



Appeal Decision

Site visit made on 22 August 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 September 2017

Appeal Ref: APP/P5870/W/17/3170388 15 & 16 Benhilton Gardens, Sutton SM1 3BS

- 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 David Cunningham (Foxes Dale Ltd) against the decision of the Council of the London Borough of Sutton.
 - The application Ref B2016/75814/FUL, dated 7 November 2016, was refused by notice dated 5 January 2017.
 - The development proposed is described as the demolition of existing garage to 15 Benhilton Gardens. Erection of four single storey dwellings to the rear of 15 & 16 Benhilton gardens with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the character and appearance of the surrounding area.
 - The effect of the proposed development on the living conditions of the occupants of properties on Hunting Gate Mews with particular regard to outlook.
 - The effect of the proposed development on protected trees.

Reasons

Character and appearance

3. The appeal site comprises two long and narrow plots of land which form the rear gardens of Nos 15 and 16 Benhilton Gardens. Approximately half the depth of these rear gardens is managed for residential purposes with the northern remaining half being largely overgrown. Within the appeal site the rear gardens are fairly level for some distance but then incline towards the far end, finally rising steeply into a tall embankment with a prominent east to west tree line containing a number of protected trees. Benhilton Gardens is a residential cul-de-sac that comprises predominantly of bungalows. A characteristic feature of this part of the estate is that properties are set in substantial plots with long rear gardens.

4. A footpath forms the majority of the western boundary of the site with terraced properties on Hunting Gate Mews located to the west of the path. Relatively high close boarded timber fencing forms the respective boundary of the footpath with the appeal site and the rear gardens of properties on Hunting Gate Mews. There has been some limited backland developments in the rear gardens of properties on the estate but these appear to have been served from existing accesses.
5. The proposed development would involve the demolition of the attached side garage of No 15 Benhilton Gardens to provide access to four modest sized, flat roof bungalows, each of similar design, that would be constructed in the rear gardens of the bungalows at Nos 15 and 16. The proposed two bungalows at the northern end of the site would be orientated in a north-south direction with a pair proposed to occupy the southern half of the site being orientated in a west-east direction. The proposed bungalows would be of a contemporary design and the western elevation, facing Hunting Gate Mews would contain no windows or doors.
6. There are other examples of backland development in the area. On the northern side of the street is an existing Scout Hall located to the rear of No 18. A pair of semi-detached dwellings has also been constructed to the rear of No 24 at the eastern extremity of the cul-de-sac. The retained rear gardens of these host properties and those of the semi-detached properties remain relatively large. The Council suggests that both these developments have been constructed off existing accesses and have not required the demolition of structures or the creation of new access points between dwellings. Other than these developments the remainder of the rear gardens on the northern side of Benhilton Gardens remain undeveloped such that the character of the rear block of Nos 15 to 22 remains as predominantly long rear gardens.
7. Given the existence of other access points between properties on both sides of the street that serves backland development and the fact that the proposal would require only a slight widening of the existing access to the garage, I do not consider that the demolition of the existing side garage at No 15 and the formation of an access would cause any demonstrable harm to the character of the street scene. Moreover, give the retention of the exiting front gardens of the host properties and the fact that the existing gap between the side elevations of bungalows would be retained, the proposed access would be barely noticeable in views along the street.
8. Although Benhilton Gardens is comprised predominantly of bungalows of similar design style, scale, mass and construction age, more recent development on Hunting Mews and the other examples of backland development are two-storey of modern design. As such, there is a relatively eclectic mix of design style in the wider locality. The proposed contemporary design style of the development would not be reflective of the immediate surroundings. However, given the wider variety in design style in the locality and the fact that the appearance of the street scene would remain largely unaltered, I do not consider that the proposed contemporary design of the bungalows would be harmful to the character of the surrounding area of an extent to warrant the dismissal of this appeal on those grounds.
9. However, unlike the other examples of backland development on this side of the street the proposed development would occupy the majority of the existing

rear garden leaving a relatively small area remaining for the enjoyment of the occupants of the host properties. The proposed bungalows themselves would have small areas of private amenity space. As such the size of the remaining and proposed garden areas would be at odds with the prevailing character of the surrounding development of residential properties which have relatively large areas of private amenity space.

10. Moreover, the proposed development would result in the loss of the majority of the existing rear gardens of the host properties. This would erode the current strong recognisable character of undeveloped long rear gardens that form an integral part of the character and appearance of the rear block of Nos 15 to 22. A considerably denser form of urban development would be created than that which exists on any other part of Benhilton Gardens, including those areas where backland development has occurred. As such the proposed density of development would also not be reflective of the character and appearance of that in the surrounding area.
11. In addition, the alignment of the four dwellings laid out with one pair orientated north-south and one pair orientated west-east would be at odds with the prevailing pattern of development on the street which has a strong west-east emphasis.
12. Taking the above factors into account, the proposed development would cause demonstrable harm to the character and appearance of the surrounding area. As such, it would be contrary to Policies PMP1 and BP12 of the Sutton Core Planning Strategy Development Plan Document (2009) and Policies DM1 and DM30 of the Site Development Policies Development Plan Document (2012) (SDP). These policies, amongst, other things, seek to ensure that new development respects the local context, and maintains and enhances the local character and appearance of the surrounding area. In addition, development on back garden land is precluded where the site, as part of a larger street block, makes an important contribution to the character and appearance of the surrounding area.
13. The Council's Decision Notice also refers to a conflict with Policy DM3 of the SDP. However, this policy relates to the enhancement of the street scene and for the reasons identified above, I do not consider that the harm to the appearance of the street as a consequence of the proposed development would be of an extent to conflict with the provisions of this policy.
14. Although the Officer report refers to a conflict with Policy 7.4 of the London Plan (2016), the Council's Decision Notice refers only to a conflict with Policy 7.3 of this Plan. This policy relates to a need to design out crime. I have no evidence to demonstrate if, or how, the proposed development would conflict with the provisions of this policy. Consequently, I have attached little weight to the alleged conflict with the requirements of Policy 7.3 in the determination of this appeal.

Living conditions

15. The Council indicates that the proposed dwellings would have a flat roof approximately 3.4m high and 4.1m to the top of the proposed lantern section of the roof. It is also indicated that the proposed dwellings would be positioned approximately 1.8m from the boundary with the footpath and approximately

- 10.5m from the rear facade of the nearest residential property on Hunting Gate Mews.
16. The Council has not referred to any adopted separation distances that are required to be maintained between existing and proposed development. The submitted sections, which I have no evidence to suggest may be erroneous, demonstrate that in the vicinity of the proposed dwellings the ground levels of the appeal site are slightly lower than those on Hunting Gate Mews. The sections show that the roofs of the proposed properties would project slightly above the height of the close boarded fencing that forms the footpath and property boundaries of Hunting Gate Mews.
 17. There would be some loss of outlook from the rear of Nos 12 and 15 Hunting Gate Mews. Views from these properties would predominantly see a small part of the narrow flank wall of the proposed bungalows projecting above the fence. However, given the low height and flat roof form of the proposed bungalows, and the absence of any adopted and defined separation distances in local planning policy, I do not consider that these views of the proposed development would be of such a detrimental extent that would cause demonstrable harm to the living conditions of the occupants of those properties sufficient to dismiss this appeal on that ground.
 18. For the above reasons, the proposed development would not cause a loss of outlook for the occupants of adjoining properties on Hunting Gate Mews of an extent that would cause demonstrable harm to living conditions. Consequently, there would be no conflict with Policy DM2 of the SDP. This policy, amongst other things, indicates that the Council will not grant planning permission for any development that adversely affects the amenities of those currently occupying adjoining or nearby properties and in assessing the impact of the proposed development the effect on outlook will be taken into account.

Protected trees

19. The appellant has submitted an Arboricultural Implications Report which accords with British Standard BS 5837: 2012, Trees in relation to design, demolition and construction – Recommendations. This report contains a survey of 13 individual and two groups of trees growing on or immediately adjacent to this site and provides evidence of the position and health of the trees and the implications of the proposed development on tree loss, retention, protection and compensatory planting. I have no other evidence to suggest that findings and conclusions of the report may be incorrect.
20. The site contains a number of trees at the far rear end of the site, predominantly growing on the steep embankment, that are protected by two Group Tree Preservation Orders (G1 and G2). In addition a protected Oak tree is located in the part of the overgrown garden of No 16.
21. BS 5837 defines the quality of trees into four categories. Category A being trees of high quality with an estimated remaining life expectancy of at least 40 years; Category B being trees of moderate quality with an estimated remaining life expectancy of at least 20 years; Category C being trees of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter below 150mm; Category U being trees in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years.

22. The report identifies that none of the trees surveyed are category 'A' or 'B'. The protected trees proposed to be removed include the Oak tree which is surveyed as a category 'C' tree, trees in group G1 which are category 'U' and the removal of some trees in group G2 which are category 'C'. The Oak tree identified has having a deteriorating health and a significant structural fault in the main trunk that would require management even if the site was not to be developed and such management would significantly reduce its amenity value.
23. From observations at my site visit, the felling of the low quality trees identified for removal will represent only a minor alteration to the key arboricultural features of the site where the tree lined embankment at the rear would remain as the predominant feature. As such, I agree with the findings of the report that the proposed development will result in only a low magnitude of impact on the character and appearance of the surrounding area which would be further mitigate by proposed planting.
24. Taking these factors into account, the removal of the identified trees would not have a significant or severe impact on the local landscape. Consequently, there would be no conflict with Policy DM1 of the SDP. This policy, amongst other things, requires that development should maintain the local character and appearance of the surrounding area and be expected to respect and retain, where possible, the natural features of the site, including trees of amenity value.

Other matters

25. I have taken into account the contribution that the proposed development would make to housing supply within the Borough. However, based on the evidence before me, which is not disputed by the appellant, the Council is currently meeting its requirement to deliver a 5 year supply of land for housing. Consequently, in this regard I consider that there are no other compelling or overriding reasons why the appeal site should be used for additional housing.

Conclusion

26. I have found that the proposed development would not harm the living conditions of the occupants of properties on Hunting Gate Mews. In addition, the proposed replacement planting would offset the loss of a poor specimen protected tree and other trees that have low amenity value such that the effect on the character of the landscape would not be significant. However, these matters do not outweigh the harm that would be caused to the character and appearance of the surrounding area as a consequence of the proposed development. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR