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## Appeal Decision

Site visit made on 10 February 2020

by **S Hunt BA (Hons) MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 06 May 2020

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**Appeal Ref: APP/P5870/W/19/3229840**

**25-27 Beddington Gardens and 18 Holmwood Gardens, Wallington  
SM6 0JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Rooksmead Residential against the decision of the Council of the London Borough of Sutton.
  - The application Ref DM2018/01835, dated 10 October 2018, was refused by notice dated 27 February 2019.
  - The development proposed is Demolition of existing houses and the erection of a part 4 storey building and basement parking to accommodate self-contained flats, with associated hard and soft landscaping and refuse and cycle storage (Outline, access, layout and scale only).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appellant's description of the proposed development on the application form differs slightly from that on the Council's decision notice. The Council's description more accurately represents the proposals and is as specified by the appellant on the appeal form, therefore I have determined the appeal on this basis.
3. Outline planning permission is sought for the access, layout and scale of the development, with matters of appearance and landscaping reserved for future approval. The appellant has confirmed that the submitted elevations (references SK-07 and SK-10) are illustrative plans and I have determined the appeal on this basis.
4. The decision notice includes six reasons for refusal (RFR). The third reason relates to a lack of provision of suitably sized affordable housing. A completed unilateral undertaking (UU) made under Section 106 of the Town and Country Planning Act has been submitted by the appellant. The UU makes provision for the affordable housing and the internal sizes of the units/number of bedrooms can be established at reserved matters stage. This RFR does not therefore form a main issue in my decision.
5. The sixth reason for refusal relates to impacts on flood risk and sustainable drainage. The Council have subsequently put forward a condition which would ensure appropriate details are provided at reserved matters stage. There is no evidence before me from the drainage authorities or in the submitted drainage

assessment to suggest that the site is at high risk of flooding or has any particular drainage issues, therefore this does not form a main issue in this case.

6. The development plan for the area consists of the London Plan 2016 (LP) and the Sutton Local Plan 2018 (SLP). Emerging policy comprises the new London Plan (Intend to Publish December 2019).

### **Main Issues**

7. The main issues are:

- i) The effect of the proposed development on the character and appearance of the site and the surrounding area;
- ii) Whether the proposed development would provide acceptable living conditions for future occupants and the living conditions of immediate neighbouring occupiers;
- iii) The effects of the proposed development on protected species, specifically bats; and
- iv) The effects of the proposed development on air quality.

### **Reasons**

#### *Character and Appearance*

8. The appeal site comprises a prominent corner plot currently occupied by a pair of dormer bungalows fronting Beddington Gardens, and a detached house which faces Holmwood Gardens, all of which would be demolished. The area has a pleasant green and spacious character, with grass verges and trees lining the surrounding streets. The dwellings sit within generous gardens bounded by mature trees and vegetation. The trees within the site (one of which is protected by Tree Preservation Order 'T19') and the surrounding area represent a significant part of the character of the site and its immediate surroundings.
9. I noted on my site visit that there is a distinct change in building types and urban grain along Beddington Gardens towards the district centre of Wallington. The west side of Holmwood Gardens, where the site is located, comprises two storey houses and bungalows set within generous plots. From the opposite side of Holmwood Gardens towards the district centre of Wallington and the A237 Woodcote Road there are few individual dwellings. Instead there are a range of more modern blocks of flats and sheltered housing, many of them three storeys in height. Notwithstanding the larger size and bulk of the blocks, this part of Beddington Gardens largely retains the green and low density appearance of the area, with generous set-backs from the road and spacious grounds.
10. The illustrative plans indicate a flat roofed L-shaped building up to four storeys high over a basement car park. The building would clearly appear as the highest and bulkiest building in the locality within both longer range views and in its immediate setting. This is particularly so when viewed in the context of the neighbouring dwellings, which include a modest sized bungalow. The illustrative plans show the fourth floor to be recessed, and the building stepping down to three storeys where it adjoins the neighbouring boundaries. These design features would go some way to lessening its massing,

nonetheless the development would unduly dominate the site and so detract from its surroundings to an unacceptable degree.

11. The plans indicate that some elements of the proposed building would align with the front of neighbouring properties on both Beddington Gardens and Holmwood Gardens. Nonetheless, there are a number of proposed three storey bays which would project some way forwards of the established building lines on both streets. The scale and height of these bays would be dominant features, further detracting from the character of the area.
12. The proposed layout shows the development occupying a much larger proportion of the site than the existing dwellings, with a consequently smaller area of outdoor space around this prominent corner plot. Together with its height, massing and the insufficient set-back from the surrounding roads, this higher density development would lead to a cramped and contrived appearance, incongruous with the distinctive spacious character of the immediately surrounding area.
13. I acknowledge that most of the trees on the boundaries are proposed to be retained, including T19. Nonetheless the majority of vegetation within the main body of the site would be removed to facilitate the development, contributing to the negative effect on the character of the site and its surroundings.
14. I do not agree with the appellant that the building would favourably reflect Cavendish Court, directly opposite the appeal site. Cavendish Court differs markedly from the plans before me, and it is situated on the opposite side of Holmwood Gardens where I have found there is a distinct change in area character. Similarly, I cannot make any conclusions based on comparisons to the previously refused scheme on the site, nor other applications and appeals in the area, as full details and plans are not in the evidence before me.
15. The site lies within a 'zone of potential intensification' as set out in Policy 1 of the SLP. This zone covers a wide area of Wallington, and it informs Policy 7 of the SLP in relation to housing densities. However neither of these Policies suggest that all land within such zones is suitable for high density development. Part a) of Policy 7 requires the density of new dwellings to be suitable to local character, and I have found harm in this respect.
16. I note that the appellants evidence in relation to the density matrix takes no account of existing densities, which are relatively low in the immediate area. At 396 habitable rooms per hectare (hr/ha) the proposed development is at the upper end of the 'Urban' setting range in the 2016 London Plan (200-450 hr/ha), being more akin to the 'Central' setting (300-650 hr/ha). I find that the development would lead to a cramped and contrived appearance causing harm to area character, therefore the location of the site within the zone of potential intensification has little bearing on my decision.
17. I acknowledge that detailed design and appearance can be controlled through a future reserved matters application. Nonetheless, the proposed scale and layout of the building would result in significant harm to the character and appearance of the existing site and the surrounding area for the reasons set out above. The proposed development would therefore conflict with Policies 7.4 and 7.6 of the LP and Policy 28 of the SLP which seek, amongst other matters, for developments to have regard to surrounding buildings, to respect the local area character and to be of a suitable scale to the setting of the site and

townscape. In turn the proposals would be at odds with paragraphs 127 and 130 of the Framework.

### *Living Conditions*

#### *Future Occupiers:*

18. The position of windows and balconies shown on the illustrative plans, and subsequently the internal floor plans, could differ in a future reserved matters application to consider details of appearance. Consequently, I am unable to establish whether living conditions for future occupants would be acceptable with regard to natural light and privacy from overlooking. Use of privacy screens between balconies as suggested by the appellant may be an appropriate mitigation measure, however these features are not for me to consider as part of this outline application. Concerns regarding single aspect units could also be addressed through suitable design in a future reserved matters submission.
19. I note that the Council's Tree Officer raises no objection with regard to the potential impact on future occupiers due to the siting of the building within close proximity to mature trees. The Officer's response suggests that such issues have been overcome since the refusal of the previous application, that sufficient distances from the retained trees are met by the proposed siting and relevant tree protection conditions could be imposed. In the absence of evidence to the contrary I do not consider this matter any further.

