



Appeal Decision

Inquiry opened on 4 March 2008

Site visit made on 5 March 2008

by Paul Dignan MSc PhD

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

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Decision date:
29 May 2008

Appeal Ref: APP/L5240/A/08/2062817

Hallinwood Bungalow, 46 Quail Gardens, South Croydon, London CR2 8TF.

- 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 Asprey Homes Ltd against the decision of the Council of the London Borough of Croydon.
- The application Ref. 07/04464/P, dated 6 November 2007, was refused by notice dated 2 January 2008.
- The development proposed is: *Erection of 4 four bed and 1 five bed two storey detached dwellings with integral garages.*

Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposed development is described on the planning application form as the *erection of 4 four bed and 1 five bed two storey detached dwellings with integral garages*. However, the appellant has indicated on the appeal form that while the planning application was with the Council for consideration the description was revised to *demolition of gazebo and shed; erection of 4 detached four bedroom houses with integral garages and 1 detached five bedroom detached house with integral garage; formation of vehicular access and provision of associated parking*. This revised description was used in the Council's decision notice. I have taken this into account and considered the appeal on the basis of the revised description.

Background

3. The appeal site is an area of about 0.29ha comprising the large side garden of 46 Quail Gardens. It is within the urban area, but it adjoins Selsdon Wood, a Local Nature Reserve which is within the Metropolitan Green Belt and is a site of Metropolitan Importance for Nature Conservation. Selsdon Wood slopes steeply up from the appeal site, with the appeal site land sloping gently down to Quail Gardens. Adjoining the site to the south-west is an area of open grassland, trees and shrubs comprising a strip of land some 46m wide between Quail Gardens and Selsdon Wood. This land is designated as Local Open Land in the adopted Croydon Replacement Unitary Development Plan 2006 (UDP). A well used public footpath runs along the boundary of the site with Selsdon Wood, linking to a major footpath network nearby.

Main issues

4. I consider the main issues to be the impact of the proposal in terms of:
 - (a) the setting of the Metropolitan Green Belt, and
 - (b) the character and appearance of the area.

Reasons

The setting of the Green Belt

5. UDP Policy RO6 aims to safeguard the setting of the Metropolitan Green Belt by avoiding development conspicuous from the Green Belt that would harm its visual amenity. This approach accords with the national planning advice in paragraph 3.15 of *Planning Policy Guidance 2: Green Belts* (PPG2) which provides that the visual amenities of the Green Belt should not be injured by proposals for development conspicuous from the Green Belt which might be visually detrimental by reason of their siting, materials or design. Similarly, UDP Policy SP5 seeks to safeguard and enhance the open character of the Green Belt.
6. The wooded nature of Selsdon Wood means that views of the site from the Green Belt are limited to the public footpath running along its eastern side. However, the generally open nature of the site, contrasting with the wooded approaches, and the falling land levels across it makes it a particularly prominent and notable site. The long distance views from the footpath to the north-west beyond the site create a sense of openness, while its undeveloped nature, providing clear separation from the nearby residential development along Quail Gardens, contributes significantly to the semi-natural character of this part of the Green Belt.
7. Whilst I appreciate that the reasonably low density of the proposed development would serve to reduce its impact, it would nonetheless be very conspicuous when viewed from the adjoining footpath. The house nearest the footpath would be only some 4m away, and despite aspects of its design which are intended to reduce its impact, and the provision of landscaping, such close proximity would make it unavoidably visually intrusive. The presence of the development as a whole would bring residential development uncomfortably close to the Green Belt at a prominent location where its impact would be exacerbated by the existing wide separation of residential development from the Green Belt in this area. The result would be a much harder transition between development and the Green Belt than exists at present and a substantial erosion of the semi-natural character of the Green Belt alongside the site. This would be harmful to the setting of the Green Belt in terms of its visual amenity.
8. There is other residential development in the area, on the northern (Cascades) and eastern (Court Wood Lane) sides of Selsdon Wood which is close to the Green Belt boundary, but the buildings in those developments are not anything like as close as is proposed in this case. Furthermore, both developments date from the 1960s, predating the development plan policies and PPG2, which limits their relevance.

9. I have also been referred to other instances in the wider area where planning permission has recently been granted, either on application (Refs. 05/01119/P and 06/04679/RES) or on appeal (Refs. APP/L5240/A/05/1188198 and APP/L5240/A/06/1198911; APP/M3645/A/07/2039590) for residential developments in close proximity to the Green Belt boundary where the wooded nature of the site or surroundings has been held to acceptably mitigate their impact on the setting of the Green Belt. However, none of the developments referred to has a comparable relationship with a well used footpath, so that the visual amenity of the Green Belt would suffer less harm. The Council has also drawn my attention to an appeal decision (Ref. APP/L5240/A/06/2026510) where development visible from the Green Belt was found to be unacceptable, but this was in long distance views from open downland and is not directly comparable.
10. I have noted the appellants' comments that the Council has had the opportunity to include the site in the Green Belt but has not chosen to do so. However, I consider the Council's view, that there was no need to designate the site as Green Belt since it was already protected from development by the Section 52 agreement, to be reasonable in the circumstances. It would not have been open to the Council to designate the appeal site as a continuation of the strip of Local Open Land to the south-west as this designation cannot be applied to residential garden land.
11. I conclude on this issue therefore that the proposal would harm the setting of the Green Belt. This would conflict with the aims of UDP Policies RO6 and SP5, along with the advice in PPG2.

Character and appearance

12. Three aspects of the proposal have been identified by the Council as harmful to the character and appearance of the area. These are (i) the loss of part of the buffer strip between Selsdon Wood and the residential development within Selsdon Vale Estate, (ii) the impact on protected trees, and (iii) design, layout and massing. I shall deal with each in turn.

Buffer strip

13. Quail Gardens forms a part of the Selsdon Vale Estate, a large medium density housing development built in the 1970's. The development of this estate in the vicinity of the appeal site was carried out under three separate planning permissions. The first (App. Ref. 72/20/259 - 476 houses), in 1972, included a condition to ensure that a strip of land 150 feet wide was retained undeveloped between the housing development and the Selsdon Wood Nature Reserve. The reason given was to ensure the proper development of the site, and this now forms the area of Local Open Land adjoining the appeal site. Planning permission for a further 175 dwellings was granted to the same developer in 1976. At the time of the 1972 and 1976 developments the appeal site was part of a property known as Hallinwood Kennels, which was under separate ownership and did not form part of either application. Hallinwood Kennels was subsequently acquired by the developers of the Selsdon Vale Estate and planning permission (App. Ref. 79/20/284) was granted in 1979 to erect 20 houses on part of it. The remainder, the land now comprising Hallinwood Bungalow, 46 Quail Gardens, referred to as the 'blue land', and contiguous with

the undeveloped strip of land retained under the 1972 planning permission, was made the subject of an agreement under Section 52 of the Town and Country Planning Act 1971 (the Section 52 agreement).

14. The preamble to the Section 52 agreement refers to the intent of the retained strip as being a buffer of open land between the housing estate and the Nature Reserve. It goes on to say that the blue land will form a continuation of the retained strip and that it will be regulated in a like manner in terms of future use. The terms of the Section 52 agreement are (1) to demolish the existing kennel buildings on the blue land, (2) to discontinue the present use of the blue land for kennels and boarding animals, and (3) not to use the blue land for any purpose other than as a single dwellinghouse with associated garden ground.
15. It is the appellant's view that the purpose of the Section 52 agreement was solely to protect the ecology of Selsdon Wood Nature Reserve. It is submitted that explicit reference to the undeveloped strip of land, in both the agreement and the 1972 planning permission, as being between the developed area and the nature reserve suggests that its purpose, and accordingly the purpose of the restriction on future development of the appeal site, was for ecological or nature conservation reasons. Since the Council has accepted that the development would not harm any specific ecological aspects of the nature reserve, the appellant contends that there are no planning interests to be protected by the agreement.
16. The precise purpose of restricting development alongside Selsdon Wood is not made clear either in the 1972 planning permission or in the Section 52 agreement. However, I do not find the reference to the nature reserve in those documents to be convincing evidence that its purpose was purely for ecological or nature conservation purposes. If ecological or nature conservation was the sole reason for the Section 52 agreement there would have been no need to require the demolition of the kennel buildings. I consider it more likely than not that reference to the Selsdon Wood Nature Reserve merely serves to identify where the undeveloped land is situated, for the avoidance of doubt. That the undeveloped strip of land retained in the 1972 planning permission is referred to as a buffer of open land, and the effect of the demolition of the kennel buildings increased the openness of the blue land, which in turn was intended to form a continuation of the buffer of open land, suggest to me that the visual amenity of Selsdon Wood was a key planning consideration at the time.
17. A letter from the Ministry of Housing and Local Government, dated 15 June 1967, submitted by the Council at the Inquiry, supports this view. The letter refers to an Inspector's report following a Local Inquiry into an appeal by the eventual developers of the Selsdon Vale Estate against the refusal of planning permission for residential development at Selsdon Vale, which at that time lay within the Green Belt. The extent of the 1967 appeal site is not shown, but it is clear that it is in the general vicinity of the current appeal site. The impact of residential development on Selsdon Wood was considered by the Inspector, and the Minister agreed with the Inspector's conclusion that residential development would not be out of place on the site and would not harm the amenities of Selsdon Wood provided that, amongst other things, the layout would leave undeveloped a strip at least 150 feet wide along the boundary of the site with Selsdon Wood.

