
Appeal Decision

Site visit made on 21 September 2016

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 30 November 2016

Appeal Ref: APP/D5120/W/16/3152783

Rear of 14-20 West Street, Erith, Bexley DA8 1AF

- 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 A C Hillier of Westgate London Ltd against the decision of the Council of the London Borough of Bexley.
 - The application ref: 15/02205/FUL, dated 1 July 2015, was refused by notice dated 9 February 2016.
 - The development proposed is described as follows: "The proposal comprises the redevelopment of this vacant site for residential use (7 flats), laid out as: erection of one three storey building (Block A) containing 4 x 1b2p flats & 1 x 2b3p flat and, erection of one two storey building (Block B) containing 2 x 1b2p flats and the formation of 4 off-street parking spaces. The existing two storey dilapidated building and three single storey garage structures will be demolished".
-

Decision

1. The appeal is dismissed.

Background & Preliminary Matters

2. Notwithstanding the site address above (from the planning application form) it is clear that the appeal site comprises land to the rear of nos. 14-28 West Street. That is acknowledged in the address used by the Council in processing the application, and the Council also simplified the development description.
3. The appeal site, in a predominantly residential area, is the smaller north-east portion of a larger area of overgrown land formerly in commercial use and containing some semi-derelict buildings. Several previous applications for redevelopment include one for the whole of the previously developed site, which was dismissed on appeal in 2011.
4. Planning permission was granted in 2014¹ for a terrace of eight three-storey houses on the larger south-west portion of the previously developed site (the permitted scheme). That permission is still extant and, although it had not been implemented at the time of my visit, it is a significant material consideration. Moreover the appellant acknowledges it is unlikely the appeal site would be developed before the south-west portion because of the logistics and practicalities involved.

¹ Planning application reference 12/01205/FUL

5. Dwellings in the permitted scheme and the scheme the subject of this appeal would all be accessed via a new roadway off West Street that would run between nos. 18 and 22. Nos. 14-28 West Street currently form a continuous terrace with only a narrow access route through to the appeal site, underneath a first floor element that links nos. 20 and 22. The proposed access arrangements involve demolishing no. 20 and the first floor link element.
6. The access arrangements shown on the 'proposed ground floor plan' for the appeal scheme² appear very similar to those on the 'site layout' plan³ for the permitted scheme and all of the requisite land, from West Street as far as the appeal site's south-west boundary, is included in the site edged red on the submitted site location plan. Irrespective of some differently coloured lines on the various submitted plans a condition could therefore be imposed to require provision of the proposed access arrangements.
7. The appeal submissions include three revised drawings which have been amended simply to more accurately indicate the outline of the existing building along the site's south-east boundary to the short street known as Pleasant View. I shall take these revised drawings into account, being satisfied that doing so would not prejudice the interests of any other parties. However I do have concerns about some other aspects of the submitted drawings, which are explained in the reasoning which follows.

Reasons

8. The Council's first refusal reason refers to the effects of the juxtaposition of the proposed and permitted buildings on the 'amenity' of occupiers of the dwellings in the permitted scheme. However the officers' report on the appeal application includes a conclusion relating, in essence, to the relationships that would be created between the proposed and permitted dwellings: in other words, that conclusion is not confined solely to the effects of those proposed on those permitted. That is a more appropriate approach, not least as one of the core planning principles in the *National Planning Policy Framework*⁴ is concerned with achieving high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
9. Thus the **first main issue** in this case is the adequacy of the appeal proposals in terms of the living environment that would be created for future occupiers of both the permitted and the proposed dwellings.
10. The Council relies primarily on guidance in its Supplementary Planning Document (SPD) 'design for living, Bexley's residential design guide' (2006). In relation to privacy the SPD takes a flexible approach, advising that where the distance between facing habitable room windows in new developments is less than 22m, it should be demonstrated how privacy has been incorporated into the design proposals for individual dwellings. In my experience 22m is within the range of 'rule of thumb' guidelines⁵ often used to ensure adequate separation and privacy levels and is therefore a reasonable starting point.

