



Appeal Decision

Site visit made on 28 January 2014

by P Willows BA DipUED MRTPI

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

Decision date: 10 February 2014

Appeal Ref: APP/P5870/A/13/2205143
39A Eaton Road, Sutton, Surrey SM2 5EA

- 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 Nashak Billimoria against the decision of the Council of the London Borough of Sutton.
 - The application Ref B2013/67038/FUL, dated 31 January 2013, was refused by notice dated 29 July 2013.
 - The development proposed is described as 'Demolition of existing dwelling house and the erection of a two-storey building with roof accommodation comprising of two 2-bedroom self contained flats and two 3-bedroom self contained duplex flats. Provision of cycle and refuse stores and three car parking spaces. Regularising Application for Deviations from Approved Scheme B2008/59531/FUL'.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of an existing dwelling house and the erection of a two-storey building with roof accommodation comprising of two 2 bedroom self contained flats and two 3 bedroom self contained duplex flats and the provision of cycle and refuse stores and three car parking spaces (regularising application for deviations from approved scheme B2008/59531/FUL) at 39A Eaton Road, Sutton Surrey SM2 5EA in accordance with the terms of the application Ref B2013/67038, dated 31 January 2013, and the plans submitted with it, subject to the following conditions:
 - 1) No additional windows shall be constructed within the side elevations of the building hereby permitted.
 - 2) The car parking area and provision for cycle parking shown on drawing 641-608 Rev C shall be retained throughout the lifetime of the development and shall not be used for any purpose other than the parking of vehicles and cycles.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matter

3. The description of the development set out in the appeal form and in the Council's decision differs from that entered in the planning application form. I

have relied upon the description from the planning application, but have made changes to the punctuation in the Decision above, to ensure that it is clearly expressed.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

Background and the previous scheme

5. This is a revised development proposal following the granting of planning permission on appeal for a similar scheme in 2009 (Appeal ref APP/P5870/A/08/2084626). The development has now been built, but deviates from the permitted scheme in several respects. The scheme now before me is designed to reflect those changes.
6. The previous appeal decision has established the principle of a building of this type and scale in this location. I cannot be sure from the information before me whether or not that planning permission remains extant. Be that as it may, that decision is a material consideration to which I attach very significant weight. The Council has not sought to argue that the development is flawed in principle, but instead has focused its criticisms on the differences between the scheme previously allowed on appeal and the scheme now before me. Given these circumstances, I have focused on those same matters, and references to 'changes' below concern differences compared to the previous scheme.

Character and appearance

7. Eaton Road is within a residential, suburban area. The area is mixed in character, with considerable variation in the type and design of properties. The appeal development occupies a plot between 39 Eaton Road and 6 Coniston Gardens.
8. The building is about 0.5m higher than the previous scheme and also includes roof lights that project above the ridge by about a further 0.5m. To my mind however, the essential character of the building is unchanged and its proportions are not harmed. Nor does it appear too high in relation to either of its neighbours, notwithstanding its proximity to them. Views of the rooflights, which are located within the central part of the roof rather than on the outer slopes, are limited to longer-range views. The clearest view I was able to obtain was from Coniston Gardens but, even from there, the rooflights are not intrusive and have little effect on this varied street scene. Overall I do not consider that the changes to the building have resulted in it having a dominant or overbearing effect on the area.
9. Other changes to the building include 2 separate first floor windows with a distinct vertical emphasis to the front elevation rather than the single, central window previously proposed, but the revised design respects the overall character of the building and is not harmful in my view. The rooflights on the front and rear roof slopes are larger than originally proposed, but do not appear disproportionate. The marginal increase in the width of the front bay windows has little effect on the appearance of the structure. The size and

shape of the windows on the rear elevation have been altered, but these changes are minor and respect the character of the building.

10. All other external changes to the building are minor and have little effect on its character or appearance. Nor would any changes to the ancillary structures be harmful. I have noted comments to the effect that the building appears cramped in its plot, but there is no material change to its footprint.
11. I conclude that the development does not harm the character or appearance of the area. Accordingly, I find no conflict with Policy BP12 (Good urban design and heritage) of the *Core Planning Strategy* or with Policies DM1 (Character and design) and DM3 (Enhancing the street scene and public realm) of the *Site Development Policies Development Plan Document*. Nor do I find conflict with the Council's Supplementary Planning Document 14 *Creating Locally Distinctive Places*.

Other matters

12. Other matters raised include the effect of the development on the living conditions of neighbouring residents. However, to my mind the modest changes to the scheme mean that it is little different to the previous proposal in that regard. I cannot see that any of the changes to the fenestration, including the very modest changes to the bay windows at the front, have any material effect in terms of overlooking of neighbouring properties. The small change to the height of the building would not materially increase its visual presence or result in any significant loss of light compared to the previously approved scheme. None of the other changes to the scheme would have any significant effect on neighbouring occupiers in my view.
13. I have noted the suggestion that the building constructed is closer to the boundary to No 6 Coniston Gardens than the previous scheme, and saw during my site visit that it is very close indeed to the wall that runs along the site boundary. Yet the Council has confirmed that the scheme before me shows no change to the siting of the building compared to the previous scheme and, having reviewed both sets of plans, I have reached the same view. The correct siting of the building as constructed is a matter for the Council in the first instance, but it has not raised any concerns in that regard. Questions of ownership and the definition of boundaries are civil matters and are not for me to determine.
14. I appreciate that the fact that the development has been carried out without planning permission being in place for the changed scheme has been a particular cause for concern, but that does not alter my assessment of the proposal before me, which has been made solely on its planning merits.

Conclusion and planning conditions

15. For the reasons set out above I conclude that the appeal should be allowed.
16. I have imposed a condition preventing the formation of additional windows in the sides of the building to prevent harmful overlooking of neighbouring properties. I have also required the car parking spaces and provision for cycles to be retained to ensure that excessive on-street car parking does not arise from the development. However, a condition concerning the approved drawings is not needed, given that the development has already been carried out.

17. The Council has suggested a condition relating to meeting Level 3 of the Code for Sustainable Homes. However, the building is now complete and occupied and the Council has indicated that it has been designed to meet Level 3 of the Code. With this in mind, and bearing in mind also the standards imposed by the Building Regulations, the extent of any further benefits of ensuring Level 3 compliance is not clear. Consequently, while I am mindful that the Council has a policy supporting sustainable design and construction, I do not see that there is a definite need for the condition, and I am consequently not satisfied that it would meet the requirements of Circular 11/95 *The use of conditions in planning permissions*.

Peter Willows

INSPECTOR