#### *Neighbouring Occupiers:*

20. Whilst the Council does not cite impact on neighbours' living conditions in the second RFR, I have had regard to the numerous letters of objection before me.
21. The scale and layout of the building would result in varying degrees of overshadowing and enclosure to its immediate neighbours, particularly 16A Holmwood Gardens and 29 Beddington Gardens. Whilst the orientation and spacing afforded by the access drive would assist in reducing overshadowing and direct enclosure to no. 16A, such a large building would have dominating and imposing effects over the modest sized bungalow.
22. At no. 29, which has a number of windows to its side elevation, the close proximity of the part four and three storey building to its side boundaries would result in significant enclosure and loss of light. This degree of harm would only be partially lessened by the proposed stepped reduction in the height of the building as it approaches the boundaries. Other potentially harmful impacts on existing occupiers, such as overlooking, would be for future consideration of reserved matters.
23. Whilst the living conditions of future occupants cannot be fully established as part of this outline scheme, I find that the layout and scale of the proposed development would result in unacceptable and harmful effects to the living conditions of adjoining neighbours. The proposal conflicts with Policy 29 of the SLP which requires development to have an acceptable impact on the amenities of future occupiers or those currently occupying nearby properties in terms of matters including outlook and sense of enclosure, daylight and overshadowing. In turn, the proposals would also conflict with paragraph 127(f) of the Framework.

### *Protected Species*

24. The proposals include demolition of three dwellings and outbuildings, and the site is surrounded by mature trees. The evidence before me suggests that the habitat conditions of the site and surrounding area have potential for the presence of bats, a protected species under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. I am obliged to consider the presence of protected species and the extent to which they may be affected by the proposed development before planning permission is granted<sup>1</sup>. Surveys should be carried out where there is a reasonable likelihood of species being present and affected by the development.
25. I note that surveys were carried out in December 2017 and November 2018, and subsequently a Bat Mitigation and Enhancement Plan (BMEP) was produced in November 2018. The writer concluded that the existing dwellings have high habitat value and a high likelihood of bat presence and recommended that bat presence/likely-absence surveys should be completed during 2019, which would then inform an application for a European Protected Species Mitigation Licence. I am not aware of any further surveys being carried out.
26. The BMEP recommends various mitigation and compensation measures and sets out post-development monitoring, management and maintenance. However without the required additional bat survey I cannot ascertain whether such the measures suggested in the BMEP, which appear somewhat generic, are necessary or appropriate.
27. The appellant suggests that the relevant reports were not forwarded to the Council's Biodiversity Officer. However I am content that they were taken into account by the Council in making their decision, as the Officer Report cites the submitted documents. Since submission of the appeal I have been forwarded a copy of the Biodiversity Officer's comments relating to the originally refused planning application on the site<sup>2</sup> which was referred to in their more recent representation. Having sight of both responses, it is clear to me that the consideration of protected species has not been fully addressed.
28. There is a reasonable likelihood of bats being present and affected by the development. In the absence of an up to date and seasonally specific survey I cannot determine whether the proposal would have an adverse effect on this protected species and, if so, whether such an adverse effect could be overcome by any proposed mitigation measures. I have considered whether a condition requiring further surveys at reserved matters stage could be imposed, mindful that such conditions should only be used in exceptional circumstances. However the outline nature of the scheme does not provide an exception in itself, and a condition would not be an appropriate course of action in this case. No imperative reasons of overriding public interest have been identified that would justify the harm that could arise to bats were the proposed development to proceed.
29. The proposals would therefore conflict with Policy 7.19(C) of the LP and Policy 26 of the SLP which, amongst other things, state that proposals should be resisted where they have an adverse effect on the population or conservation

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<sup>1</sup> Circular 06/2005, paragraph 99

<sup>2</sup> Consultation Comment on application reference DM2018/00128 : David Warburton, Senior Biodiversity Officer dated 30 April 2018



status of a protected species and that major new development should result in no net loss in biodiversity value. Furthermore paragraph 175(a) of the Framework indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.

