

Appeal Decision

Site visit made on 9 July 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/H5960/W/23/3333911

Sylva Court, 79 Putney Hill, Wandsworth, London SW15 3NX

- 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 Richard Taube of Upspace Construction Services against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref is 2023/2008.
 - The development proposed was originally described as erection of a new detached two-storey dwelling house (Use Class C3).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023 the National Planning Policy Framework (the Framework) was revised. The main parties have had the opportunity to comment on any implications of the revised Framework within the appeal timetable.
3. The appellant has submitted an amendment to the appeal, whereby a green roof has been added to the proposed dwelling. The Council has commented on the amendment within appeal submissions. However, the appeal notification letter does not make clear that an amendment has been submitted and from the content of representations made at the determination phase, it is clear that third parties would be unfairly prejudiced if I were to accept the amendment. Therefore, and having regard to the 'Wheatcroft Principles' and the Holborn judgement¹, and regardless of whether or not the proposed amendment would be a substantial change, I must consider the proposal as originally submitted. Consequently, I have considered the appellant's further ecological and arboricultural evidence submitted to the appeal only insofar as they relate to the original scheme as submitted.

Main Issues

4. Having regard to all of the evidence before me, I consider the main issues in the appeal to be the effect of the proposal upon:
 - the character and appearance of the area, with particular regard to the pattern of development, green infrastructure and trees;
 - the living conditions of neighbouring occupiers with particular regard to outlook from communal gardens; and
 - biodiversity.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]; Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Reasons

Character and appearance - pattern of development

5. Sylva Court comprises two linked blocks of flats of 8/9 storeys in a large plot. Further flatted developments are located towards the north at Lavington Court and the south at Ross Court. Both are typical of other flatted developments along this section of Putney Hill, being in large plots to include private open space and soft landscaping, with trees and vegetation along frontages and side boundaries. These factors combine to result in an overall green and spacious character, despite the predominant character of flatted blocks.
6. The proposed dwelling would be sited in the north-west corner of the appeal site within the rear private open space serving Sylva Court, accessed via an existing path. Due to its overall scale and siting, its southern elevation would be immediately adjacent to the boundary wall of a rear communal garden serving a short two storey terrace at Nos 49-51 (consecutive) Ross Court. The proposed dwelling would not align with the elevations of Nos 49-51, nor the nearby single storey garaging.
7. Due to its siting, scale and design, the proposed dwelling would appear as a detached dwelling within a small plot within the rear setting of Sylva Court, incongruous to the nearby flatted forms of development in large plots, and to the nearby terrace, despite being of a similar height to that terrace and the use of harmonising brick to match that of Sylva Court.
8. The main entrance to Sylva Court is not legible from the street, being located to the side of the block. However, it is legible in the context of wide paved paths which lead from the frontage. Due to its siting, the front door of the proposed dwelling would be at the end of a much narrower pathway within the private open space to the rear of the flats. This path has a high degree of enclosure, due to the change in level towards the rear of the appeal site and its proximity to the northern boundary.
9. The entrance to the proposed dwelling would also be in sharp contrast to the clearly defined shared entrances to the flatted blocks within neighbouring Ross and Lavington Courts, and those within the short terrace at Nos 49-51 which face an internal road.
10. The appellant draws my attention to the fact that the proposal would be no higher than any surrounding built form and the surrounding character of built form is mixed. Even so, the predominant character of the area is of flatted residential development of 5-8/9 storeys, with adjacent single storey garaging located largely towards the rear, which forms a significant and intervening built form between the appeal site and the two-storey flatted development at Colebrook Close towards the east.
11. For these reasons, the proposed dwelling would appear discordant to the prevailing pattern of development, and I therefore conclude that the proposed development would harm the pattern of development within the area.

Character and appearance - green infrastructure (GI)

12. Policy LP53 of the Wandsworth Local Plan 2023 (WLP) sets out that new development on or affecting public and private green and blue infrastructure or open space will only be permitted where it does not harm the character, appearance or function of the green and blue infrastructure or open space;

and that the impact of any cumulative effect of development will be taken into account. My attention is drawn by both parties to relevant definitions of GI within the development plan, guidance and the Framework. The definition of GI within the WLP is in broad conformity with that of the Framework.

