



Appeal Decision

Site visit made on 6 January 2025

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Appeal Ref: APP/Z5630/W/24/3346831

7 Graham Gardens, Surbiton, Kingston Upon Thames KT6 6LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms L Hunt against Royal Borough of Kingston Upon Thames.
 - The application Ref is 24/00774/FUL.
 - The development proposed is for the part demolition of existing dwelling, erection of 2 new dwellings and associated access, bins and cycle provision.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the submission of the appeal for non-determination, the Council has not provided any Statement of Case nor guidance as to what it considers the main issues. The Council have however submitted a series of policies from The London Plan 2021 (LP) and the Core Strategy 2012 (CS), which I have considered the proposal against.
3. The appellant has also submitted the Council's Housing Delivery Test & Five-Year Housing Land Supply Interim Position Statement which was issued in November 2024 (IPS). This was not available when the appeal was started, is a publicly available document, and the Council has been given opportunity to comment. Therefore, in considering the IPS in this decision, would not disadvantage any parties.
4. The National Planning Policy Framework (the Framework) was updated in December 2024. The main parties have been given an opportunity to comment on this, so the revised version has been referred to in this decision.

Background and Main Issues

5. The Council has submitted the consultation responses from the application, and in conjunction with the responses received to this appeal and my observations on site, I consider the main issues to be the effect of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of the occupants of neighbouring properties; and
 - protected species, specifically bats.

Reasons

Character and appearance

6. The appeal site is at the end of Graham Gardens, a cul-de-sac within an established residential area. The majority of properties in the area are 2 storey dwellings in mature gardens, either positioned along the main roads or clustered on cul-de-sacs. This gives the area a verdant and suburban character. In the main the dwellings have pitched roofs and are often finished in brick. They are generally designed to accord with the vernacular of when they were built. There are examples of alterations and replacement dwellings, as well as some infill development. However, these are either reflective of the original dwelling or again are contemporaneously designed. It is recognised there are numerous examples of roof space being used for additional accommodation, but not specifically 3 storey buildings.
7. The dwelling on the appeal site is an example of the traditional style of the properties in the area but enjoys a considerably larger garden due to its corner location. It includes a tree which is protected under an area wide tree preservation order (TPO). This along with the established and mature planting in the garden emphasises the verdant character of the area and plays a key role in creating a visual and physical buffer between the surrounding properties.
8. The proposal would reduce the width of the donor dwelling (DD) to create an access for 2, 4-storey dwellings (including a basement level), which would be finished in brick and render, and have flat green roofs. According to the appellant's arboricultural information, of the 23 defined individual trees or groups on the site, 14 would need to be removed.
9. The reduction in the size of the DD would not have a detrimental impact on the area. However, the proposed new dwellings would be of a design reminiscent of urban town houses and not the traditionally suburban style or contemporary infill development characteristic of the area. Their austere rectangular form and overall bulk would overwhelm the surrounding dwellings. Their back-land location would also emphasise their discordant visual relationship with the surrounding properties. Although the plot sizes would be similar to properties in the area, the overall mass and 3 storey height of the new dwellings, along with their proximity to each other, would create an intensification of development that would further emphasise their overbearing impact on the character and appearance of the area.
10. The appeal site currently provides a verdant and spacious relief between existing dwellings and the proposal would remove this, so have an urbanising effect on the setting of the DD and its neighbours. Although it is proposed to retain the tree protected by TPO, the removal of the majority of the established trees and planting on the appeal site would further exacerbate the detrimental impact on the area's verdant and suburban character.
11. It is acknowledged the proposal would include landscaping and some re-planting. However, this does not negate the physical and spatial impact of the new dwellings. Moreover, any new trees or landscaping planted would take a significant amount of time to mature to such a level as to provide sufficient screening and softening of the proposed dwellings to the degree that the verdant setting of the immediate area was conserved. Notwithstanding whether

such levels of planting would be possible on the site and that their long-term management and retention could be ensured.

12. Therefore, the proposal would have a significantly detrimental impact on the character and appearance of the area. It would fail to comply with CS Policies CS8, DM10, and DM11, and LP Policy D3, as far as they seek to protect the character of the borough and respect the local distinctiveness of a street or area.

Living conditions

13. It is commonly understood that the rear area closest to a dwelling is considered the most private and a level of privacy is necessary to ensure good living conditions. The appeal site has a number of neighbouring properties, and due to the orientation of the proposed dwellings and distances involved, the privacy of the occupants of the majority of these properties would not be affected. This, however, would not be the case for the DD or 7 Kirkleas Road (No. 7).
14. Due to the layout of the existing properties and the mature landscaping within the appeal site and along the boundaries, DD and No. 7 enjoy a high level of privacy to the rear. However, the proposal would include 1st and 2nd floor windows within the new dwellings. These would be orientated towards DD and No. 7 and located above the proposed boundary treatments. They would therefore have near complete views of the rear gardens of both DD and No. 7, including those sections closest to the rear elevations. As such the proposal would significantly increase the overlooking of both DD and No. 7. This would reduce the privacy of the occupants of both properties to such an extent as to detrimentally impact their living conditions.
15. It is appreciated that landscaping could provide some screening. However, as with the first main issue, it is not considered the landscaping proposed would adequately mitigate the harm identified, especially in relation to the proposed 2nd floor windows. Equally I do not find the distances between the proposed dwellings and the 2 properties in question to be so great as to retain privacy of their occupants.
16. It is acknowledged, however, that due to the plot sizes and dimensions of adjacent properties, and their orientation to the appeal site, it is unlikely the proposal would harm the living conditions of any neighbouring occupants in terms of access to light, and noise and disturbance. Also, that although that the proposal would be visible from the neighbouring properties, the impact on each individual property would not be so extensive as to be considered overbearing. Nevertheless, this does not negate the harm identified in relation to the occupants of the DD and No. 7.
17. With regard to living conditions, the proposal would cause significant harm in relation to the privacy of the occupants of the DD and No. 7, so fail to comply with CS Policy DM10, which amongst other things requires proposed development to have regard to the living conditions of neighbours.

Protected species

18. Interested parties have noted the presence of bats, a protected species, on the site and in the local vicinity. This is borne out in the refusal of 2 earlier

applications¹ on the site which amongst other issues, identified protected species as a reason to refuse. It is also noted that the appellant's Preliminary Ecology Appraisal and Preliminary Roost Assessment (PEAPRA) confirmed that 3 buildings on site are capable of providing roosts for bats and that nocturnal surveys are recommended to determine if they are present.

19. Without the nocturnal surveys the impact of the proposal on bats cannot be ascertained nor what the appropriate mitigation would be. Due to the potential irrevocable harm the development could have on this protected species, it is necessary to take a precautionary approach. Therefore, as it cannot be concluded that the proposal would not harm bats it would fail to comply with CS Policy DM6 and LP Policy G6 insofar as they seek the protection and conservation of priority species, including bats.

Other Matters

20. The appeal site would be adjacent to the Southborough Conservation Area (CA) so could be considered as a part of its setting. The CA's significance is linked to its development as a residential area between the 1860s and the 1930s, around Southborough House which was built in 1808 and designed by John Nash. The properties are of large, detached dwellings and are of differing styles but very much reflective of the era they were built. However, the appeal site is comparatively small in relation to the wider setting of the CA and separated from the houses around Southborough House by the later residential development of Kirkleas Road. I therefore find that although the proposal maybe within the setting of the CA, in this instance, it would not harm its significance.
21. It is acknowledged that the Council's traffic engineer raised concerns relating to swept path diagrams for fire appliances, and construction logistics. However, from the information before me it is likely these matters could be dealt with by condition and therefore not cause harm in relation to highway safety.
22. The submission of computer-generated images by interested parties has been noted. However, without detail of the information used to create those images they have not been determinative in this decision. Nor has the appeal reference APP/Z5630/A/99/1032033/P8 which was considered under now superseded development plan policies.
23. It is noted the appellant considers the site to be brownfield. However, the definition of brownfield land within the Framework is that of previously developed land which specifically excludes land in built-up areas such as residential gardens, parks, recreation ground and allotments.

Housing Balance

24. On review of the IPS, and the most recently produced Housing Delivery Test results, it is indicated that the Council can only demonstrate a 1.55-year housing land supply and is currently only delivering 48% of its housing requirement. As such it is necessary for me to apply paragraph 11 of the Framework.
25. The proposal would provide a net increase of 2 dwellings reasonably quickly on an accessible site. The Framework seeks to boost significantly the supply of

¹ 21/000951/OUT and 23/00876/OUT

housing and recognises the importance of small sites in meeting the housing requirement of an area. In conjunction with the significant shortfall in housing land supply and delivery this benefit would attract significant weight.

26. The appellant states that the proposal could provide some ecological enhancements, as set out in the PEAPRA. This along with the proposed energy efficiency measures, and the economic and social impact new housing can have, would constitute further benefits of the scheme. However, due to the small scale of the proposal these benefits would attract only limited weight.
27. As set out above the proposal would not cause harm in relation to the setting of the CA, or highway safety. From the information submitted, I am satisfied it would also not be harmful in relation to water management and drainage; the living conditions of future occupants of the proposal; parking; cycle and refuse storage provision; sustainable and safe construction methods, including for the proposed basements; and fire safety. Although it is recognised conditions may be required to ensure this. Nevertheless, a lack of harm is by definition a neutral factor and so can not weigh for or against the proposal.
28. However, I have found significant harm in relation to the character and appearance of the area, the living conditions of neighbouring residents, and protected species. The proposal would therefore conflict with the Framework insofar as it seeks to achieve well designed places and conserve and enhance the natural environment. Consequently, in these circumstances, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Conclusion

29. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR