

Appeal Decision

Site visit made on 12 October 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 8 November 2016

Appeal Ref: APP/G5180/W/16/3152631

65-67 Cameron Road, South Bromley, BR2 9BG

- 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 M Ali against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/05474/FULL1, dated 12 December 2015, was refused by notice dated 8 March 2016.
 - The development proposed is a new day nursery and early learning centre.
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Decision

1. The appeal is allowed and planning permission is granted for a new day nursery and early learning centre at 65-67 Cameron Road, South Bromley, BR2 9BG in accordance with the terms of the application, Ref DC/15/05474/FULL1, dated 12 December 2015, subject to the conditions in the schedule below.

Application for costs

2. An application for costs was made by Mr M Ali against the Council of the London Borough of Bromley. This application will be the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - the effect of the proposed development on the character and appearance of the area having regard to its design and the proposed fencing;
 - the effect of the proposal on the living conditions of neighbours having particular regard to noise and disturbance; and
 - the effect of the proposal on pedestrian and vehicular safety.

Reasons

Character and appearance

4. The appeal site is an area of open land between Cameron Road and Cornford Close which is designated as Urban Open Space (UOS) within the London Borough of Bromley Unitary Development Plan 2006 (UDP). Saved policy G8 of the UDP indicates that proposals for built development on areas of UOS will be permitted only in certain circumstances. One such circumstance is where the development is small scale and supports the outdoor recreational uses or
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children's play facilities on the site. The Inspector, in considering a previous appeal¹ for a similar proposal on the site found this circumstance to be the most appropriate in that case and I see no reason to take an alternative view in relation to the current proposal. The policy goes on to indicate that where built development is involved, as is the case here, the Council will weigh any benefits being offered to the community, such as new recreational or employment opportunities, against a proposed loss of open space and that in all cases the scale, siting and size of the proposal should not unduly impair the open nature of the site.

5. The appeal proposal for a day nursery and early learning centre would be small scale and would support children's play. It would also provide childcare facilities in the area and provide employment opportunities for local people. I note that a number of interested parties refer to other similar facilities within the area and query the need for another such facility. However, the Council in its Committee report indicates that there is a demand for pre-school places in the area and states that, in the intervening period since the proposal subject to the previous appeal, demand for such a facility has increased in terms of population demographics and that further flexibility is required to address the need and demand. Accordingly, it seems to me from the evidence that the proposal would provide significant benefits to the community.
6. The Council describes the appeal site which is a grassed area of land with three mature trees upon it as being a functional open space used by the local population. I saw from my site visit that there is a hardsurfaced path across the site as well as two informal paths which appear to reflect desire lines. However, the evidence indicates that there is some doubt as to the status of the site with regards to rights of access. In any event the proposed development would still allow for access of whatever status across part of the site.
7. The appeal site is surrounded by housing which forms part of the 1960s Hayesford Park estate comprising of suburban housing of various designs, types and styles along with wide verges, street trees and open spaces. It has a generally open character and although somewhat overgrown and neglected I agree with the view of the Inspector on the previous appeal that it provides a visual break and visual amenity to a built-up area, providing relief on two substantially built-up frontages and allowing through views between.
8. Although the appeal proposal would inevitably have some effect on the open nature of the land the earth mound/earth sheltered design of the building would mean that much of the through views would be retained. Furthermore, the turfed earth mound along with the living willow fence would mean that the open verdant character of the site would be retained. The living willow fence would complement the earth sheltered design so as not to appear as an overly intrusive feature or erode its appearance as green open land. In my view the proposed enclosures namely the proposed fence which would surround the semi-circle edge of the mound on the northern side and the living willow fence would not unduly interrupt views across the site. Furthermore, a suitably worded condition could be imposed to control the specific details of these.
9. The proposed development would be sited between the three protected trees on the site. The Council's Arboricultural Officer does not object to the proposal

¹ APP/G5180/A/14/2222432

but rather agrees with the findings of the Inspector on the previous appeal that no harm would be caused to the trees and that they would continue to perform an amenity role which can be appreciated over a large area and not just on the site. From the evidence before me I see no reason to take an alternative view.

10. In relation to the first main issue therefore, I conclude that the proposed development would not materially harm the character and appearance of the area having regard to its design and the proposed fencing.
11. Drawing together all of the above therefore, the appeal proposal would provide significant community benefits, it would retain access across part of the site and would not unduly impair the open nature of the site. Accordingly, overall I consider that it would accord with the requirements of policy G8 of the UDP.

