, density and massing of the area. In this instance, the proposed height would not assimilate with neighbouring properties on Kingswood Lane and would appear incongruous.
9. Block B would be largely screened from public views by Block A but would be seen from the access and over neighbouring properties. Cul-de-sac development is an existing feature within Kingswood Lane. Furthermore, the proposed rear block would be viewed against the apartment block and terraced housing to the rear of the site. As such, the presence of backland development would not appear out of character. However, the modest separation between Blocks A and B, the lack of front gardens, and the siting of Block B close to the rear boundary would result in a cramped layout. Whilst the appeal site is wider than nearby plots, its subdivision to create narrow plots would further increase the sense of overdevelopment.

10. The CLP and the London Plan, the spatial development strategy for Greater London, March 2021 (LP), encourages dense residential development in sustainable locations close to services and facilities. The proposal would lead to a higher density of development compared to the existing development. Furthermore, the proposed landscaping would soften the appearance of the proposal. Nonetheless, the proposed dwellings would still appear incongruous due to their height and massing.
11. Planning permissions for similar developments have been put before me. During my site visit I observed all of these sites. Each of those developments are materially different to the appeal for reasons including the prevalence of two-storey development nearby, the appeal site being located on what could be characterised as an arterial route and one is within a corner plot. Four of the permissions for similar development are located on Kingswood Lane. They are not in the vicinity of the appeal site and on a section of the road which is characterised by a looser pattern of development where there is open land on the opposite side. Whilst the developments which have been carried out have similarities with the appeal scheme, the character of the surrounding area in each case is significantly different and the developments do not appear incongruous in their context. In any event, all proposals are judged on their own merit.
12. I conclude that the proposal would have a harmful effect on the character and appearance of the area. It would be contrary to LP Policy D3 and CLP policies SP4 and DM10. These policies indicate that proposals should enhance local context by delivering buildings that positively respond to local distinctiveness and the Council will require development of a high quality that respects the scale, height and massing of the area. Furthermore, it would be contrary to the Framework where it advises that the creation of high quality, beautiful and sustainable places is fundamental to what the planning and development process should achieve.

Living conditions

13. The proposal includes the retention of a tall hedge to the rear of the plot and additional planting is proposed along the boundaries with 13 and 15A Kingswood Lane (Nos 13 and 15A). Nevertheless, new vegetation would take time to mature to provide meaningful screening. Furthermore, the extent of the vegetation cannot be guaranteed in perpetuity, and it is likely given the modest size of the proposed rear gardens that there would be pressure to prune or fell the hedge. As such, little weight can be given to the extent of the screening afforded by the existing and proposed vegetation.
14. Block B would be sited a short distance from the side and rear boundaries. The first-floor windows to the front of these houses would be recessed. However, these windows would still offer views over a large section of the rear gardens of Nos 13 and 15A, including the space directly to the rear of the properties where occupiers would expect to feel a greater sense of privacy. The rear first-floor windows of Block B would be a short distance from the rear garden area of 369 Limpsfield Road (No 369). Without the hedge, future occupiers of the proposed dwellings would have uninterrupted direct views over the entire rear garden of No 369 from a short distance. I therefore consider that the proposal would lead to a loss of privacy for occupiers of Nos 13, 15 and 369.

15. Given the distance between Block B and the rear garden of 367 Limpsfield Road (No 367), as well as two boundary treatments, I do not consider that the proposal would lead to a significant loss of privacy for the occupiers of No 367.
16. No quantifiable evidence relating to the effect of the proposal on the amount of sunlight and daylight experienced by neighbouring residents' is before me. Nonetheless, Block B would span almost the entire length of the rear garden of No 369. Given the orientation of the appeal site and the proposed height of the terraced housing, I have concerns that those houses would overshadow the garden of No 369 for most of the day, particularly in winter months when the sun is lower. It has not been demonstrated that the proposal would not harmfully affect the living conditions of occupiers of No 369, with regard to overshadowing of their garden.
17. The proposal may lead to increased shadowing of other gardens but given the distance to No 367 and the orientation of Nos 13 and 15A, it would not be to a harmful extent. Furthermore, whilst the extent of shadowing would increase the proposed dwellings are sited sufficiently far enough away from neighbouring properties that they would not harmfully affect the amount of daylight experienced by residents of Nos 13, 15A, 367 and 369.
18. There would only be angled views of Block B from rear windows of Nos 13 and 15A and the block would be sited significantly back from these windows. Although the proposed dwellings would be sited close to the side and rear boundaries of the site, due to the orientation of the proposed dwellings and the relatively wide rear gardens of Nos 13 and 15A, neighbouring residents would not feel enclosed by the proposal. Whilst Block B would be sited closer to Nos 367 and 369, the proposed dwellings would be orientated perpendicular to those properties. Overall, I conclude that the proposal would not have a harmful effect on the outlook enjoyed by neighbouring residents.
19. Block A would be broadly in line with Nos 13 and 15A. Also, the first-floor windows in the side elevation would be obscurely glazed. I therefore conclude that these proposed dwellings would not harmfully affect neighbouring occupiers' living conditions.
20. As above, several planning permissions for backland development have been put before me. However, the pertinent details in relation to how those developments interact with neighbouring development are not before me. Therefore, it has not been demonstrated that they set a precedent for the proposed development. In any event, each proposal is assessed on its own merit. Moreover, a lack of objection from occupiers of Nos 13 and 15A does not lead me to an alternative conclusion on the effect of the proposal on their living conditions.
21. Overall, I conclude that the proposal would have a harmful effect on the living conditions of residents of Nos 13 and 15A, with regard to a loss of privacy, and No 369, with regard to a loss of privacy and sunlight; but would not have a harmful effect on the living conditions of residents of No 367. The proposal would be contrary to CLP Policy DM10.6 and LP Policy D6 which indicate that the Council will support development that ensures that the amenity of occupiers of adjoining buildings is protected.

Sustainable Transport

22. Both the appellant and the Council agree it would be appropriate to secure a financial contribution toward improvements to sustainable transport modes to alleviate congestion generated by the development. There is no legal agreement before me; however, it has been suggested that a condition could be attached to any planning permission, requiring the appellant to make a contribution.
23. The Planning Practice Guidance⁴ advises that a positively worded condition which requires the appellant to enter into a planning obligation is unlikely to pass the test of enforceability. Moreover, only in exceptional circumstances would a negatively worded condition, requiring a planning obligation to be entered into, be considered acceptable. In this instance, it has not been demonstrated that a condition could be enforceable or that exceptional circumstances exist.
24. Given there is not a mechanism before me to secure a financial contribution, the proposal would make an appropriate contribution towards improvements to sustainable transport modes. It would therefore be contrary to CLP Policies SP8 and DM30 which indicate that the Council will manage the pattern of urban growth to make the fullest use of public transport amongst other things.
25. Within the fourth reason for refusal the Council has indicated that the proposal would be contrary to LP Policy T6.1. However, this policy relates to residential parking, it has not been demonstrated that the proposal would be contrary to this policy.

Protected species

26. Circular 06/2005⁵ identifies that it is essential that the presence, or otherwise, of protected species, and the extent that they may be affected by the proposed development is established before planning permission is granted. Further to this, Circular 06/2005 caveats that developers should not be expected to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the decision.
27. Whilst the potential effect on nesting birds could be mitigated through appropriate measures, the preliminary ecological assessment indicates that further surveys need to be undertaken to determine the actual risk level for bats. No further surveys have been undertaken.
28. Although the results of bat emergence surveys are only considered valid for a relatively short period of time, these results are needed to establish the extent that bats may be affected by the proposal. For this reason, it would not be appropriate for these surveys to be conditioned as part of any permission. In making my decision I am mindful of the precautionary principle which requires that where it is unclear whether an effect would be significant, it must be assumed that such an effect would be, unless there is objective evidence to the contrary.

⁴ Reference ID: 21a-010-20190723

⁵ Government Circular: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system, Office of the Deputy Prime Minister, August 2005.

29. The proposal includes ecological and biodiversity enhancement measures, including bat boxes. However, it has not been demonstrated that they would mitigate the effect of the proposal on bats.
30. I conclude that the proposal would not satisfactorily address the potential loss, or otherwise, of habitat suitable for protected species. It would therefore be contrary to CLP Policy DM27 and LP Policy G6 which indicate that proposals should not have an adverse impact on species or their habitat protected by law and should manage impacts on biodiversity.

Refuse storage

31. The proposed refuse storage areas for each of the units would be within an appropriate distance of the refuse collection area. Nonetheless, the proposed refuse collection area would be slightly too small to accommodate food caddies for each of the properties as well as the required number of bins. Regardless, a condition could be attached to any planning permission which requires details of the refuse collection area to be submitted to and agreed in writing with the local planning authority.
32. I conclude that appropriate refuse storage could be secured by condition. The proposal would therefore comply with CLP Policy DM13 and LP Policy SI7 which indicate that developments should be designed and provided with adequate space for the temporary storage of waste.

Other Matters

33. The proposals would include private external amenity space for future occupiers above the required standards, as well as appropriate parking provision. These are neutral factors and do not alter my assessment on the acceptability of the appeal proposal.
34. I note the comments made by the appellant regarding how the application was dealt with. However, this is a matter between the parties and has not been determinative in my consideration of this appeal.

Conclusion

35. The material considerations do not indicate that a decision should be made other than in accordance with the development plan.

J Hobbs

INSPECTOR