18. The effect of the Section 52 agreement, following on from the 1972 planning permission, was to establish a more or less continuous buffer strip of open land, other than the existing unobtrusive bungalow at 46 Quail Gardens, between the Selsdon Vale Estate and Selsdon Wood. This undeveloped strip means that the north-western side of Quail Gardens forms a distinct edge to urban development, with the undeveloped strip providing an attractive soft transition to the dense woodland beyond. This is now a distinctive characteristic which is integral to the pleasant, spacious character of the area. Development of the appeal site would amount to a significant reduction of the buffer strip, which would disturb and detract from, rather than enhance, the area's character.
19. I find therefore that the proposed development would harm the character of the area and thereby conflict with UDP Policy H2, which requires housing development within the built-up area to respect the character of residential areas and avoid the loss of other protected uses. It would also conflict with the Section 52 agreement, which I consider protects legitimate planning interests and to which I give considerable weight.

Trees

20. The site is covered by a Tree Preservation Order (TPO No. 39, 1979, confirmed in April 1980). No protected trees of significant amenity value are proposed to be removed in order to accommodate the development, and it is not disputed that, subject to suitable tree protection measures, the construction works would not unacceptably threaten the health of the retained trees. The Council's concerns relate to possible threats that the development would pose to the long-term retention of a row of five Norway Maples growing along the south-western boundary of the site, alongside the adjoining strip of Local Open Land.
21. The trees, referred to as T1 to T5 respectively, T1 being nearest the roadside, are semi-mature to mature specimens growing in relatively close proximity to each other. They are prominent in the street scene, and contribute to the visual amenity of the area, although there is a fair degree of natural woodland establishment occurring next to the row of trees on the public land and this may eventually effectively screen them from many public views. Of the five trees, two are in decline and unlikely to persist in the medium to long term. One of these, T4, is of very minor importance as it is a semi-suppressed tree whose vacated crown space would quickly be taken up by T3 and T5. Accordingly the Council are satisfied that it could be removed immediately without replacement. The other is T1, the most prominent tree in the row. The cause of its decline is unknown and it is difficult therefore to estimate its probable life expectancy, but it is not disputed that it is unlikely to survive for more than 20 years, and possibly less than 10. However, the Council has indicated that it would be likely to require its replacement with a tree of similar potential in terms of eventual size, and I have taken this into account in my assessment of the proposal.
22. The row of trees would be at the end of the rear gardens of three of the proposed houses, and their relative orientation would mean that the tree canopies would cause shading of the rear gardens at various times of the day. A computer generated shading analysis submitted by the appellants indicates that the trees would cause shading of much of the rear garden areas in mid to

late afternoon during August. However, this would not, in my view, be so severe as to be unacceptable in terms of the living conditions of prospective occupiers. The garden depths are reasonably generous, so that the trees, which are of moderate size, would not appear unduly dominant or threatening, and being deciduous, the shading effects would be seasonal only. In addition, remedial pruning and crown shaping works are proposed, which the Council accepts as reasonable, and these would further improve light levels in the gardens.

23. The Council has drawn my attention to an appeal decision (Ref. APP/L5240/A/07/2046819) where the Inspector took a different view, but the development in that case involved different spatial relationships between a dwelling and a protected tree and is not directly comparable. Overall I am not persuaded that the proposal would lead to irresistible pressure to remove the protected trees, and I find therefore that, in this respect, it would not conflict with UDP Policies NC4, SP8, UD2 and UD14.

