



Appeal Decision

Site visit made on 5 November 2018

by Elizabeth Pleasant DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2018

Appeal Ref: APP/P5870/W/18/3203866 53 Aultone Way, Sutton SM1 3LD

- 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 Barnfield Homes against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2018/00163, dated 2 February 2018, was refused by a notice dated 28 March 2018.
 - The development proposed is demolition of part of 55 Aultone Way, the erection of four houses, and the provision of new access drive.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.
3. Since the appeal has been lodged, a Tree Preservation Order has been confirmed in respect of the mature oak tree situated within the rear garden area of No 65 Grennell Road. The appellant has had an opportunity to comment on this matter during the appeal proceedings and has not therefore been prejudiced.
4. The appellant has made reference to policies in the draft London Plan. However, this Plan is in its very early stages of preparation and therefore taking into account paragraph 48 of the Framework, the weight that can be attached to those policies is limited.

Main Issues

5. The main issues in this case are the effect on the:
 - Character and appearance of the area;
 - Living conditions of neighbouring residents; and
 - Future health and longevity of adjacent trees.

Reasons

Character and appearance

6. Aultone Way, in the vicinity of the appeal site, is characterised by detached and semi-detached dwellings which are generally aligned and front towards the street. There are a mixture of both single and two-storey properties, however their regular positioning, consistent plot width, including modest front gardens and driveways set behind a deep pavement and verge, has created a clear building line which gives this part of the street a distinct rhythm and character.
7. The appeal site comprises part of the rear garden areas of Nos. 53, 55 & 57 Aultone Way. Although the site is predominantly open, there are a number of small ancillary garden structures on it, together with trees, bushes and brambles. In this location, the deep and verdant gardens of the appeal site, together with those of neighbouring properties on Aultone Way, Grennell Road and Rose Hill Park West, provide a sylvan backdrop to the houses on these streets, and contribute significantly to the spacious character and verdant appearance of the area.
8. Access to the site would be from a new private drive to be constructed between Nos. 55 and 57 Aultone Way. This would be a narrow drive with no pavements. The proposed dwellings would be situated at the end of the drive and would front onto a shared turning area. Whilst the new dwellings would be visible from the street, seen at the end of the drive and above the neighbouring bungalow, their positioning in a back garden location would be at odds with the existing urban grain. I appreciate that the properties have been designed to reflect the appearance of other properties in the locality. However, this cluster of built development within a swathe of garden land would erode the predominantly open and natural appearance of the site and have a harmful effect on the character and appearance of the area.
9. I have taken into consideration other developments that have taken place in the locality, including Kendal Gardens and Roseacre Close. However, in those cases cul-de-sacs have been formed and development fronts directly towards the new street. Moreover, the new streets are sufficiently wide enough to accommodate a footway and create a sense of place which integrates into the existing street pattern. In contrast, the proposed development by reason of its narrow access drive and back garden position, would fail to integrate into the existing street scene.
10. I have also had regard to my colleague's decision in relation to a proposed development in Wallington.¹ I do not know the exact details of that case or the character of that area. However, from the evidence before me it would seem that in that instance the Council did not object to the principle of development on the site, but were concerned about the scale of development proposed. In addition, the development highlighted at 4 Rose Hill would appear to be an infill site and front directly towards the main road. These cases are not therefore directly comparable to this appeal case, and in any event each case must be considered on its own merits. It is on that basis that I have made my decision.

¹ APP/P5870/W/17/3169472

11. I conclude that the proposed development would have a harmful effect on the character and appearance of the area. It would conflict with the development plan and in particular with Policy 13 of the Sutton Local Plan, 2018 (LP) which seeks to resist the development of back garden land which makes an important contribution to the character and appearance of the area. I also find conflict with Policy 28 of the LP which seeks to ensure that new development respects local context and responds to local character.

