



Appeal Decision

Site visit made on 24 June 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2024

Appeal Ref: APP/T5720/W/23/3333009

75 Cavendish Road, Colliers Wood, Merton, London SW19 2EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Max Lychagin of Maxilion Architecture against the decision of the Council of the London Borough of Merton.
 - The application Ref is 23/P1772.
 - The development proposed is the demolition of existing bungalow and detached garage and erection of a 2-storey building with accommodation within roof space to create 7 self-contained flats (1 x 3 bed, 2 x 2 bed, 4 x 1 bed) with associated amenity space, cycle store and bin enclosure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted a Surface Water Drainage Strategy & Flood Risk Assessment, by Pitman Associates, dated September 2023. The Council has confirmed that in light of this information its fifth reason for refusal has been overcome, subject to a condition requiring the development to be carried out in accordance with the document. The Council therefore no longer contests that reason for refusal. The appeal has been determined on this basis.
3. A Unilateral Undertaking dated 2 February 2024 has also been submitted to ensure that future occupants of the development would not be entitled to a Residents Parking Permit. The Council considers the legal agreement addresses its sixth reason for refusal and has advised that reason for refusal is no longer contested. The appeal will be determined on this basis, and I shall return to the legal agreement later in my decision.
4. As part of the appeal the appellant has submitted an amended proposed block plan and roof plan and a Biodiversity Net Gain (BNG) Assessment. The amended drawing would increase the width of the path to the cycle store to 1.2 metres to adhere to the guidance within the London Cycling Design Guide. I have given due consideration to guidance in the 'Procedural Guide: Planning Appeals - England' (2024)¹, and the 'Wheatcroft Principles'² referred to in the guidance, which addressed the matter of amended plans being submitted with and appeal, along with other case law, in deciding whether to accept the revised plan and BNG Assessment.

¹ Section 16 of the *Procedural Guide Planning Appeals – England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

² *Bernard Wheatcroft Ltd vs Secretary of State for the Environment* [JPL, 1982, P37]

5. I consider the proposal before me (should the amended drawing and BNG Assessment be included), is essentially the same as the scheme that was considered by the Council and therefore that the appeal process is not being used to evolve the scheme. Furthermore, the Council has had the opportunity to comment on this information. As such I am satisfied that the revisions do not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced or impacted should I accept the amended plan.
6. The Council has referred to Nos 27-35 Norfolk Road in its reason for refusal. However, the Council has subsequently acknowledged that this was an error and the reason for refusal should have referred to Nos 27-31 Norfolk Road. I have therefore considered the appeal on this basis.

Main Issues

7. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on the living conditions of occupants of Nos 27-33 Norfolk Road, with regard to outlook;
 - whether the proposed development would provide suitable living conditions for future occupants, with regard to privacy; and
 - whether the proposed development would deliver biodiversity net gain.

Reasons

Character and appearance

8. The appeal site is in an area of predominantly two-storey semi-detached and terraced buildings within narrow plots. Exceptions to this include the single-storey dwelling at the site and a further single-storey building on the opposite side of Cavendish Road. Development in the area typically fronts the road behind shallow front gardens. Larger buildings, including Woodlands House, are typically set further back from the road behind trees, reducing their visual intrusion within the area.
9. The proposal would replace the existing dwelling with a building accommodating seven flats. The building would be of a considerable scale, extending deep within the site and spanning most of the width of the site. The double fronted elevation, with two forward projecting gables would relate well with the surrounding development, but their position either side of a single front door would accentuate the grand scale of the building.
10. The crown roof would limit the overall height of the building but would emphasise the substantial mass of the building. Moreover, the steep pitch of the roof would jar with the gentle pitches of roofs in the area. The scale and considerable bulk of the building due to its substantial depth and mass at roof level would be appreciable from Cavendish Road, notwithstanding the presence of development and trees on either side of the site. Whilst the design of the windows and proposed materials would be sympathetic to the character of the area, the significant bulk of the building would be discordant with the generally modest proportions of development in the area.

11. The building would be set forward of the terrace of properties to the side of the site. While the building's position has been determined by the curvature of the road, the building would be highly prominent on the approach to the site along Cavendish Road. Accordingly, due to the substantial scale and mass of the development, the proposal would appear as an imposing and dominant feature in the area, which is harmfully at odds with the existing development in the area.
12. I conclude that the proposal would harm the character and appearance of the area. The development therefore conflicts with Policies D1, D3 and D4 of the London Plan 2021 (LonP), Policy CS14 of the Merton Core Planning Strategy 2011 (CS) and Policy DM D2 of the Merton Sites and Policies Plan 2014 (MSPP), which collectively require proposals to ensure a high quality design that respects the bulk and proportions of the original building and relates positively and appropriately to the scale, height and massing of surrounding buildings, and the National Planning Policy Framework (the Framework), which requires proposals to be of a high quality design sensitive to the characteristics of the local area.

Living conditions - outlook

13. The shallow rear gardens of Nos 27-33 Norfolk Road (Nos 27-33) abut the side boundary of the site. The trees within the gardens of Nos 27-33 are spaced and of only a modest height. Consequently, when in leaf they provide only a partial screening of views from the rear elevations of the neighbouring properties towards the site.
14. The building would be close to, and would extend across, the rear boundaries of Nos 29-33 Norfolk Road (Nos 29-33). Even though the proposal would incorporate features of visual interest, the presence of a building of significant mass close to the shared boundaries would result in a significant visual intrusion. Through its substantial scale and position, the proposal would generate a harmful sense of enclosure, which would dominate the outlook of occupants of neighbouring properties from within both the dwellings and the gardens.
15. The site is within an urban setting where typically the restricted space between buildings limits the outlook for residents. The appellant has drawn my attention to other instances where the flank walls abut the rear boundaries of adjacent properties. While the precise details of these sites are not before me, the scale and depth of the buildings are not directly comparable to that of the appeal proposal. The building at Robinson Road is a larger building, however the mass has been broken up by a small link with the rear element being set further away from the side boundary. In any event, each proposal should be considered on its individual merits and with appropriate regard to the development plan and any material considerations.
16. I conclude that the proposal would harm the living conditions of occupants of Nos 27-33. The development therefore conflicts with Policy DM D2 of the MSPP, which seeks to protect existing development from visual intrusion so that the living conditions of existing and future occupiers are not unduly diminished and the Framework, which requires a high standard of amenity for existing and future users.

Living conditions - privacy

17. To the side of the building would be a path leading to the rear garden area and the cycle store. The amended plan would provide a wider path and would limit access on the opposite side of the building adjacent to the boundary with Nos 29-33. Additionally, the kitchen window that would serve Flat 2 would be fitted with obscure glazing up to a height of two metres above the floor level.
18. The use of obscure glazing and the restriction of access to the path adjacent to the boundary with Nos 29-33 would ensure that an adequate level of privacy would be provided for future occupants of the ground floor accommodation. In addition, the fence enclosing the path to the cycle store would prevent overlooking of the bedrooms in Flats 1 and 2. Consequently, future occupants of the development would be afforded an adequate level of privacy.
19. The path to the cycle store would be enclosed by fences on either side. Nevertheless, the narrow width would be for only a short distance and the space would open out towards the rear of the site. Accordingly, the path would provide future occupants with a suitable entry to the shared amenity space.
20. I conclude that the proposal would provide suitable living conditions for future occupants. The development therefore accords with Policy CS14 of the CS, Policy DM D2 of the MSPP and Policy D6 of the LonP, which collectively seek to ensure provision of an appropriate quality of living conditions and require that proposals deliver appropriate outlook, privacy and amenity and the Framework, which requires a high standard of amenity for existing and future users.

Biodiversity

21. The Council state that securing a BNG could be secured by way of a condition and have recommended that were I to allow the appeal, a condition should be imposed requiring details of how the development would achieve BNG.
22. While the Council contend that the submitted BNG Assessment has not been prepared by a competent person, it nonetheless indicates that a net gain in biodiversity could be achieved. In the event that the appeal is allowed, a condition requiring the submission and implementation of a scheme of biodiversity enhancements to be achieved on the site could be included and would be appropriate, reasonable and necessary.
23. I conclude that, that, subject to the inclusion of an appropriate condition, the proposal would deliver BNG. The development therefore accords with Policy G6 of the LonP, which requires proposals to manage impacts on biodiversity and aim to secure biodiversity net gain.

Planning Obligation

24. The completed Unilateral Undertaking (UU) secures an obligation to prevent future occupiers from obtaining parking permits within the Controlled Parking Zone. This obligation is necessary to ensure that the development would not result in an increased demand for on-street parking in accordance with Policy T6 of the LonP. The UU meets the tests set out in the Framework and the statutory test set out in regulation 122 of the Community Infrastructure Levy

Regulations 2010. I have therefore taken this obligation into account in my decision.

Planning Balance

25. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with the aforementioned policies of the CS, MSPP and the LonP, with the associated conflict reflecting harm to the character and appearance of the area and to the living conditions of occupants of neighbouring properties. The development conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
26. While the Council states that the delivery of housing is not below 75%. Nevertheless, Footnote 8 of the Framework states that paragraph 11 d) of the Framework is engaged when a five year supply of deliverable housing sites cannot be demonstrated. The Council states that it is unable to demonstrate a five year supply of deliverable housing sites. As such, paragraph 11 d) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. The proposal would make a positive contribution to housing supply with associated social and economic benefits during the period of construction and once the dwellings are occupied. While increasing the supply of housing land from small sites is a strategic priority, the contribution of six additional dwellings to meeting housing need in the Borough through a more efficient use of land in an urban area and the associated benefits are limited by the scale of the development proposed.
28. In the particular circumstances of this case, I have concluded that the harm to the character and appearance of the area and the living conditions of occupants of adjacent properties conflict with policies of the Framework. The adverse impacts would therefore significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

Conclusion

29. The proposal conflicts with the development plan when considered as a whole. Material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. For the reasons given above I conclude that the appeal should be dismissed.

J Pearce

INSPECTOR