13. The private open space to the rear of Sylva Court includes paved and unpaved areas. The narrow pathway from the paved courtyard space at the rear of the flats falls gently towards the rear of the large plot, bordered by trees and vegetation along the northern boundary. On the opposite side of the pathway is the wall of the underground car park with the raised communal garden above, with further vegetation hanging above and along the wall. This leads to a smaller garden space which although predominantly paved, includes trees along the northern boundary, a further tree, hedging and other vegetation. Consequently, it feels more private than the raised communal garden area above, offering shade and seclusion, more intimate with nature, more akin to a secret garden. This enclosed garden therefore has a markedly different character and appearance to that of the raised communal garden area, which functions as informal recreation space and has a more open feel.
14. The trees and vegetation within the enclosed garden area therefore form important green features which make a significant contribution to its character and appearance. In my judgement the site does not appear as developed land, covered by hardstanding as the appellant suggests. The presence of paving and a short flight of steps serving an emergency exit door to the underground car park does not diminish its green qualities. Moreover, such a position does not accord with the appellant's ecology and arboricultural evidence which identifies the green features within this space and accepts that the trees along its boundary may be considered to form part of a green feature of the built environment.
15. The proposal would result in the loss of part of the private open space/communal gardens serving Sylva Court, and no compensatory quantum of open space is proposed. The important green features within it would be replaced by built form, such that its character, appearance and function would significantly change from a communal garden area, albeit a secret one, to a two-storey dwelling.
16. The proposal would result in the loss of trees and vegetation at the site of the proposed dwelling. I accept that these green features do not form a designated or strategic GI site, and the trees within it would not be street trees or form a designated green corridor or network. However, as green features within an urban environment, they fall within the definition of GI as set out in the WLP, even though they are not formally designated as such. The list of examples within the WLP definition is not a closed list, and Policy LP53 clearly includes reference to trees and smaller spaces. Planning Practice Guidance² (PPG) recognises that GI can include private gardens and other areas of open space.
17. Although the management of private open space is largely outside the scope of the planning system, it can include features such as private/communal gardens, green roofs, green walls, trees and other planting such that it forms a significant portion of GI within an area. Consequently, green features within the urban environment, including those within private open spaces can assist

² Paragraph: 004 Reference ID: 8-004-20190721 Revision date: 21 07 2019

in meeting broader planning objectives such as mitigating the effects of climate change, managing urban heat/cooling, supporting biodiversity, contributing to the physical and mental health and well-being of residents, and the character and appearance of an area, including visual amenity in the public and private realm.

18. Furthermore, the appellant's arboricultural appeal statement October 2023 (Oct 2023 Statement) demonstrates amongst other things that onsite and offsite tree lined boundaries have relative connections to key off-site GI features such as the woodland to the west of Lavington, Sylva and Ross Courts, such that it is accepted that there is a functional connectivity to wider key GI.
19. For the reasons given above, I conclude that the proposal would result in the loss of important green features which would otherwise be GI, and the loss of private open space and it would harm the character, appearance and function of that space.

Character and appearance - trees

20. The trees to be removed are set at a lower height than the trees within the raised communal garden area, and the lime trees to be removed are routinely pollarded. Nonetheless, they appear in view from within the raised communal garden area and the large courtyard at Sylva Court as I saw at my visit, and therefore they make a positive contribution to the wider character and appearance of the private open space to the rear of Sylva Court. Together with other vegetation along the boundaries of the raised communal garden, they form part of the setting to Sylva Court, provide a degree of green enclosure and some degree of screening towards Lavington Court when viewed from within it. The trees also appear in limited views from windows within the rear elevation of Sylva Court, depending on their siting and angle of view.
21. Five trees would be removed to accommodate the proposed dwelling, four of which would be along the boundary. The Oct 2023 Statement classifies these trees for removal as being low quality. A further dead tree would be removed from the communal garden area, in the interests of good arboricultural practice. Further, the statement demonstrates that tree roots of the lime trees along the northern boundary have broken into a small area of tarmac within Lavington Court, and there is some evidence of a pressure crack within a retaining wall, but this damage is not considered significant. The statement sets out that continued pollarding of these trees is necessary to minimise their impact in this regard. I find no reason to consider otherwise.
22. While the five trees to be removed at the site of the proposed dwelling are considered to be of low amenity value in the appellant's tree survey data, the Oct 2023 Statement accepts they have limited private amenity value. However, the appellant's analysis of private views is limited to north facing views from Ross Court, and south facing views from Lavington Court.
23. The analysis does not take account of views from the terrace towards the east at Nos 49-51, including from its communal garden. My observations indicate that views from the windows within the rear elevation would be oblique, but views from the communal garden are direct, and the existing trees to be removed appear in prominent view above the perforated boundary wall to the communal garden, and they provide some limited screening of Lavington

Court. Furthermore, the trees and vegetation can be seen in limited views from the windows within the rear elevation of Sylva Court, depending on the angle of view, and from within the existing communal garden and large paved courtyard.

