

Appeal Decision

Site visit made on 19 September 2016

by Elizabeth Lawrence BTP MRTPI

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

Decision date: 7 October 2016

Appeal Ref: APP/G5180/W/16/3153114

56 Foxgrove Road, Beckenham, Kent, BR3 5DB.

- 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 McCulloch Homes Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/05329/FULL1, dated 6 December 2015, was refused by notice dated 25 February 2016.
 - The development proposed is erection of a block of 9 flats with associated car parking and amenity space. Replacement car parking on frontage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The first main issue is the effect of the scheme on the character and appearance of the locality. The second main issue is the effect of the scheme on the living conditions of the occupiers of the adjoining properties, with particular regard to privacy and visual impact. The third main issue is whether satisfactory arrangements would be made for waste servicing.

Reasons

Character and appearance

3. The proposal would result in the provision of 9 No. 2 and 3 bedroom flats in a mixed residential area. The area includes low density detached and semi-detached dwellings and flats developments interspersed with clusters of modern higher density terraced housing developments. In principle it is an area where new residential development is acceptable.
 4. The National Planning Policy Framework (NPPF) seeks to boost significantly the supply of housing and encourages optimising the potential of existing developed sites. Housing applications should be considered in the context of the presumption in favour of sustainable development. Together and amongst other things policies 3.3, 3.4 and 3.8 of The London Plan 2016 and policy H1 of the London Borough of Bromley Unitary Development Plan 2006 (UDP) have the same objectives.
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5. The Council has stated that the site is located within an area with an accessibility (PTAL) score of 1B. Whilst the proposed scheme would exceed the density range for such areas as set out in policy H7 of the UDP, it would fall within the density range of between 40 and 65 units per hectare as set out in table 3.2 of The London Plan 2016.
6. The proposed building would be located in the rear garden of 56 Foxgrove Road and would be surrounded on three sides by large mature landscaped rear gardens. As with the Appeal site these gardens have rear vehicular accesses and include rear parking/garage courts, which are modest in form and appearance. The gardens are devoid of large tall buildings.
7. The majority of the Appeal site is located within a back garden and so falls outside the definition of previously developed land, as set out in the NPPF. The NPPF states that local planning authorities should consider setting out policies which resist the development of residential gardens where development would cause harm to the local area. There are no such policies in the UDP, which pre-dates the NPPF. However the supporting text to policy H7 of the UDP advises that proposals in rear gardens which would undermine the character of the area or harm the living conditions of existing residents will be resisted. Small scale and sensitive developments may be permitted.
8. At the same time Policies 3.5 and 7.4 of The London Plan and policies BE1, H7 and NE7 of the UDP require new developments to be of a high standard of design and layout. They should complement the quality of the surrounding areas and respect important landscape features. The Council places a high priority on the retention and protection of trees which are important to the Boroughs environment and provide a valuable resource for wildlife.
9. These policies are consistent with the NPPF which states that sustainable development has three mutually dependent roles including economic, social and environmental. Design is seen as a key element of sustainable development and new development should reflect the identity of local surroundings, function well and add to the overall quality of the area.
10. Notwithstanding the higher density developments in the locality the generous sized and mature landscaped gardens and associated trees make a significant contribution to the spacious and verdant character and appearance of the locality. This includes the contribution made by the Appeal site. It is acknowledged that none of the trees within the Appeal site are outstanding specimens or the subject of Tree Preservation Orders. Despite this, both individually and collectively the existing trees and hedges make a valuable contribution to the sylvan quality of the back garden environment.
11. With the proposal a significant proportion of the site would be occupied by the proposed flats building or hard surfacing. The proposed building would be significantly larger and taller than other structures within the surrounding rear gardens. It would project to within five metres of the southern and western boundaries of the site and would be less than seven metres from the eastern boundary of the site. The area to the front of the building would be dominated by parking and turning areas. Overall, the intensity of the scheme would be at odds with the spacious rear garden environment in which it would be located.

12. To accommodate the proposed development the scheme includes the removal of 16 trees, as well as a number of shrubs. In view of the intensity of the proposed scheme there would be limited opportunity to replace the trees that would be removed or to provide a meaningful soft landscaping scheme. Whilst the Appellants arboricultural report states that there would be sufficient space for relatively extensive replanting, no details are provided and their report also states that there is a risk that new tree planting may not flourish due to a poor growing environment.
13. For these reasons the proposed scheme would appear cramped on the site and would fail to respect the verdant and spatial characteristics of the surrounding area. Due to its mass and height the proposed building would appear out of place and as a discordant feature within this group of large, spacious rear gardens. These concerns could not be satisfactorily addressed through the imposition of conditions.
14. Whilst it is noted that there are a number of higher density terraced housing scheme in the locality, they comprise a cluster of larger comprehensive development schemes, with their own access roads and dwellings/parking courts facing or abutting Foxgrove Road or The Avenue. As such they are not directly comparable to the Appeal scheme, which comprises a large single building within a back garden.
15. *Trees in relation to design, demolition and construction – Recommendations* (BS 5837:2012) advises that a realistic assessment of the probable impact of any proposed development on trees should take into account the characteristics and condition of the trees concerned, with due allowance and space for their future growth and maintenance requirements. To maximise the probability of successful tree retention account should be taken during the design process of any shading of buildings and open spaces, any direct damage both below and above ground, future pressure to remove the tree and seasonal nuisance.
16. The proposal would require the five trees located within the adjacent gardens to be cut back to facilitate the erection of scaffolding and access for construction traffic. Such works would fall within the root protection zone of some of these trees, as would the proposed rear patios. Similarly construction access and work would take place within the root protection zones of various trees located to the west and east of the proposed building and within surfaced areas. This is in addition to any necessary soak-a-ways and drainage runs. Few details are provided concerning the possible cumulative long term effects such works would have on the retained trees.
17. The Appellants arboricultural report advises that some of the retained trees may cast prohibitive shade on the finished development, or impose an onerous requirement for leaf clearance from gutters.
18. The mature Ash tree (T26) located to the east of the building would overhang the proposed building. It would dominate the outlook, have an enclosing impact and cause overshadowing within five west facing double bedrooms, particularly during the summer months. On the west and southern sides of the proposed building the outlook from and sunlight within 12 bedrooms and five open plan living areas would be materially affected by the retained trees. This

is in addition to the patios and gardens located to the west, south and east of the building.

19. As a consequence the retained and potentially any new trees would have a materially enclosing and overbearing impact on the outlook from the proposed flats and most garden and patio areas. As indicated by the Appellant, the trees and shrubs would create a dense screen around and would dwarf the proposed building. This highlights the cramped nature of the scheme. Even if the construction of the development did not have a materially adverse impact on the long term health of these trees, there could well be pressure from the future occupants of the proposed flats to either fell or materially cut back these trees.
20. This adds to my concerns regarding the harm the scheme would cause to the verdant character and appearance of the surrounding area. As stated in policy NE7 of the UDP developments should take particular account of trees within and adjoining sites, which are considered desirable to retain.
21. For these reasons the proposed scheme would be contrary to the environmental role of sustainable development. The harm that would be caused by the scheme to the character and appearance of the locality would materially outweigh the benefits of providing nine flats in this established residential area and would fail to meet the wider public interest, in terms of the NPPF.
22. I therefore conclude on the first main issue that the proposed scheme would seriously and unacceptably harm the character and appearance of the locality. It would therefore conflict with policies H7, BE1 and NE7 of the UDP, policies 3.5 & 7.4 of The London Plan and the NPPF.