Design, layout and massing

24. The form and layout of development proposed, large two-storey detached houses in a cluster type layout, would be noticeably different from the adjoining residential development which is dominated by linear form development of mainly semi-detached houses. However, the design would be reasonably pleasing to the eye, and although the overall mass of the dwellings would be considerably larger than that which prevails in the area, in the context of the more spacious layout and larger plot sizes, and the relatively large degree of separation from the existing development, the contrast with what already exists would not, in my view, cause appreciable harm to the character of the area. In this respect I consider that the proposal would not be contrary to UDP Policies UD2 and UD3.

Conclusion on character and appearance

25. I have taken into account that the design, layout and massing of the houses would in itself be acceptable and that there would not be unacceptable harm to the character of the area due to the impact on protected trees. However, this is insufficient to outweigh my concerns about the potential impact of the loss of part of the buffer strip, and I conclude on this main issue therefore that the proposal would be detrimental to the character and appearance of the area.

Other Matters

26. There is a large group of badger setts located in Selsdon Wood within 50m of the site, including a main breeding sett, and evidence of considerable badger use within the site boundaries. The impact of the development on the badgers has been a major cause of concern locally. However, the National Trust, Natural England and the Council do not object to the proposal on nature conservation grounds, and I see no reason to disagree. A draft badger licence application designed to avoid any impact on the badgers has been prepared, but in any case any works likely to affect the badgers would remain under the control of Natural England.
27. The matter of housing supply in Croydon was also raised at the Inquiry. Croydon has had an historic undersupply of housing, but I understand that this

issue has been addressed through Policy 3A.2 of the London Plan – Alterations, dated December 2007. Be that as it may, the targets set out therein are minima only, and should be exceeded where possible. In this context the proposal would clearly make a small but useful contribution to housing supply in Croydon. I concur with the appellant that the appeal site is in an accessible location and the proposal would make more efficient use of it in housing density terms. In these respects the proposed development would attract some support from London Plan Policy 2A, Planning Policy Statement 1: Delivering Sustainable Development (PPS1), Planning Policy Statement 3 (PPS3); Housing and Planning Policy Guidance Note 13: Transport. However, PPS1, in common with PPS3, gives encouragement to development which makes the best use of land in a sustainable way whilst respecting local character. Given my conclusions on the main issues, my view is that the proposal would not fit well overall with the patterns of development encouraged by PPS1 and PPS3.

Conclusions

28. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Paul Dignan

INSPECTOR

DOCUMENTS

- Document 1 Council's letter of Notification of the Inquiry, plus list of addressees.
- Document 2 Statement of Common Ground
- Document 3 Notice of refusal of planning permission for App. Ref. 06/02367/P 27-33 Hollymeoak Road, Coulsdon, submitted by the Council.
- Document 4 Annotated maps showing relationship of developments at Cascades and Court Wood Lane to the Green Belt at Selsdon Wood, submitted by the Council.
- Document 5 Copies of planning permissions for Selsdon Vale Estate, including Section 52 agreement relating to Hallinwood Bungalow, submitted by the Council.
- Document 6 Map showing location of appeal site in appeal ref. APP/L5240/A/06/2026510, submitted by the appellants.
- Document 7 Computer generated tree shadow diagram with T1 and T4 removed, submitted by the appellants.
- Document 8 Extract (5.11(ii)) from *Tree Preservation Orders: A guide to the Law and Good Practice*, submitted by the Council.
- Document 9 Extract (15.8.4) from *The Law of Trees, Forests and Hedgerows*, by Charles Mynors, submitted by the Council.
- Document 10 Extract (p9) from British Standard 5837:2005 *Trees in Relation to construction – Recommendations*, submitted by the Council.
- Document 11 Photographs of trees surrounding and on appeal site, submitted by the appellants.
- Document 12 Annotated map showing relationship of development at Cascades to the Green Belt and the Site of Nature Conservation Importance, submitted by the Council.
- Document 13 Map showing relationship of development at Cascades to the Green Belt and the Site of Nature Conservation Importance, submitted by the Council.
- Document 14 Letter from Ministry of Housing and Local Government, dated 15 June 1967, in relation to appeal ref. APP/4409/A/10594, submitted by the Council.
- Document 15 High Court Judgement - *Stimpson v First Sec. of State*, (CO/1509/2003), submitted by the Council.

PLANS

The application plans.