### *Air Quality*

30. Policy 34 of the SLP relates to air quality amongst other environmental matters. It specifies at part d) that all major development proposals with potentially significant adverse impacts on air quality, located within 150m of a sensitive receptor, should be accompanied by an Air Quality Assessment (AQA). At part e) it cites the Council's Air Quality Action Plan and the need to put in place appropriate mitigation measures in order to offset any unacceptable impacts.
31. An AQA was not submitted with the application and the Council's Pollution Control Team objected on this basis. The appellant suggests that mitigation measures could be agreed by condition or supplied with the reserved matters application, however this is not accepted by the Pollution Control Team as the outcome of the assessment may influence the viability of the development. Furthermore, the Team requested an Air Quality Neutral Assessment. The Air Quality Action Plan for this area is not before me and there is limited evidence in relation to the issue from both parties.
32. I do not agree with the appellant that this is merely a 'tick box exercise', nor is the cost of such reports a valid reason for lack of submission in accordance with Policy 34 which is clear in its requirements. Without the information that would be contained in an AQA the baseline local air quality is unknown. Consequently it cannot be determined whether the operation of the development would adversely affect that quality, and it is unknown whether future residents would be affected by air quality. The imposition of conditions requiring mitigation measures, such as a construction management plan, would only give limited protection without further evidence to inform them.
33. I am therefore unable to conclude whether the proposed development would have a negative effect on air quality. Consequently, it would conflict with SLP Policy 34 and the provisions of paragraph 181 of the Framework.

### **Other Matters**

34. The majority of the evidence in relation to this appeal was produced prior to the publication of the Report of the Examination in Public of the London Plan 2019 (October 2019), the 'Intend to Publish' version (December 2019), and the Secretary of State's response (March 2020). I have therefore given the parties the opportunity to comment. No responses have been received in this respect, nonetheless I give weight to the relevant policies in accordance with paragraph 48 of the National Planning Policy Framework ('the Framework').
35. In particular, I find the proposed development to be contrary to parts B 1), 11) and 12) of Policy D3 (Design led approach) in that it fails to positively respond to local distinctiveness and does not respect the special and valued architectural features and characteristics that contribute towards the local character. However, Part A of the Policy in relation to optimising capacity of

sites and densities is subject to significant modification<sup>3</sup>, as such I only give this Policy moderate weight. Nonetheless, the modifications do not materially alter the existing development plan policies and as such I do not consider the emerging London Plan any further.

36. A completed unilateral undertaking (UU) has been supplied which includes provision of 18 affordable housing units (around 49%) which meets and indeed is in excess of the 35% required by Policy 8 of the SLP. The Council have made minor comments on the UU which do not alter the substance of the obligations within. I am satisfied that the agreement, which also includes a carbon emissions offset contribution, would accord with the tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I have had due regard to their provisions in the consideration of this appeal.
37. I note that the appellant suggests that 100% of the units might be affordable and this is a significant benefit of the scheme. Nonetheless this does not outweigh the harm arising from conflict with the development plan that I have set out above.
38. A key strategic objective of the SLP is to meet the Borough's share of London's future housing need, and this also reflects the Government's objective of significantly boosting the supply of homes. I also have regard to the emerging new London Plan which seeks to further increase supply in the Borough. The proposed development would meet aims to increase housing supply on previously developed land. It is in a location which benefits from good accessibility to nearby public transport provision and the shops and services within the centre of Wallington, however these positive attributes of the scheme are outweighed by the harm I have identified above.
39. In terms of five year housing land supply, there is no evidence before me to suggest that there is currently a shortfall in the Borough, nor has it been identified that the tilted balance would apply. Nevertheless, the adverse impacts of granting permission would significantly and demonstrably outweigh the aforementioned benefits.

### **Conclusion**

40. For the reasons given above I conclude that the appeal should be dismissed.

*S Hunt*

INSPECTOR

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<sup>3</sup> Letter to the Mayor of London from the Secretary of State for Housing, Communities and Local Government 13 March 2020 – Direction DR2