

Appeal Decision

Site visit made on 2 July 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/L5240/W/23/3332191

50 Bishops Park Road, Norbury, Croydon, London, SW16 5TS

- 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 and Mrs Kanon against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/03339/FUL.
 - The development proposed is 3 x 3 Bed New Build Terrace Dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs Kanon against the London Borough of Croydon. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposed development on;
 - the character and appearance of the area;
 - the living conditions of future occupiers with regards to privacy, natural light, and noise;
 - the living conditions of nearby residents with regards to privacy, outlook, and noise;
 - biodiversity and trees;
 - highway safety, including parking; and
 - the provision of refuse storage, cycle parking and fire safety.

Reasons

Character and Appearance

4. The appeal site is an end of terraced building and its associated garden. The area has a pleasant consistency which is found in the strength of its urban grain, made up of two storey rows of terraced residential dwellings in a single tier layout facing the highway. Plot sizes are generally consistent, being

narrow and located to the rear. Smaller outbuildings are located to the rear of frontage development.

5. The proposed development would introduce a short terrace of three dwellings in the back land area between the terrace on Bishops Park Road and the railway line to the rear, which, with the exception of smaller, ancillary buildings, and extensions, is currently free from built form. This would be in marked contrast with the existing pattern of development and would introduce an uncharacteristic second tier thereof. The incongruousness of the proposals would be exacerbated by the dwelling's lack of a street frontage.
6. The submitted plans showing the extent of the appeal site detail small curtilages for the proposed dwellings, significantly lacking the space of others around it, leading to a much higher building to space ratio. It would result in a cramped form of development which would be at odds with and erode the established development pattern and urban grain of the area.
7. The appellant has referred to examples of developments in the area. I have not been provided with full details of these, however based on the information provided the specifics of these developments do not appear directly comparable with the appeal scheme. In any event, I have dealt with this appeal on its own merits.
8. The proposals would therefore harm the character and appearance of the area, jarring with its consistency. Accordingly, I conclude that the proposal would harm the character and appearance of the area contrary to Policy DM10 of the Croydon Local Plan (2018) (Local Plan), and Policies D3 and D4 of the London Plan (2021) (LP) which seek, amongst other things, to ensure that development is subservient to host buildings and respects the development pattern, layout and siting. The proposal would also conflict with paragraph 135 of the National Planning Policy Framework (Framework) which seeks good design sympathetic to local character.

Living Conditions – future occupiers

9. The proposed development would be located to the rear of dwellings that front on to Bishops Park Road with a railway line located to the rear. This railway line provides access to central London and appears to have regular trains passing.
10. The proposed development would have three windows in each of the rear elevations. I am mindful of a previous appeal¹ at the site where the Inspector concluded that various balconies and windows facing the railway line would suffer from the constant noise and disturbance that the line generates. In the absence of any Noise Assessment, it is not possible to determine the level of impact that this would give rise to or what potential mitigation might be required. Whilst the units for that scheme were located closer to the railway line, rear windows in the current scheme would face towards the railway line, with the closest being approximately five metres from the railway embankment.
11. In the absence of a noise assessment, I am unable to conclude whether the proposed development would experience harmful levels of noise from the

¹ APP/L5240/W/22/3313103

railway line. The appellant has referred to the provision of sound insulation, which could mitigate noise from within the proposed dwellings. However, this would not mitigate noise when windows and doors are open or from within the garden areas of the dwellings.

12. The proximity to the railway embankment, and associated trees, has the potential to impact on the rear facing windows in terms of natural light. A sunlight map has been provided in support of the appeal; however, this does not detail the proposed dwellings. Due to their staggered nature the proposed dwellings in combination with the railway embankment have the potential to overshadow each other. Furthermore, the fact that existing dwellings experience restricted levels of light is not adequate justification to allow further substandard developments.
13. The proximity of the embankment, orientation of the proposed dwellings and the north facing nature of the site would significantly restrict levels of light entering them, which would result in the rooms they serve being unduly gloomy to the detriment of their usability and the future resident.
14. The orientation of the proposed development would have the front elevations facing, at an angle, towards No 54 Bishops Park Road. The most northern plot has the most potential to overlook the rear windows of No 54. This plot has been designed in order for windows to face the access to the appeal site. As such windows would look towards the side elevation of No 54 which is devoid of any windows. As such, in relation to the potential for mutual overlooking, the design of the proposal, as it relates to No 54, would not result in a loss of privacy to future residents.
15. Whilst I have not found harm to future residents in relation to privacy, the proposed development would have a harmful impact on future resident with regards to noise and disturbance and natural light. It would therefore be contrary to Local Plan Policies SP2, SP4 and DM10, LP Policies D3, D6 and D7 and the guidance contained within the Mayor of London Housing Supplementary Planning Guidance (2016) (SPG). Together these seek, amongst other things, to ensure that developments provide adequate sunlight and daylight for potential future occupants and prevents or mitigates the impacts of noise. The proposed development would also be contrary to paragraph 135 of the Framework that seeks high standards of amenity for existing and future users.