Living conditions

12. The appeal site is located within a predominantly residential area and adjoins residential properties to the north and south on Cameron Road and Cornford Close. The Council contends that the appeal proposal would result in a considerable increase in the ambient noise levels as a result of the comings and goings associated with the proposed use.
13. Whilst I appreciate that there is likely to be a certain amount of activity associated with the use of the proposed building as a day nursery/early learning centre the numbers attending the facility would be relatively small and the use would operate only on weekdays during the daytime. I note that the Council's Environmental Health Officer did not object to the proposal in relation to this matter subject to the imposition of a suitably worded condition restricting the maximum number of children attending the facility at any one time to that indicated in the documentation. Accordingly, I am not persuaded from the evidence before me that the appeal proposal would, by virtue of the general activities associated with the proposed use including people dropping off and picking up children and congregating around the entrance, materially add to noise and disturbance in the area so as to cause harm to the living conditions of neighbours in this respect.
14. Although not referred to in its reason for refusal the Council in its appeal statement suggests that the appeal proposal would impair the residential amenity of residents in terms of the loss of open space and outlook. As indicated above there is some doubt as to the status of the site with regards to rights of access. I have found that the appeal proposal would not materially harm the character and appearance of the area. Furthermore, the earth mound/earth sheltered design of the proposed building with internal floor levels which would be partially sunk below the external ground level would mean that it would not appear unduly dominant or overbearing when viewed from the adjacent dwellings and/or their respective garden areas. Accordingly, having regard to all of the above I am satisfied that the proposal would not impair the residential amenity of residents in terms of the loss of open space and outlook.
15. To conclude on this issue therefore, the appeal proposal would not cause material harm to the living conditions of neighbours having particular regard to noise and disturbance. Accordingly, it would comply with policy BE1 of the UDP which seeks to ensure that development respects the amenity of occupiers of neighbouring buildings and that their environments are not harmed by, amongst other things, noise and disturbance.

Pedestrian and Vehicular Safety

16. The Council indicates that the proposed access and parking arrangements are effectively unchanged from the previous scheme which was considered at appeal. It also indicates that, notwithstanding the Inspector's findings on the previous appeal that subject to suitably worded conditions the parking would be acceptable under policies T3 and T18 of the UDP, it remains concerned in respect of the proposed parking layout and its effect on vehicle manoeuvrability within the site and by the junction with Cameron Road. However, no substantive technical evidence has been submitted with the appeal documentation in this respect. Furthermore, in response to the consultation on the planning application, the Council's Highways Officer indicated that, having regard to the previous appeal decision, suitably worded conditions could be imposed to address these matters.
17. I note that the proposal would result in the removal of two marked on-street parking bays on Cameron Road to provide for the access. However, the evidence indicates that there is capacity within the local area to cater for the loss of 2 permit parking bays. The adequacy of visibility sightlines could be addressed by the imposition of conditions as suggested by the Council's Highways Officer. Similarly, suitably worded conditions requiring further details of the parking spaces and details of the boundary treatment and/or means of enclosure to be agreed would ensure there was no obstruction of the parking area caused by the proposed entrance gates.
18. Having regard to all of the above therefore there is no substantive technical evidence to lead me to a different conclusion in relation to the issue of the parking arrangements to that of the Inspector on the previous appeal proposal. I am satisfied that the proposal would not be a significant generator of traffic and that the Council's concerns in relation to the proposed parking layout and its effect on vehicle manoeuvrability within the site and by the junction with Cameron Road could be adequately addressed by suitably worded conditions so as to ensure that the proposal would not cause harm to pedestrian and vehicular. The proposal would therefore be acceptable under policy T3 of the UDP which sets out the Council's approach to parking provision.

Other matters

19. There is no substantive evidence to indicate that the appeal proposal would have an adverse impact upon wildlife.
20. I note that there are public sewers crossing the site. However, whilst that may have implications for implementation, I have made my decision solely on the planning merits of the proposal.

Conclusions and Conditions

21. I have found that the proposed development would not materially harm the character and appearance of the area having regard to its design and the proposed fencing. In this respect therefore it would overcome the concerns of the Inspector on the previous scheme for a similar proposal on the site.
22. The proposed development would not cause material harm to the living conditions of neighbours having particular regard to noise and disturbance. Furthermore, subject to the imposition of suitably worded conditions it would not cause harm to pedestrian and vehicular safety. Accordingly, having regard

to all of the above the proposed development would accord with the development plan as a whole.