Living conditions

23. The proposed development would be dominant in the outlook from the rear facing windows of the existing flats on the Appeal site and its dominance would be heightened by the use of the proposed balconies. However, the two buildings would be more than 30 metres apart, which would minimise any loss of privacy. In addition, the residents of the existing flats would continue to benefit from spacious views into the rear garden environment on either side of the proposed building. The outlook from the proposed flats would be towards the retained garden area to the rear of the existing flats, which would result in some loss of privacy. However, this is a communal garden that is overlooked by the existing and adjacent flats and it would be separated from the proposed building by a small parking court.
24. For these reasons, on balance, the proposal would not have a materially adverse impact on the living conditions of the occupiers of the existing flats on the Appeal site due to loss of privacy or visual impact.
25. The proposed building would be sited even further way from the adjoining flats developments to the south in The Avenue and would be partially screened from these flats and their communal garden areas by the trees adjacent to the southern boundary of the Appeal site. Accordingly, the proposal would not have a materially adverse impact on the living conditions of the occupiers of the existing flats developments to the south.

26. With the proposal the existing rear facing flats at Coniston Court and Pentlands would continue to benefit from open aspects into their rear gardens and would be sited in excess of 30 metres from the Appeal building. The proposed building would be partially screened from these existing flats by various trees located close to the Appeal site's boundaries.
27. The outlook from the upper floor eastern facing windows of the proposed building would be towards the rear parking court which serves the flats at Pentlands and would be some distance from the communal garden area at Pentlands.
28. Due to their siting and proximity to the western boundary of the site some of the proposed upper floor windows would facilitate views directly into the communal gardens serving the flats development at Coniston Court. This would result in some loss of privacy for the occupants of those flats. However, as their gardens are communal and partially overlooked from adjacent buildings, the likely level of over-looking would not be unreasonable and would not amount to a reason for dismissing this Appeal.
29. Finally, whilst the Council has referred to policy H7 of the UDP, this policy relates to the overall design of new development and the living conditions of its proposed residents. As such it is not relevant in relation to the living conditions of the occupiers of adjacent properties.
30. I conclude on this main issue that the proposed development would not have a materially harmful impact on the living conditions of the existing flats developments on all sides, due to visual impact or privacy. In this respect the scheme would comply with policy BE1 of the UDP, which amongst other things seeks to ensure that new developments respect the living conditions of existing residents.

Waste servicing

31. The submitted drawings indicate that the bin store would be located at the southern end of the proposed access drive and would exceed the maximum distance from Foxgrove Road for access by the Council's waste and refuse vehicles. The Appellant has stated that this is a matter that could be dealt with by condition. However, they have not suggested any possible alternative locations which would be suitably located for the occupants of the proposed flats, would be safe, neighbourly and meet the accessibility requirements of the Council.
32. The Appellants have also confirmed that the refuse could be collected by a private waste operator. The frequency of such collections and the size of the vehicles concerned are not stated. Similarly it is not stated if the vehicles would have sufficient room to turn on site, would reverse into and out of the site or whether it would be feasible for the bins to be wheeled to the entrance of the site by the private contractors.
33. In the absence of such details it is not possible to assess the impact of a private waste collection service on pedestrian safety and the living conditions of the occupiers of the ground floor flat on the east side of the existing flats development on the Appeal site.

34. Accordingly, in relation to the Appeal scheme waste servicing is not a matter that could reasonably be made the subject of a condition.
35. I conclude on this issue that, on the basis of the information submitted, it has not been demonstrated that it would be possible to make appropriate arrangements for waste servicing. Accordingly the scheme would conflict with policy BE1 of the UDP which encourages sustainable design and requires new development to respect the living conditions of the occupiers of adjacent buildings.

Other matters

36. Account has been taken of the concerns raised in relation to the loss of wildlife habitats, traffic and drainage, although they do not add materially to my conclusions on the main issues.

Conclusion

37. Whilst I have found in favour of the Appellant in relation to the second main issue, the conclusions on the first and third main issues represent compelling reasons for dismissing this Appeal.

Elizabeth Lawrence

INSPECTOR