Living Conditions – nearby residents

16. The proposed development would introduce three dwellings to the rear of No 50 Bishops Park Road and would adjoin No 54. The proposed dwellings would be constructed immediately adjacent to the proposed boundary with No 50 and in close proximity to the boundary with No 54. The proposed dwellings would extend along most of the garden of No's 50 and 54, albeit at an angle where No 54 is concerned.
17. Given the limited distance between the proposed development and the boundaries with No's 50 and 54, combined with the height and depth of the proposed dwellings, the proposed development would have a significantly detrimental effect on the living conditions of the occupiers of the neighbouring property. The proposed dwellings would appear as a dominant feature which

would have an overbearing effect on the outlook from both the gardens and rear facing rooms of adjoining dwellings. Furthermore, the depth and height of the proposed dwellings would be readily apparent from the rear garden of No 48, having an overbearing effect on its garden to the detriment of its useability.

18. As noted above, I have found that due to the orientation of the proposed dwellings there would not be any mutual overlooking, as such the proposal would not have a harmful impact in relation to privacy on nearby residents. With regards to noise and disturbance, whilst there may be some disturbance during the construction of the dwellings, this would be temporary and could be controlled by conditions. The use of proposed development as residential dwellings would somewhat increase the general noise; however, this would be associated with residential use of the building. Due to the proximity of existing dwellings and the location of the site in a suburban area, the proposal would not introduce harmful noise levels in this respect.
19. Whilst I have not found harm in relation to privacy and noise and disturbance to nearby residents, the proposed development would have a harmful impact on outlook. It would therefore be contrary to Local Plan Policies SP2, SP4 and DM10, LP Policies D3, D6 and D7 and the guidance contained within the SPG. Together these seek, amongst other things, to ensure that the amenity of the occupiers of adjoining buildings are protected. The proposed development would also be contrary to paragraph 135 of the Framework that seeks high standards of amenity for existing and future users.

Biodiversity and Trees

20. During my site visit I noted that a number of trees were located on and close to the appeal site. Natural England guidance² provides details of where protected species are likely to be present to assess the chance of a development affecting them. It notes that trees and gardens can provide habitats for a number of species, including bats, birds, dormice, and invertebrates.
21. No ecological information has been submitted in support of the appeal. Given the trees present on the site and the fact that a number of these are proposed to be removed, the development could impact on protected species. Circular 06/2005³ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted. On the basis of the evidence before me, I do not consider that it would be appropriate to condition the undertaking of survey work.
22. It is contended that the site is well-screened, and that the proposal has been designed to avoid harm to trees within one metre of the boundary of the site. All other trees would be removed to accommodate the proposed development. However, no Tree Survey, or expert report has been submitted to identify the trees on the site, or to assess the direct or indirect impacts of the development on their immediate health, or their long-term compatibility with the dwellings.

² Protected Species and Development: advice for local planning authorities

³ Biodiversity and geological conservation: circular 06/2005

23. From my own observations, it appeared that the proposed development would jeopardise the retention of many of the trees identified as being retained on or near the site. The proposed building would be constructed in close proximity to a number of these trees. The excavations for the proposed development would therefore likely be within or close to the rooting environment of the trees. Even if the trees could be retained in the short term, their position so close to the dwellings, could lead to longer term pressure for its removal, depending on its future growth potential.
24. Consequently, in the absence of any expert evidence, I cannot conclude that the proposed development would not involve the loss of trees, either as a direct result of construction works, or due to longer term incompatibility between the trees and the reasonable enjoyment of the dwellings by future occupants. I do not consider that this could be overcome by the conditions requiring tree protection measures. Without convincing expert advice, I cannot be confident that protective measures would allow for the trees to be retained.
25. In light of the above, I am not satisfied that sufficient evidence has been provided in order to ascertain the effects of the proposed development on biodiversity and trees. I conclude that the proposal fails to demonstrate that its effects on the biodiversity and trees of the site and the surrounding area would be acceptable. The proposed development is therefore contrary to Local Plan Policies DM10, DM27 and DM28 which seek, amongst other things, to ensure that developments enhance biodiversity and protect and enhance woodlands, trees, and hedgerows. The proposal would also be contrary to paragraph 186 of the Framework which seeks to ensure that proposals conserve and enhance biodiversity.

Highway Safety

26. The appeal site currently benefits from a driveway and garage to its side. The access to these appears to be shared with No 54, which also has a driveway and garage. During my site visit a car was parked in the driveway of No 4, demonstrating that it is used.
27. Whilst the red outline details that half of the access would be retained for pedestrian access, in order to access their garage and drive residents of No 54 would need to drive across the pedestrian access. No 54 does not benefit from any turning area, as such cars would be required to reverse in or off the drive. Due to the proposed boundary wall, vehicles reversing on to the highway would have limited visibility of pedestrians utilising the proposed access gate which could lead to conflict.
28. The lack of good visibility when manoeuvring along the drive combined with the shared access arrangement would increase the potential for conflicts between users to the detriment of highway safety.
29. Furthermore, the loss of driveway and garage for No 50 would result in further parking pressures in the immediate area. Whilst the appeal site is located within a Controlled Parking Zone (CPZ) no planning obligation has been submitted to restrict future occupiers being able to gain permits. As such, parking pressures on nearby roads could increase.

30. Whilst a transport report has been submitted, albeit for a different scheme, this has not included details of measures maps of the road to ascertain the precise number of parking bays available. In the absence of accurate evidence relating to nearby parking and a planning obligation I cannot conclude that the proposed development would not have a harmful impact on parking in the area.
31. For the reasons set out above I consider that the proposed development would be detrimental to highway safety. Accordingly, I find conflict with Local Plan Policies SP8, DM10, DM29 and DM30 and LP Policies T4, T5 and T6 which seek, amongst other things, to ensure that highway safety is not compromised. The proposal would also not accord with paragraph 115 of the Framework which seeks to ensure that development does not have an unacceptable impact on highway safety.

Refuse Storage, Cycle Parking and Fire Safety

32. The Council are concerned that the proposed development does not meet the policies relating to refuse storage, cycle parking and fire safety. The proposed development would provide refuse storage and cycle parking via the pedestrian access gate. This appears to be a typical access gate and the Council are concerned that this would not be of a sufficient width to allow bins and bicycles to manoeuvre easily. The appellant has not provided any evidence that would lead me to dispute the Council's findings in this respect. However, there appears to be additional room at the pedestrian access that a wider gate could be installed. As such, this matter could be dealt with by condition.
33. The refuse storage and cycle parking would be located to the front of the proposed buildings. Whilst the Council consider that there is currently insufficient refuse space, there appears to be sufficient space within the appeal site that this could be accommodated. Furthermore, the details of different cycle storage could be dealt with via condition. As such, whilst detailed information relating to refuse and cycle parking is not contained on the plans, as I have been minded to allow the appeal then these matters could be dealt with via condition.
34. The appellant has submitted a fire report detailing that the building will be constructed to and fire appliances would be provided in line with Building Regulations. It goes on to state that there are no restrictions on the street in terms of evacuation distances, and fire alarms would be provided in the buildings.
35. Whilst I acknowledge that some of these requirements are dealt with through the Building Regulations and some detail has been provided within the fire report. Nevertheless, the report is silent on a fire strategy or due to the narrow access to the site and shared crossover, how fire appliances would access the site or manage their equipment in the event of an emergency. I am not convinced that it has been properly demonstrated how the access for fire appliances would work from the existing access.
36. Whilst I have not found harm in relation to refuse storage or cycle parking. It has not been demonstrated that the proposal would provide safe access and evacuation for emergency services. It would therefore be contrary to LP

Policy D12 which seeks, amongst other things, to ensure that developments identify suitably positioned unobstructed outdoor space for fire appliances and evacuations assembly points and incorporate appropriate features which reduce risk to life.

Other Matters

37. I have found conflict with the development plan in respect of character and appearance, the living conditions of existing and future resident, biodiversity and trees, highway safety and fire safety. Whilst, I have found that no harm would arise in relation to the privacy of nearby and future residents or in relation to refuse storage and cycle parking, that is neutral in the planning balance. Therefore, I find that the proposal conflicts with the development plan when read as a whole.
38. I have not been provided with any evidence that the Council is failing to meet its housing requirements. Nevertheless, the housing requirement does not place a cap on development and other appropriate housing schemes can be granted permission.
39. The proposal would provide three dwellings in a sustainable location. There would be some socio-economic benefits from the construction of the dwellings and their use. However, these benefits would be limited by the scale of the proposal. As such, I have only attributed moderate weight to these. No other material considerations, including the Framework, have been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with the development plan.

Conclusion

40. For the reasons given above the appeal should be dismissed.

Tamsin Law

INSPECTOR