23. The Council has suggested a number of conditions that it considers should be imposed if I am minded to approve the proposed development. I have considered both the wording and reasoning for these in the light of the Framework and the Planning Practice Guidance (PPG). I have amalgamated some of the suggested conditions to avoid duplication and have amended some of the suggested wording to ensure compliance and for clarity.
24. A condition referring to the approved plans is necessary to provide certainty. However, due to the importance of design in this case and in the interests of the character and appearance of the area a condition requiring the submission and approval of further detailed plans before development commences is necessary. A condition requiring further details of the parking spaces and turning areas to be submitted, approved and implemented is also necessary in the interests of pedestrian and vehicular safety. However, the PPG advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. From the evidence I am not satisfied that such circumstances exist to include the removal of permitted development rights in this condition as suggested by the Council.
25. In the interests of the character and appearance of the area and the living conditions of neighbours the submission and approval of the details of the proposed slab levels of the building and existing site levels is necessary. It is necessary to require the details of the boundary treatments and/or means of enclosure to be submitted, approved and implemented in the interests of the character and appearance of the area and in the interests of pedestrian and vehicular safety.
26. In the interests of the character and appearance of the area conditions requiring a scheme of hard and soft landscaping to be submitted, approved and implemented and to ensure that the trees to be retained are adequately protected are necessary. A condition requiring the submission, approval and implementation of a drainage scheme is necessary to ensure that the site is adequately drained.
27. The proposal is unlikely to be a significant generator of traffic and I have not been provided with any substantive technical evidence to support the requirement of a Road Safety Audit as suggested by the Council. However, conditions requiring the provision of sightlines and visibility splays are necessary in the interests of highway, pedestrian and vehicular safety.
28. It is necessary to require details of a scheme of lighting for the access drive and parking areas in the interests of the safety of users and visitors to the development as well as in the interests of the character and appearance of the area and of the living conditions of neighbours.
29. In the interests of the living conditions of neighbours it is necessary to require a Construction Management Plan to be submitted, approved and implemented. This would negate the need for a separate condition concerning wheel washing facilities.

30. A condition is necessary to ensure satisfactory arrangements are made for the storage of refuse and recyclable materials.
31. In the interest of reducing reliance on the private car a condition is necessary requiring the provision of bicycle parking/storage facilities. The stopping up of the existing access to the site is necessary in the interests of pedestrian and vehicular safety and a condition requiring the submission, approval and implementation of a Travel Plan is necessary to ensure the transport implications of the development are appropriately managed.
32. Conditions restricting the number of pupils and staff to be accommodated at the day nursery/early learning centre and specifying the hours of use are necessary to protect the living conditions of neighbours. However, I am not satisfied from the evidence that a condition limiting the number of children allowed onto the mound curtilage play space area to a maximum of 20 is necessary.
33. I am mindful of the advice in the PPG regarding conditions restricting the future use of permitted development rights. However, I am satisfied that the circumstances in this case are such as to justify a condition to restrict the use of the proposed development to a day nursery/early learning centre, as applied for, in the interests of the living conditions of neighbours and to ensure compliance with policy G8 of the UDP.
34. For the reasons given above, and having had regard to all other matters before me, I conclude that the appeal should be allowed.

Beverley Doward

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No. 1xxxxxx 03.07.13 1:500@A3; Site Location Plan (with layout plan) Drawing No. 1xxxxxx 03.07.13 1:500@A3; Site Plan Drawing No. 1xxxxxx 03.07.13 1:200@A3; Proposed Ground Floor Plan 12/12/14 1:100@A3; Proposed Front Elevation 12/12/14 1:100@A3; Proposed Rear Elevation 12/12/14 1:100@A3; Proposed Roof Plan Drawing No. 1xxxxxx 03.07.13 1:200@A3; Proposed Section & Proposed Side Elevation 12/12/14 1:100@A3 and Permacrib - Step Details Drawing No. SD-PC-400.
- 3) Notwithstanding condition 2 i.e. the condition requiring that the development is carried out in accordance with the approved plans no development shall take place until detailed plans at a scale of 1:50 or 1:100 showing all elevations, plans and sections and full architectural details for windows, doors and entrances have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Notwithstanding condition 2 i.e. the condition requiring that the development is carried out in accordance with the approved plans no development shall take place until details of parking spaces and turning areas within the site have been submitted to and approved in writing by the local planning authority. Such provision shall be completed before the development hereby permitted is first occupied. Development shall be carried out in accordance with the approved details and permanently retained thereafter.
- 5) No development shall take place until details of the proposed slab levels of the building and the existing site levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority details of the boundary treatment and/or means of enclosure (including any gates) to be erected. The details shall include the positions, design, materials, height and type of boundary treatment and/or means of enclosure. The boundary treatment/means of enclosure shall be completed before the development hereby permitted is first occupied. Development shall be carried out in accordance with the approved details and permanently retained thereafter.
- 7) The details of a scheme of hard and soft landscaping, which shall include the materials of paved areas and other hard surfaces (including the parking and turning areas), shall be submitted to and approved in writing by the local planning authority before the commencement of the development hereby permitted. The approved scheme shall be implemented in accordance with the agreed timescale. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted.