² Drawing no. 406-A-002 rev D, which has the notation "Approved scheme Ref: 12_01205 for new road layout" across the access route

³ Drawing no. 0871/10H provided at Appendix 1 of the Council's appeal statement, together with the floor plan and elevation drawings for the permitted scheme

⁴ The *Framework* postdates the Council's Unitary Development Plan (UDP) (2004) and is a key material consideration

⁵ Which can range from 20m to as much as 26m in some areas

11. In this case, in the larger of the two proposed apartment blocks (Block A), there would be ground, first and second floor windows facing towards the three-storey terraced dwellings in the permitted scheme, albeit the opposing windows would be slightly offset from each other. Separation between ground floor windows does not often need to be taken into account because boundary walls or fencing will usually be sufficient to prevent inter-visibility between opposing ground floor windows. In this case however the proposed levels are such that the permitted terrace will sit at a higher level than Block A. Thus there could be a line of sight from upper floor windows in the terrace down towards the ground floor bedroom window in Flat 1 of Block A in addition to views of the first and second floor windows above it.
12. The distance from the corner of the permitted terrace towards the relevant Block A windows is dimensioned on the 'proposed first floor plan'⁶ as 17.3m, substantially less than the 22m guideline. The appellant suggests the oblique angle and the 'considerable' levels difference would preclude any harmful loss of privacy in the permitted terrace dwellings. The difference in levels increases the likelihood that privacy for occupants of the permitted terrace would not be seriously compromised, but the same cannot be said for occupants of the three Block A flats with windows facing towards the terrace. At a lower level than the terrace and in relatively close proximity, those windows would be overlooked from the upper levels of the terrace.
13. Moreover the permitted terrace design includes balconies at second floor level, on top of pairs of projecting elements along its front elevation⁷. Occupants would have a wider angle of view from those balconies than from windows, resulting in increased actual and perceived overlooking of the flat windows below and consequent harm to the privacy of occupants in Block A.
14. It is also suggested that the crown of a large lime tree, just outside but close to the southern corner of the appeal site⁸, would help to reduce any perception of overlooking, albeit the notation to this effect on Figure 1 of the appellant's statement appears to overestimate any such effect⁹. In any event I have borne in mind also that any screening effect would vary according to the time of year and that future management of this (and the other lime trees) could involve pollarding or crown reduction and thus loss of some or all the tree's canopy for significant periods of time. I therefore give little weight to this tree as a means of reducing inter-visibility between the flats and the terrace.
15. Moreover, if new tree planting of a size and nature sufficient to reduce harmful overlooking was to be introduced, it would be likely have other effects such as restricting light into and outlook from habitable room windows. Combined with the effects of existing lime trees, with canopies currently overhanging areas proposed as outdoor courtyards for the flats, that would also detract from the quality of the living environment for occupants of Block A.
16. For all these reasons I find that in this particular site context the close juxtaposition of the permitted terrace and Block A would create a harmful sense of overlooking and loss of privacy for occupants of flats in Block A. I find

⁶ Drawing no. 406-A-003 rev D

⁷ Albeit these projections are not apparent on any of the submitted appeal application plans

⁸ This tree is numbered T30 on some of the appellant's drawings, and T31 on others: it is not included in the Tree Preservation Order (TPO) which covers five lime trees to the north-east, alongside Pleasant View (numbered T1-T5 on the TPO plan and T25-T29 on the appellant's plans)

⁹ The notation appears to relate to the precautionary root protection area rather than the smaller crown spread

that to be the case despite the scope for some flexibility in the SPD guidelines and irrespective of the typically much shorter separation distances across streets (which are usually part of the public realm).

17. The Council also maintains that inadequate separation between the permitted terrace and a blank side wall of Block B would be detrimental to amenity for occupants of the terrace. That stems from the SPD guideline of 16m, which seeks to ensure an adequate outlook. The Council and appellant disagree on the separation distance in this case¹⁰ but, even if the lesser distance is correct, a small shortfall against the guideline would be offset by the difference in levels. This would be sufficient to ensure an adequate outlook from the nearest kitchen windows in the terrace.
18. In summary on this issue, whilst I find it unlikely the appeal scheme would result in an inadequate living environment for occupants of the permitted terrace, I conclude the juxtaposition of the permitted terrace and the proposed Block A would result in poor living conditions for occupants of flats in Block A. In failing to create an adequate living environment and a good standard of amenity for those future occupants the appeal scheme would not therefore amount to good design which, as set out in the *Framework*, is a key aspect of sustainable development. The appeal scheme would conflict with the *Framework* and with the development plan¹¹ in these respects.
19. The **second main issue** is the effects of the appeal scheme on trees which contribute to the area's visual amenity, character and appearance. More specifically, and notwithstanding reference to 'Block B' in the Council's second refusal reason, it is the effects of developing Block A on four of the protected lime trees along Pleasant View¹² which are contentious. These four trees grow in a narrow strip alongside the street surface of Pleasant View and close up to the outer wall of the existing large building on the appeal site which sits at a significantly lower level. The trees show clear evidence of previous pollarding but currently have branches extending up and across the existing building's pitched roofslope.
20. The position of Block A's outer boundary wall, as originally proposed, would be very similar to that of the existing building. The block has been designed so that it would extend along a much smaller length of this site boundary than the building to be demolished, with a flat rather than a pitched roof and with courtyard areas to each side. Thus the tree canopies would be less restricted by built form than at present, which might reasonably be considered a benefit to the trees.
21. Of greater concern are the difficulties of constructing the new building in such close proximity to the trees without damage to their crowns, trunks or root systems, any or all of which could affect their long term health and/or stability and thus the contribution they make to the area's visual amenity. Following the Council's refusal of the application a trial pit was excavated within the existing building, supervised by the appellant's arboricultural consultant, in the position considered most likely to demonstrate the presence or absence of tree roots under existing foundations.

¹⁰ The separation as annotated on drawing no. 406-A-005 rev F (proposed elevations) is 18.5m, but on another plan at the same scale (drawing no. 406-A-003 rev D, proposed first floor plan) it appears to be only some 15.5m

¹¹ Most notably saved UDP Policies H7, H8 and ENV39

¹² T26-T29 on the submitted plans

22. A descriptive account of the findings is substantiated by just one photograph, which is not especially clear. Moreover it appears the Council's arboricultural consultant was not present to observe the excavation, and nor was I able to see the trial pit during my visit, due to concerns about the safety of the building. In these circumstances I share the Council's concerns that evidence to clearly demonstrate that structural roots do not exist along and/or under the existing foundations is limited and not wholly convincing.
23. However the appellant's statement includes a suggested minor amendment, whereby the existing strip foundations would be retained in situ and the proposed building would be constructed just inside the existing foundations. The Council's consultant acknowledges this approach would reduce the risk of harm to structural roots, albeit there could still be damage to other roots. Another effect of this approach, combined with the appellant's suggested 'hand-over' method of construction (working from within the site), would be a modest reduction in the difficulties associated with the restricted working space close to the tree trunks.
24. It is also likely that at least some reduction in the trees' crowns would be needed to facilitate the development, whether re-pollarding or one of the other alternatives put forward by the appellant's consultant. Any significant reductions in crown size would have some effect on the trees' value in terms of visual amenity for a period of time. However similar effects must have occurred in the past and are to be expected when trees such as these are managed in this way.
25. On balance therefore I find that subject to the suggested amendment regarding foundations and to a fully detailed arboricultural method statement, which could be required by condition, precautions could be put in place to ensure the proposed development would not harm the long term health of trees which contribute to the area's visual amenity, character and appearance. Nor would there be any material conflict in this respect with the development plan, most notably saved UDP Policies ENV35 and ENV39.
26. The **third main issue** concerns the adequacy of the approach to providing for drainage of the appeal site and development. I have had regard to all the information on this matter in the appeal submissions. From this it appears firstly that, although the Council's third refusal reason asserts the appellant's Flood Risk Assessment is incomplete, the key matter at issue is the nature of the provision to be made for surface water drainage. Secondly there has been continuing discussion of this matter between relevant parties since refusal of the appeal application, albeit some differences of opinion are apparent from the written accounts.
27. However it does now appear to be common ground that a surface water connection to a nearby foul sewer would not be permitted. The appellant notes it has always been intended that surface water drainage would be dealt with in accordance with the SuDs hierarchy, and refers to drainage via infiltration or to a surface water sewer as alternative approaches. Representations from the Council include reference to its own suggested alternative design options. Thus, although a detailed surface water drainage strategy has not yet been prepared and agreed, there is nothing of substance before me to indicate any insurmountable problems in ensuring proper provision for such drainage. It is therefore a matter which could be addressed by a Grampian-style condition,

and I find insufficient reason to reject the appeal proposals on any drainage or flooding grounds.

28. The appeal proposals would result in beneficial redevelopment of previously developed land, creating new housing units in an accessible location, such that the scheme would have some social, economic and environmental benefits. However neither these, my findings on the second and third main issues, or any other matter raised is sufficient to outweigh my conclusions on the first main issue. In failing to create an adequate living environment and a good standard of amenity for future occupants of Block A the appeal scheme would not amount to good design. It would not accord with the development plan or with the *Framework* in these key respects, such that it would not represent sustainable development. Overall therefore I conclude the appeal must fail.

Jane Miles

INSPECTOR