Living conditions

12. The outlook from habitable room windows in the rear elevation and conservatory of 65 Grennell Road is towards the appeal site. No 65 has a shallow rear garden and by reason of the verdant surroundings, including vegetation along its common rear boundary with the appeal site, the site is quite heavily shaded.
13. The undeveloped nature of the appeal site contributes significantly to the outlook for the occupiers of this property. I noted that at the time of my visit, which was mid-afternoon, sunlight filtered into the garden of No 65 between the gaps in the vegetation along its common boundary with the appeal site.
14. The proposed development would introduce a two-storey flank wall within 10 metres of the rear windows of No 65. I have no doubt that given the nature of the outlook from this property, as described above, the proposed dwelling (House D) would have a significant enclosing effect and would also reduce the amount of daylight available to this property. For these reasons it would have a harmful effect on the living conditions of the occupiers of No 65.
15. The proposed access drive would run adjacent to the flank walls and gardens of Nos. 55 and 57 Aultone Way. No 57 has windows in its flank wall, including a glazed conservatory. I appreciate that the proposed boundary treatment would provide some mitigation for noise and disturbance, including from car headlights. However, the activities and vehicle movements associated with four new dwellings, including visitors' cars and service delivery vehicles, in such close proximity to these properties and their private gardens, would significantly diminish the existing tranquil nature of this area and have a significant and harmful effect on the living conditions of the occupiers of Nos. 55 and 57.
16. I conclude that the proposed development would have a harmful effect on the living conditions of neighbouring residents. It would conflict with the development plan and in particular with Policy 13 of the LP which seeks to resist the development of back garden land where the development of the site would, amongst other things, adversely affect the amenity of future occupiers or those currently occupying adjoining or nearby properties. I also find conflict with Policy 29 of the LP which seeks to ensure that new development does not adversely affect the amenity of adjoining occupiers taking into consideration, amongst other things, outlook and sense of enclosure and the effect of traffic movement to, from and within the site.

Health and longevity of neighbouring trees

17. The proposed development would require the removal of a total of 14 individual trees and one group containing four individuals which are situated either within the footprints of the proposed new buildings and hard surfaces, or too close to them for satisfactory retention. There is no dispute between the main parties that these tree losses, which are to low category trees, can be mitigated through replacement landscaping measures.
18. As part of the appeal submission, an Arboricultural Implications Assessment² (AIA) has been submitted. The AIA concludes that minor pruning works would be likely to be required to two trees (T20 and T15) in order to provide adequate space for scaffolding and construction working room but this would only have a negligible effect on the health or appearance of those trees.
19. The AIA also recognises that the proposed development would result in an encroachment of the footprint of one of the proposed dwellings (Plot D) including a retaining wall, into the root protection area (RPA) of the neighbouring protected oak tree (T15). It is this incursion, and the proximity of Plot D to this tree and existing trees along the northern boundary of the site, which is of concern to the Council.
20. I have taken into account the overall extent of the proposed encroachment and the intention to employ special construction methods and use of suitable above-ground hard surfacing for the access road where it too encroaches into the RPA. I have also had regard to the likely ground conditions and appreciate that healthy trees may well be able to tolerate the loss or severance of a proportion of their active root systems without suffering significant or irreversible consequences in terms of their health or viability. However, I am mindful that British Standards, BS5837:2012³ recommend that development should be outside of the RPA.
21. In this case, there is no dispute that T15 is a high quality tree which makes a significant contribution to the character and appearance of the area. Not only would the proposed development result in an incursion of its RPA, but as set out above, pruning works would be also be necessary to facilitate construction works. In addition, the proximity of the tree to Plot D is such that frequent pruning would be necessary to allow a reasonable amount of clearance from its canopy to the property and prevent branches being in contact with the flank wall, ridge and facing windows.
22. I appreciate that by reason of its orientation, T15 would not result in substantial shading of Plot D. I also note that this tree has been subjected to a regime of crown reduction in the past. However, the need for pruning of this tree is not unsurprising given its proximity and relationship to its host property, No 65 Grennell Road. I am therefore mindful that given the harm that I have found to the outlook for the occupiers of No 65 from the proposed siting of Plot D, once built there would be further pressure for pruning of T15, to provide additional light to this property.

² Arboricultural Implications Assessment and Appeal Statement, Prepared by David Archer Associates, May 2018.

³ Trees in relation to design, demolition and construction.

23. I understand that the TPO would remain in place and approval would be needed for further felling or lopping. However, the TPO would not necessarily prevent further works or tree removal if repeated arguments were made in relation to the living conditions of existing or future occupiers or the perceived threat from trees moving in high winds. It is also unreasonable to allow a development which is highly likely to result in repeated applications for such works.
24. The trees to the north of Plots C & D would create a dense screen to the rear gardens of these properties. I appreciate that those trees would only cast shade to the gardens during the early morning, and would provide some privacy for future occupiers who may also appreciate their aesthetics. However, given the limited depth of the proposed rear garden to Plot D, this garden would be heavily enclosed and would be further shaded at mid-day and during the early afternoon by the house itself. Consequently, during the winter months, when the sun is low in the sky, there would be very little sunlight available within the rear garden of this dwelling or to its rear ground floor windows. Although this group of trees may only comprise low category specimens, those trees as a group make a significant contribution to visual amenity of the area, particularly when viewed from the gardens of neighbouring properties.
25. Drawing my thoughts together, the development of Plot D would result in an incursion of T15's RPA which would be contrary to best practice for development near trees. It would also necessitate formative pruning of this highly valued tree to allow for construction works and thereafter continual lopping to ensure canopy clearance of the proposed dwelling and improve the outlook for occupiers of No 65 Grennell Road. In addition, the proximity of the neighbouring trees along the north and eastern site boundaries would contribute to a dense screen and sense of enclosure for future occupiers of Plot D. From the evidence I have before me and my own observation on site on the balance of probability the proposed development would have a harmful effect on the longevity and health of those neighbouring trees, including a highly valuable oak tree (T15).
26. I conclude that the proposed development would have a harmful effect on the future longevity and health of neighbouring trees. It would conflict with the development plan and in particular with Policy 28 of the LP which seeks to ensure, amongst other things, that new development makes provision for the retention of existing trees that are important by virtue of their significance within the local landscape and requires compliance with the latest arboricultural standards in respect of any tree works or development near trees.

Other Matters

27. A Preliminary Ecological Appraisal Survey⁴ (PEA) has been prepared on behalf of the appellant. Although the PEA was submitted to the Council just prior to the application's determination, it is clear that the Officer Report and subsequent decision by the Council, was made without reference to it. The Council's Senior Biodiversity Officer has subsequently commented on the PEA and remains of the view that insufficient information has been provided to

⁴ Preliminary Ecological Appraisal Survey, prepared by Arbtech, dated 27 March 2018

establish whether or not the buildings on site to be demolished provide habitats for bats. Furthermore, no specific accounting of the biodiversity value of the habitats on the site has been provided.

28. Despite assurances from the appellant that appropriate survey work has been undertaken, I have not been provided with any evidence on this matter. In view of my findings on the main issue set out above, this is not a matter that I need to address further. However, if the circumstances leading to a grant of planning permission had been present, in the absence of a specific survey relating to bats and a full account of the biodiversity value of the site, it would not have been clear whether the development could proceed without any impact or whether impact identified could be made acceptable through mitigation measures. Such matters should be considered prior to planning permission being granted for development in accordance with advice in Circular 06/2005, Biodiversity and Geological Conservation –statutory obligations and their impact within the planning system.
29. I accept that the site has some sustainability credentials in terms of its location with good access to shops and services. I have also taken into account the Council’s need to provide additional three bedroom homes. However, the development of four market homes would bring only limited benefits to the economic and social well-being of the local community. The harm I have identified in the main issues set out above would significantly and demonstrably outweigh the limited benefits that these dwellings would bring to the overall supply of housing and housing need in the area.

Conclusion

30. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Elizabeth Pleasant

INSPECTOR