- 8) No demolition, site clearance or building works shall be undertaken, and no equipment, plant, machinery or materials for the purposes of development shall be taken onto the site until an arboricultural method statement detailing the measures to be taken to construct the development and protect trees has been submitted to and approved in writing by the local planning authority.

The statement shall include details of:

- Type and siting of protective fencing, and maintenance of protective fencing for the duration of project;
- Type and siting of scaffolding (if required);
- Details of the method and timing of demolition, site clearance and building works;
- Depth, extent and means of excavation of foundations and details of method of construction of new foundations;
- Location of site facilities (if required), and location of storage areas for materials, structures, machinery, equipment or spoil, and mixing of cement or concrete;
- Location of bonfire site (if required);
- Details of the location of underground services avoiding locating them within the protected zone;
- Details of the method to be used for the removal of existing hard surfacing within the protected zone;
- Details of the nature and installation of any new surfacing within the protected zone; and
- Methods proposed for the watering of the trees during the course of the project.

The method statement shall be implemented according to the details contained therein until completion of building works, and all plant, machinery or materials for the purposes of development have been removed from the site.

- 9) No development shall take place until a drainage scheme has been submitted to and approved in writing by the local planning authority and the drainage works shall be carried out in accordance with the approved scheme before any part of the development hereby permitted is first occupied. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles of sustainable drainage systems and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) specify the responsibilities of each party for the implementation of the SuDS scheme together with a timetable for its implementation;

- iii) and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) Before commencement of the development hereby permitted details of a scheme to light the access drive and car parking areas shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the development is first occupied and the lighting shall be permanently retained thereafter.
- 11) Before commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site; wheel washing facilities and the hours of construction work at the site. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.
- 12) Before any part of the development hereby permitted is first occupied that part of a sight line of 43m which can be accommodated within the site shall be provided in both directions at 2.4m and no obstruction to visibility shall exceed 1m in height in advance of this sight line, which shall be permanently retained as such.
- 13) Before the access hereby permitted is first used by vehicles, it shall be provided with 3.3m x 2.4m x 3.3m visibility splays and there shall be no obstruction to visibility in excess of 1m in height within these splays. The visibility splays shall be permanently retained thereafter.
- 14) Details of arrangements for the storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the local planning authority before any part of the development hereby permitted is commenced. The approved arrangements shall be completed before any part of the development hereby permitted is first occupied and shall be permanently retained thereafter.
- 15) Before any part of the development hereby permitted is first occupied, bicycle parking (including covered storage facilities where appropriate) shall be provided at the site in accordance with details to be submitted to and approved in writing by the local planning authority. The bicycle parking/storage facilities shall be permanently retained thereafter.
- 16) The existing access shall be stopped up at the back edge of the highway before any part of the development hereby permitted is first occupied in accordance with details of an enclosure to be submitted to and approved in writing by the local planning authority. The approved enclosure shall be permanently retained as such.
- 17) Before the commencement of the use hereby permitted, a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Plan should include measures to promote and encourage the use of alternative modes of transport to the car. It shall also include a

timetable for the implementation of the proposed measures and details of the mechanisms for implementation and for annual monitoring and updating. The Travel Plan shall be implemented in accordance with the agreed timescale and details.

- 18) The children attending the day nursery/early learning centre shall be between the ages of 0 and 6 years and not more than 28 children and 7 staff shall be accommodated at any one time.
- 19) The use of the premises as a day nursery/early learning centre shall be limited to Mondays to Fridays inclusive between the hours of 8.00am and 6.00pm.
- 20) Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the use of the building hereby permitted shall be used only for the purpose of a children's day nursery/early learning centre and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).