
Appeal Decision

Site visit made on 13 February 2024

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 April 2024

Appeal Ref: APP/L5240/W/23/3325720

Rear of 7 Ashburton Road, Croydon, Surrey CR0 6AP

- 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 Suresh Sinnathurai against the decision of London Borough of Croydon.
 - The application Ref 21/05383/FUL, dated 22 October 2021, was refused by notice dated 28 February 2023.
 - The development proposed is 3 bedroom bungalow at rear of 7 Ashburton Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework ('the Framework') was revised in December 2023 and is a material consideration. All references I have made to the Framework relate to the revised document, and I have provided the main parties with opportunity to comment upon it.
3. The Council is concerned that the appellant has not demonstrated that the relevant rights exist in relation to the use of the existing access road by future occupiers of the proposed dwelling. Determination as to whether such rights exist is a legal matter that falls outside of the scope of this appeal and is therefore beyond my consideration. In the interests of clarity, I have considered the proposal on the basis that there is a theoretical possibility that the site could be accessed by this means.

Main Issues

4. The main issues are;
 - the effect of the proposal on the character and appearance of the area, including whether it would preserve or enhance the character or appearance of East India Estate Conservation Area ('the CA').
 - whether the proposal would provide adequate living conditions for future occupiers with particular regard to the standard of the accommodation;
 - the effect of the proposal upon highway and pedestrian safety;
 - whether the proposal makes adequate provision for Biodiversity Net Gain, and;
 - whether the proposal would make adequate provision for the storage of cycles and refuse.

Reasons

Character and appearance

5. The appeal is an area of land to the rear of 7 Ashburton Road ('No 7') and comprises grassed lawn, concrete hardstanding, existing trees and other vegetation. It is separated from the building by means of a close-boarded timber fence but it does not appear to be a matter of dispute that it formerly comprised part of a larger garden area.
6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making in decisions on planning applications and appeals within a Conservation Area, that special attention is paid to the desirability of preserving or enhancing the character or appearance of the area.
7. The CA comprises of formally laid out villa-lined residential streets occupying the former estate of the East India College, including the appeal site. Its significance, insofar as it relates to this appeal, is derived from the distinctive pattern of streets, including the juxtaposition of tightly-packed road frontages with deep back gardens behind. Glimpsed views between buildings of these large back gardens, which have a prevalence of mature trees and vegetation, provide a verdant counterpoint to an otherwise dense urban environment.
8. Although the appeal site is separated from No 7, it nevertheless contributes to the overall character of green spaces to the rear of properties in the CA. Although largely unremarkable in its current state, it does contain a large mature tree which is likely to be visible from other properties and rear gardens in the area. As a result, the appeal site contributes positively to the character and appearance of the CA.
9. The proposal would introduce a single dwelling, accessed by a shared access road which wraps around the rear of properties on Ashburton Road from a point further to the south. This would, by definition, introduce a dwelling into a space currently absent of buildings and would erode this area of green space. As a form of backland development it would also reduce the clear formal spacing between streets, and would not reflect the overall urban grain. Although located away from the street frontage, it is likely that the proposed dwelling would be visible from a number of nearby residential properties and neighbouring gardens. The scale of the proposed dwelling, both in terms of height and footprint, or its design, would not mitigate this harm.
10. The evidence which is before me does not include any form of assessment of existing trees within the site nor an assessment of the potential effect of the proposal upon any such trees. Nevertheless, as set out above, I consider the existing large tree to contribute positively to the character of the area.
11. The provided plans indicate that the north-eastern corner of the proposed dwelling would be located over the position of this tree. It is clear therefore, that its removal would be necessary in order to allow the construction of the proposed dwelling. Although relocation is identified, I cannot be certain as to how this would be achieved or the whereabouts of any site for relocation, nor has it been shown that this would be feasible for a tree of this size, or age. The loss of this tree would represent further harm to the CA.
12. Therefore, the proposal would lead to less than substantial harm to the significance of the heritage asset. Paragraph 208 of the Framework states that

where a development would lead to less than substantial harm to a heritage asset, this harm should be weighed against the public benefits of the proposal.

13. The proposal would represent a modest contribution towards the supply of deliverable housing sites in the area. Being a small-scale development, it is likely that it could be delivered quickly. Having regard to Paragraph 60 of the Framework, which sets out the Government's objective of significantly boosting the supply of homes, these are moderate benefits of the scheme.
14. Additionally, the proposal would lead to some temporary economic benefits during the period of construction, along with longer term economic benefits upon occupation. Given the scale of the proposal, I afford these further benefits modest weight in favour of the scheme.
15. Weighed against these benefits is the harm that I have identified to the character and appearance of the CA. Paragraph 205 of the Framework states that great weight should be given to the conservation of heritage assets. Accordingly, I conclude that the benefits of the proposal would not outweigh this harm.
16. The proposal would conflict with Policies D3, D4, G7 and HC1 of the London Plan ('LP'), and Policies SP4, DM10, DM18 and DM28 of the Croydon Local Plan ('CLP') which together, and amongst other matters, state that developments should conserve the significance of heritage assets, enhance local context, respond to the existing character of a place, demonstrate compliance with the design requirements of the LP, and retain existing trees of value unless adequate mitigation is provided. It would also conflict with Chapters 12 and 16 of the Framework, which highlight the importance of high-quality buildings and places, and state that great weight should be given to the conservation of heritage assets.
17. The proposal would also conflict with advice set out within the East India Estate Conservation Area Appraisal and Management Plan Supplementary Planning Document which sets out that development in back gardens will generally not be permitted due to the potential disruption of the area's spacious character and loss of green spaces.
18. In refusing permission, the Council has also alleged conflict with LP Policy D5. However, this policy relates to inclusive design and the Council has not drawn my attention to any specific wording which is relevant to this issue. This policy has therefore not been determinative in my reasoning on this main issue.

Living conditions

19. LP Policy D6 sets out that new dwellings should have a ceiling height of at least 2.5 metres across 75% of their floor area. The provided plans indicate that the proposed ground floor would achieve a ceiling height of 2.4 metres, and the upper storey 2.3 metres, at its highest point. Accordingly, the proposal would fail to achieve the required ceiling height of 2.5 metres across 75% of its floor area.
20. Whilst I acknowledge that the appellant has stated that adequate ceiling heights would be provided, there is no evidence before me, in any of the provided plans, that demonstrates that this would be achieved. Therefore, it has not been shown that the proposal would be of a suitable standard, and on

the basis of the evidence before me it is likely that rooms within the dwelling would feel oppressive due to the low height of the ceilings.

21. The appellant has advised that current fire safety measures are appropriate and will not be negatively affected by the development. However, I have been provided with no details of such measures and there is no other substantive evidence before me in relation to how fire safety would be addressed. Furthermore, the proposal clearly relates to an additional dwelling, contrary to the statement of the appellant in relation to this. Overall, it has not been shown that the proposal would achieve a suitable standard of fire safety.
22. Although the Council could have requested the submission of additional fire safety information during its consideration of the planning application, the fact that it may not have done so does not overcome the harm that I have identified.
23. I have found that the proposal would fail to provide adequate living conditions for future occupiers with particular regard to the standard of accommodation. It would therefore be contrary to LP Policies D6 and D12 which together, and amongst other factors, require new development to have regard to the amenities of future occupants and to provide functional and comfortable layouts that are fit for purpose, and that meet the specified minimum standard, and achieve the highest standards of fire safety.

Highway and pedestrian safety

24. I saw on my site visit that the existing access road is narrow in width and currently provides access to some domestic garages and to a marked parking area. The appeal site would be accessed via the parking area and provision would be made within the appeal site for the parking of a single vehicle, with a turntable device to allow forward entry and exit. Given the radius of the turntable device, I am satisfied that adequate parking and manoeuvring space for a single vehicle would be provided within the site.
25. The existing access road joins Ashburton Road between two residential properties. The arrangement of the property to the north means that good visibility is available over the driveway at that property. To the south is an enclosed garden with mature vegetation. Although the access is currently in use, and used by multiple vehicles, it is likely that visibility to the south for drivers of vehicles emerging from the access is likely to be restricted. Although the level of traffic likely to be generated by the proposal would be such that it would represent only a modest increase in the use of the access, it would nevertheless increase the potential for conflict between pedestrians and vehicles at this point.
26. It is stated that visibility splays could be secured by means of planning condition. However, it appears likely that this would require the use of land outside of the control of the appellant. Accordingly, any such condition to this effect would be unreasonable, and would therefore fail the relevant tests set out in Planning Practice Guidance. It has not been shown, therefore, that appropriate levels of visibility could be provided.
27. A pedestrian access to the appeal site is shown being provided to the north of No 7. Whilst the provided drawings do not indicate that this would link to the dwelling itself and would terminate at the lawn area, I am satisfied that details of a footway within the appeal site, including adequate lighting, could be

secured by means of a planning condition. This would provide an adequate means of pedestrian access and would also allow a safe route to move refuse bins for roadside collection on Ashburton Road.

28. Nevertheless, with regard to this main issue, I conclude that the proposal would lead to harm to highway safety. It would therefore be contrary to LP Policies T4 and T7 and CLP Policy DM29, which together, and amongst other factors state that development proposals should not increase road danger or have a detrimental impact on highway safety for pedestrians. It would, however, accord with LP Policy T6 and CLP Policy DM30 which together set out the required levels of car parking provision.

Biodiversity Net Gain

29. There is no evidence before me which establishes a biodiversity baseline for the appeal site, which given its nature, is likely to be of some biodiversity value. Such value would not be diminished by the possibility of it being derived from any lack of maintenance of the appeal site.
30. The proposal would lead to a large part of the appeal site being occupied by a dwelling and as I have discussed above, it has also not been shown that the proposal would not result in the loss of existing trees.
31. It is stated that a landscaping scheme would form part of the development, however details of this are limited, and without any assessment of the current biodiversity value of the appeal site, it has not been shown that a sufficient degree of mitigation could be delivered in order to deliver Biodiversity Net Gain. Accordingly, it would not be appropriate to secure such details by means of a planning condition.
32. The proposal would fail to make adequate provision for Biodiversity Net Gain. It would therefore be contrary to LP Policy G6 and CLP Policy DM27 which, together and amongst other factors, seek to manage and enhance biodiversity across the borough and require developments to incorporate biodiversity to enhance local flora and fauna and aid pollination locally.

Storage of cycles and refuse

33. The provided plans indicate that storage would be provided for two refuse bins, along with a small cycle store. The Council has stated, and it is not disputed, that in order to provide sufficient storage, that any refuse storage structure would need to be capable of accommodating two 240-litre bins, a single 180 litre bin and a 23-litre food caddy. The structure shown on the provided plans does not appear to be of sufficient size to allow this.
34. CLP Policy DM13 states that refuse and recycling facilities should be treated as an integral element of the overall design and should be integrated within the building envelope, and that adequate space for the temporary storage of bulky waste be provided. Accordingly, in order to achieve compliance with this policy, it is likely that further design work to the proposed dwelling would be required. This would be beyond the scope of what could reasonably be secured by means of planning condition.
35. The Council also considers that the indicated cycle store would be of insufficient size. However, although much of the front garden of the proposed dwelling would be used to accommodate the vehicle turntable, which would restrict flexibility to some extent, there are other areas within the site where a larger

cycle storage structure could be located. Therefore, I am satisfied that a cycle storage structure of a suitable size could be secured by means of a planning condition, had I been minded to allow the appeal.

36. The proposal would fail to provide suitable storage for refuse. It would therefore be contrary to CLP Policy DM13, the requirements of which I have set out above. It would, however, provide adequate provision for the storage of cycles. It would therefore be in accordance with LP Policies T4 and T5 and CLP Policies SP8, insofar as they relate to this main issue. Together and amongst other factors, these policies state that cycle parking should be provided within new development.
37. In refusing permission, the Council has also alleged conflict with CLP Policy SP6. However, this policy relates to sustainable design and the Council has not drawn my attention to any specific wording which is relevant to this issue. This policy has therefore not been determinative in my reasoning on this main issue.

Other Matters

38. The Council has also raised concern in relation to the absence of any planning obligation to prevent future occupiers applying for resident parking permits or contracts in car parks operated by the Council. As I am dismissing the appeal for other reasons, it has not been necessary for me to pursue this matter further, as it would weigh neutrally in the planning balance.
39. The Council has not raised objections relating to the effect of the proposal upon the living conditions of the occupiers of nearby properties. Even if I were to agree that the proposal was acceptable in these regards, the absence of harm weighs neither for, nor against, the proposal.

Conclusion

40. The proposal would lead to less than substantial harm to a designated heritage asset and would result in additional harm, as set out above. It would conflict with the development plan when read as a whole.
41. Having regard to all matters raised, there are no material considerations, including the Framework, which would indicate taking a decision other than in accordance with the development plan in this case.
42. For the reasons given above, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR