

Appeal Decision

Site visit made on 25 July 2016

by **Zoe Raygen Dip URP MRTPI**

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

Decision date: 15 August 2016

Appeal Ref: APP/T5720/W/16/3149922

Wyke Road, Raynes Park, London SW20 8RT

- 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 Martin Gregory against the decision of the Council of the London Borough of Merton.
 - The application Ref 15/P2530, dated 21 April 2015, was refused by notice dated 10 November 2015.
 - The development proposed is described as the construction of six, two-bed houses arranged in three pairs on unoccupied land adjacent to the railway at Raynes Park. The accommodation is arranged over three levels. Ground floor consists of kitchen and dining, first consists of bedrooms and third is to be amenity/living. The houses are designed to be empathetic to the area as possible by creating a green corridor on the site. The development will create "stepping stones" for species such as birds, bats and invertebrates by using green roofs and living walls. The railway embankment will not be impacted upon during the development works and will remain as is.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The Council's first reason for refusal related to the absence of a planning obligation to secure a financial contribution towards affordable housing. A Court of Appeal judgement on 11 May 2016 upheld the Secretary of State's appeal on all grounds relating to the High Court judgement in *R (on the application of West Berkshire District Council and Reading Borough Council) v SSCLG* [2015] EWHC 2222 (Admin) on 31 July 2015. As a consequence, a Written Ministerial Statement published on 28 November 2014 and Planning Practice Guidance (PPG) are material considerations that set out Government policy defining the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought for small scale development. The definition includes the proposal before me. The Council have therefore withdrawn this reason for refusal.
3. The appellants have submitted revised plans as part of their statement which propose an acoustic fence and a glazed enclosure to the second floor terraces in order to overcome the reason for refusal regarding future occupiers living conditions. They have asked that the revisions be taken into account and, if necessary, be the subject of a condition. However, the revisions have not been the subject of consultation and therefore were I take them into account in my decision interested parties could be prejudiced. It would also therefore be

unreasonable for them to be the subject of a condition. Furthermore, if I were to take the plans into account, it could preclude the appellant reaching an alternative satisfactory conclusion regarding noise with the Council.

Main Issue

4. The main issue is whether the proposal would provide acceptable living conditions for future occupiers with particular regard to garden space and noise and disturbance.

Reasons

5. Each housing unit would have a small garden area to its side and rear which together would be below the 50 square metres required by Policy DM D2 of the Sites and Policies Plan and Policies Map 2014 (the SPPP). However the appellant submits that in accordance with paragraph 6.32 of the SPPP the garden should include paved and unpaved front, rear and side gardens. It goes on to state that existing ancillary buildings within the garden e.g. sheds, garages etc. will generally be regarded as part of the garden area. If the parking space for each house was to be included in the calculation of the garden area then each side section would be above 50 square metres.
6. However, the definition in paragraph 6.32 is in relation to basement and subterranean development. The requirement for new garden space within Policy DM D2 specifies a single useable regular shaped amenity space. The inclusion of the parking area would not facilitate a useable amenity space. As a result therefore the remaining section of garden is small. The appellant also points to the provision of the second floor terraces and balconies for each dwelling which would add about 12 square metres to each garden area and means that the garden space for each dwelling would be about or above 50 square metres. The Council does not dispute this.
7. Although future occupants of the dwellings proposed may be at various stages in their lives (whether elderly, family or single, young professionals) it is likely that they would still desire a private area to sit out in and relax, garden or perhaps to erect a small shed for the storage of garden tools or a bicycle. Furthermore, as the proposed houses would have two bedrooms it is conceivable that they would be occupied by small families who would require play equipment.
8. The garden space or the balconies and terraces that would be provided with the dwellings proposed would be segregated to such a degree that they would not be of a sufficient size or quality to comfortably accommodate these needs. While the terraces and balconies would provide a sitting out area they would both be open to public view from users of Wyke Road. In addition the narrow private area to the rear of the houses would be enclosed by the steep railway embankment, which together with the proposed rear overhang of the new building, would create an oppressive, enclosed small area. Moreover, each of the gardens falls below the space standards set out within Policy DM D2 of the SPPP in that they do not comprise a single useable regular shaped amenity space.
9. The garden space and the terraces would be adjacent to the railway line to the rear of the site. Wykes Lane is a quiet, mainly residential, road located away from the busier commercial area to the north-west. At the time of my site visit

the relative quietness was punctuated by the very loud sound of frequent trains, sometimes two passing each other.

10. The appellant's Environmental Assessment and Vibration Assessment report (the EAVA) states that the noise levels in the gardens would be about 60dBLAeq16h. As a result it would be considerably above the upper guideline within the BS 8233:2014 Sound Insulation and Noise Reduction for Buildings – Code of Practice (the BS) of 55dBLAeq. I note that the BS recognises that it is not always practicable to achieve these levels in urban areas and adjacent to transport networks and therefore it states that development should be designed to achieve the lowest practicable levels in these external amenity areas but should not be prohibited. Furthermore, I acknowledge that the UK National Noise Incidence Study 2000/2001 found that 54% of UK homes were exposed to noise above 55dB LAeq16hr.
11. Nevertheless, in addition to the high noise levels there would be a near constant number of trains passing by within the day. At the time of my site visit I noted 11 trains passing the appeal site within a fifteen minute period. This is supported by the EAVA which noted 732 trains passing throughout the day time period. I note that the Council's Environmental Health officer raised no objections to the proposal, nonetheless, in my view, such a high frequency of trains with excessive noise levels would significantly detract from the occupier's enjoyment of their garden space.
12. I have had regard to the appeal sites location within a reasonable walking distance of areas of open space. However, Policy DM D2 does not allow for provision of garden space off site. Moreover the areas of public open space would afford limited privacy for occupiers.
13. I saw that other houses were close to the railway line to the north east of the appeal site. However, these properties had significantly larger, private rear gardens. I have also been directed to residential properties on Broughton Street in London that are located near to the railway line. Nevertheless, these properties are some distance from the appeal site and I cannot be sure that the details, particularly in respect of the noise and frequency of the trains, are directly comparable. In any case I have determined this appeal based on its own merits.
14. The Council has also raised concerns regarding the overall living conditions of the future occupiers. However the EAVA has adequately demonstrated that high noise levels could be sufficiently mitigated in the day and night. Other means of ventilation could be used in bedrooms to ensure that occupiers did not suffer by having to have their windows shut at night. Such an approach would be in accordance with Paragraph 006 of the Planning Practice Guidance (the PPG).
15. I have found the proposal to be acceptable in some respects. However, for the reasons above I conclude that it would not provide acceptable living conditions for future occupiers with regard to garden space and noise and disturbance within the garden. It would therefore be contrary to Policies DM D2 and DM EP2 of the SSSP. These require amongst other things that outdoor amenity space accords with the appropriate minimum standards and that development does not have a significant effect on the living conditions of future occupiers due to noise.

Balancing and Conclusion

16. In considering the potential benefits of the proposal, I note that the six proposed dwellings would contribute to the Council's five year housing land supply as required by the Framework. A net increase of six dwellings would be a modest contribution and I afford this benefit moderate weight. Furthermore, I acknowledge that the proposal is located near to public transport links and local services which also carries some weight.
17. The proposed development would be significantly harmful to the living conditions of its future occupiers. This impact is contrary to both local and national planning policy to which I give considerable weight.
18. I am not aware as to whether the Council has a shortfall of housing supply. Even if the Council does have a shortfall and paragraphs 49 and 14 of the Framework are relevant, I have considered the benefits which would be derived from the appeal scheme but these only carry limited to modest weight. I conclude therefore that the considerable harm I have found would significantly and demonstrably outweigh these benefits when assessed against the policies in the Framework as a whole. The proposal would conflict with the Framework and Development Plan when taken as a whole and consequently the proposal is not sustainable development for which the Framework carries a presumption in favour. For this reason, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Zoe Raygen

INSPECTOR