24. For these reasons, I am not satisfied that the appellant's evidence demonstrates that full account has been taken of the private amenity value of the trees, and therefore their contribution has not been fully assessed. In my judgement, their value is more than limited, as suggested by the appellant.
25. Overall, in numerical terms, the five proposed replacement trees would compensate for the number of trees lost directly from the development. Three trees would be planted within the raised communal garden area. Two further trees would be planted along a length of the northern boundary which would be about 5.5m. Once established, these two trees would in effect fill an existing gap in the tree line along the northern boundary. Nonetheless, the proposal would result in a loss of tree line about 8.9m length at the site of the proposed dwelling.
26. The proposed green wall would provide an expanse of green features as seen from Lavington Court. The Council draws my attention to concerns about an effective maintenance regime and its northerly aspect, such that it might not thrive. In this regard, there is a risk that the green wall would ultimately fail, but this could be controlled by a suitable condition. In such circumstances, the green wall would provide a feature of green character that would assist in mitigating the loss of the existing trees along the boundary in terms of public and private amenity. However, this would not be of the same character as a line of trees, which is the predominant character within the area. As it would face outward from Sylva Court it would not provide equivalent amenity value in terms of views from within the rear communal space within Sylva Court, nor from windows within the rear elevation of Sylva Court. Such views would effectively be replaced by those of the proposed dwelling, predominantly of its upper storey.
27. The appellant suggests that the absence of a tree preservation order (TPO) indicates that the Council does not find the existing trees to have sufficient amenity value to warrant protection. The Council advises that the assessment for a TPO is materially different. However, neither party has provided any compelling evidence of any such assessment. Furthermore, I note that PPG³ advises that local planning authorities should use TPOs to protect selected trees and woodlands "if their removal would have a significant negative impact on the local environment and its enjoyment by the public". Therefore, the absence of a TPO has little bearing on my consideration of the appeal.
28. Drawing all of the above together, the proposal would result in harm to the green character and appearance of the area. The proposed replacement tree planting and green wall would not provide an equivalent amenity value to that lost. For the reasons given above, I conclude that the proposal would harm the character and appearance of the area, with particular regard to trees.

Character and appearance – overall conclusion

29. The proposed dwelling would appear incongruous to the prevailing pattern of development in terms of built form and would result in the loss of private open

³ Paragraph: 007 Reference ID: 36-007-20140306 Revision date: 06 03 2014

space serving Sylva Court, without any compensatory quantum of such space. It would result in the removal of green features which play an important role in the character, appearance and function of the communal open space serving Sylva Court; and which also serve as GI. The replacement planting would not be of an overall equivalent compensatory amenity value.

30. For the reasons given above, I conclude that the proposal would significantly harm the character and appearance of the host property and the wider area, with particular regard to the pattern of development, green infrastructure and trees. The proposal conflicts with WLP Policy LP53, whose objectives I have set out above; WLP Policies LP1, LP7 and LP56; and Policies D1, D2, D4 and H2 of the London Plan 2021 (LP).
31. Taken together, and among other things, these policies seek to ensure that development is of a high-quality design that responds positively to its context and respects the prevailing local character; that site optimisation is achieved in the most appropriate way; that additional housing in existing residential areas on small sites should ensure that main entrances are visible from the public realm and clearly identified; and that key features important to the character and appearance of the area (trees) are retained or re-provided in accordance with WLP Policy LP56. Furthermore, the proposed development would also be contrary to the requirements of the Framework.

Living Conditions

32. The communal gardens to Sylva Court and Nos 49-51 Ross Court play an important role in meeting the needs of existing occupiers for the enjoyment of private outdoor space.
33. Due to the overall scale and siting of the proposed dwelling, its upper storey would appear in prominent view above the raised communal garden area of Sylva Court. This would result in a strong sense of enclosure by built form to the corner of the raised communal garden area, when viewed from within it, as demonstrated by the appellant's CGI images. These images also demonstrate that the proposed dwelling would appear noticeably taller and closer than the terrace at Nos 49-51 when viewed from the raised communal garden and large courtyard. Consequently, the proposed dwelling would have an overbearing effect when viewed from the rear private amenity space at Sylva Court, to the detriment of its existing occupiers. The presence of extensive glazing within its main elevation in proximity to the raised communal garden would result in a feeling of intrusion.
34. The proposed dwelling would be sited immediately adjacent to the perforated boundary wall of the rear communal garden serving Nos 49-51. Existing views from the garden include this wall (which would remain), with existing trees and vegetation above. Due to its overall scale, height and siting, the largely solid brick flank of the proposed dwelling's upper storey would appear in prominent and close view from within the rear communal garden of Nos 49-51, and it would therefore appear overbearing, despite other alternative views being available.
35. While the appellant suggests that the proposed high-level windows of wide and shallow proportions prevent adverse impacts upon neighbouring privacy, it seems to me that such a design is also indicative of proximity to Nos 49-51, such that this supports my findings. The fact that the proposal would not prevent the proper operation of neighbouring uses does not alter my findings.

36. For the reasons above, I conclude that the proposed development would significantly harm the living conditions of neighbouring occupiers, with particular regard to outlook from the communal gardens at Sylva Court and Nos 49-51 Ross Court. Consequently, there is conflict with WLP Policy LP2, which seeks to ensure that development proposals do not adversely impact the amenity of existing and neighbouring occupiers.

Biodiversity

37. Although 10% biodiversity net gain (BNG) is mandatory from 12 February 2024, planning applications made before that date are exempt, and certain other exemptions also apply. For these reasons, mandatory BNG does not apply in this case. The appellant's ecology evidence demonstrates that the proposal would result in a BNG of just over 11%, primarily through replacement tree planting. This could be controlled by suitable conditions, as the Council accepts. In such circumstances the proposal would deliver a net gain in biodiversity.
38. I therefore conclude that subject to suitable conditions, the proposal would result in a net gain in biodiversity. It accords with WLP Policies LP55, which seeks to protect and enhance biodiversity.

Other Matters

39. The appellant advises that the proposal is on a brownfield site. In such circumstances, the proposal would support the government's objectives for the efficient use of land. However, the site of the proposed dwelling forms part of the communal gardens within Sylva Court. Even if it were previously developed land, it would not overcome the harm that I have found.
40. The proposal is for a unit of family sized accommodation. It would therefore assist in the government's objective to significantly boost the supply of homes, and in meeting the housing needs of the borough and wider London. As a single dwelling on a small site, it could be built out relatively quickly. However, such benefits would be of limited weight due to the scale of the development. Temporary economic benefits would arise during the construction process, with additional household expenditure thereafter, but these benefits would be modest in scale, attracting limited weight.
41. The fact that the proposal would deliver a net gain in biodiversity and that the proposed dwelling would meet relevant standards such as those for internal space are policy requirements of development, and as such they are neutral factors in my assessment.
42. Interested parties raise a number of concerns, including but not limited to parking, the amenities of future occupiers of the development, and effects upon wildlife. Many of these concerns have been addressed by the Council in the officer report which considered the application. Whilst I can understand such concerns, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
43. Other concerns are raised, including the effects of the construction phase. I appreciate that noise and other disturbance can arise during this process, but such effects are temporary, and the management of construction activity can be addressed by suitable conditions. There is no compelling evidence that the proposal would give rise to an increase in anti-social behaviour or crime

during the construction phase, nor that the development would adversely impact upon existing sewerage and drainage arrangements.

44. A further concern is raised that the effect of the proposal upon access via the existing gate at the site of the proposed dwelling has not been taken into account. Comments made indicate that this route is used to access waste bins sited just beyond the gate. I note that the gate is shown on the existing and proposed block plans, but it is clearly not the intention of the proposal to retain the gate. My own observations indicate that the gate permits pedestrian access to Ross Court, and that there are a number of communal sized waste bins immediately outside the gate, adjacent to the eastern boundary of the appeal site. I also saw some domestic sized waste bins within the space below Sylva Court's rear block, but these were limited in number such that they would not be sufficient to meet the needs of Sylva Court as a whole.
45. In the absence of any further evidence on the nature of existing arrangements for the storage and collection of waste and recycling for existing occupiers, I cannot be certain that the proposal would not adversely impact such arrangements. In any event, as I am dismissing the appeal on the main issues, and further consideration of this matter would not alter my decision, it is not necessary for me to consider this matter further.
46. Concerns regarding any effect on property values and mortgages; leasehold rights; profit that may arise; and the approach of the owner/developer to the management or maintenance of the site are private matters and have no bearing on my consideration of the appeal.
47. The appellant draws my attention to pre-application advice received from the Council in 2019. This advice clearly relates to a different scheme of greater scope than that before me, with a different planning policy context. Consequently, this advice has no bearing on my consideration of the main issues. I have considered the appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Conclusion

48. The proposal would significantly harm the character and appearance of the appeal site and wider area and the living conditions of neighbouring occupiers.
49. Whilst there would be a positive contribution to the supply of homes, and some economic and social benefits through the construction phase and subsequent occupation of the scheme, these benefits do not outweigh my assessment on the main issues.
50. Given my findings above, the proposal conflicts with the development plan when taken as a whole, and the material considerations, including the Framework, do not indicate that the proposal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR