

Appeal Decision

Site visits made on 16 November and 13 December 2016

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 4th January 2017

Appeal Ref: APP/G5180/W/16/3156413

St Raphaels Residential Home, 32 Orchard Road, Bromley BR1 2PS.

- 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 Methodist Homes (MHA) against the decision of the Council of the London Borough of Bromley.
 - The application Ref: DC/15/02145/FULL1, dated 11 May 2015, was refused by notice dated 16 May 2016.
 - The development proposed is the demolition of the existing care home and the erection of a part one/two/three storey building with an additional storey of accommodation within the roofspace comprising 75 retirement living apartments (50 x 2 bed and 25 x 1 bed) with basement level ancillary facilities, parking for 52 cars (33 at basement level, 19 at surface level) cycle parking spaces, refuse storage and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was amended during the course of its consideration by Council officers to address matters identified as requiring alteration. However, although the Council took a decision to refuse the application for reasons relating to character and appearance and traffic impact, other objections have also been maintained by local residents. The number of proposed apartments and their configuration is recorded in the information above based on the latest evidence before me.

Application for Costs

3. An application for costs was made by Methodist Homes against the Council of the London Borough of Bromley. This application is the subject of a separate decision.

Nature of the Proposal

4. The Appellant seeks planning permission on the basis that the development would fall into Class C2 of the Town and Country (Use Classes) Order 1987 (as amended) for the provision of residential accommodation and care to people in need of care. Local residents argue that the level of care proposed is so limited that notwithstanding the Appellant's position the development more properly falls into Class C3 (use as a dwellinghouse) as it would provide general residential accommodation. In particular it is pointed out that Class C3(b)
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provides for not more than 6 residents living together as a single household (including a household where care is provided for residents).

5. It is acknowledged that there is a 'grey area' here and that there is an apparent overlap between Class C2 and Class C3 as both refer to residents where care is provided. Other examples have been provided where it has been determined that development similar to this has been deemed to fall into Class C2 (notably the Portishead decision¹). But each case has to be judged on its own characteristics and I cannot rely on the conclusions reached in other cases where I have not had the opportunity of perusing the evidence. In the appeal before me I can well understand the position asserted by some that the care offered (albeit required as part of a lease) would be likely to be so minimal for some residents that the end use of many individual flats would be akin to C3 accommodation.
6. As a result, whilst I cannot dispute that in a legal sense the development must be regarded as falling within Class C2, the residents may well have a similar lifestyle to residents of a C3 block of flats. Indeed I consider that to be a likely outcome. In support of this I note the difference between this case and Portishead in terms of minimum age (60 here as opposed to 65 at Portishead) of residents. This is explained further below where relevant.

Main Issues

7. The main issues are:
 - (a) The effect of the proposed development on the character and appearance of the surrounding area;
 - (b) The effect of the proposed development on the living conditions of adjoining occupiers;
 - (c) The effect of the proposed development on the safety and free flow of traffic.

Reasons

Character and Appearance

8. The existing development on site (formerly a care home) is composed of various elements built at different times. The tallest structure is that which is located towards the north-eastern part of the site, and its age and detailing reflect some of the surroundings. Large buildings on spacious plots are a notable characteristic of the locality, though there are many examples of the areas around and between the buildings being infilled with smaller, but still good sized buildings (mainly dwellings).
9. The remainder of the appeal site is made up of buildings of varying scale, including a significant 2 storey block running parallel with the frontage to Orchard Road. There is, as a consequence, a continuous stretch of buildings across almost all of the site. To the rear the site is more open, with a chapel the most bulky and tallest feature, and a single storey wing surrounded by the now somewhat neglected landscaped grounds.
10. It is indisputable that the appeal proposal would significantly increase built development on the land. Ground coverage, mass and height would be

¹ APP/D0121/A/12/2168918

increased. From Orchard Road the increase in bulk would be allied to the setting forward of much of the building from the current building line of the 2 storey element. Despite the articulation evident in the design, and the details following much of what can be seen nearby (such as the gabled steep roof slopes) it is my view that the overall bulk and mass of the building would be uncomfortable in this location. For the most part buildings in the locality are 2 or 3 storeys high, the exception being the relatively modern blocks of flats almost opposite. Those flats, however, are set lower and do not exhibit the same perception of bulkiness that would result from the proposed development. The size of the building, despite the gables, returns and recesses, would be perceived as being far bulkier than any other building hereabouts.

11. Much of the rear part of the site is difficult to see from public vantage points because of intervening vegetation. Nonetheless, from Ashmead Gate the new wing extending southwards into the site relatively close to the boundary is likely to be perceived as a large (up to 3 storey) built block in a currently undeveloped green area. When combined with the glimpses of the eastern wing which would be available from Baytree Close the overall impression would be of the development intruding into, and reducing, the spacious nature of the surroundings.
12. Taking these matters together it is my judgement that the proposal would fundamentally alter the character and appearance of the locality. In place of an Edwardian building characteristic of the area, with subservient later development, the proposed scheme would introduce a bulky and uncharacteristic mass of building which because of its extent and height would detract from the current spacious character of the locality. This would be harmful to the appearance of the area and in conflict with Policies BE1 and H7 of the Unitary Development Plan (UDP) and Policy 3.5 of the London Plan (LPlan). These policies follow the thrust of the National Planning Policy Framework (NPPF) which seeks to ensure that new development is of high quality and responds well to its surroundings.

Living Conditions

13. The appeal site is effectively surrounded on 3 sides (east, west and south) by recent housing development. These houses clearly have an existing relationship with the buildings on the appeal site with which the occupants of surrounding houses are comfortable. The appeal scheme would change the relationship and is the cause of residents' concerns.
14. In my judgement the most significant impact would be felt to the north-east. Here the existing 3 storey building and single storey wing would be replaced by a 4 storey frontage building reducing southwards through the site to 3, 2 and 1 storey. Part of the site to the rear of No 7 Baytree Close would also be developed as an outdoor facility for scheme residents linked to the restaurant/cafeteria proposed. There would also be parking close to the boundary with No 34 Orchard Road.
15. The limited fenestration proposed at third floor (4th Storey) level would in part preclude unacceptable overlooking towards Nos 34 and 36 Orchard Road and No 7 Baytree Close, as would the high level windows proposed at second floor level. But I have concerns that at least one window to a habitable 3rd floor room would face directly towards the orangery at the rear of No 7 from a

significant height. Intervening planting would mitigate the impact to a degree, but I do not consider that it would remove the uncomfortable perception of being overlooked. Similarly I am not persuaded that the installation of side screens to proposed balconies would adequately resolve the feeling of being overlooked from other parts of the building at first and second floor level.

16. Having had the opportunity of visiting the most affected dwellings it is my judgement that there would be likely to be some loss of low sunlight in winter months. However this loss would not be so severe that planning permission should be restricted on those grounds alone.
17. Of greater concern is the degree to which the occupants of the dwellings to the east would be affected by the dominant and overbearing presence of the blocks of development proposed. Although reducing in height to the south and being in part located some distance from the common boundary it is my judgement that the dominance of the proposed blocks would create an oppressive atmosphere, especially at No 7 Baytree Close which is built close to the common boundary.
18. In relation to the other dwellings to south and west which face the appeal site or share a boundary with it I do not find that there would be unacceptable impact. The development would be visible to varying degrees, but would be at sufficient distance that it would not cause undue harm to living conditions there.
19. My overall conclusion on this issue, therefore, is that the proposal would result in an unacceptably harmful impact on the living conditions of the occupants of those dwellings located close to the north-eastern part of the development. There would thus be conflict with Policy BE1 of the UDP which seeks to ensure that development would respect the amenity of occupiers of neighbouring buildings. This is in line with the objective of the NPPF which seeks a good standard of amenity for existing occupants of land and buildings.

Traffic Impact

20. As I have pointed out earlier it seems to me that this development would be akin to a C3 use so far as some residents are concerned. The proposed lower age range is set at 60 (though younger people may live with the qualifying person aged 60 or above). But in today's world 60 is not generally regarded as old, and many of that age bracket will be in employment. Indeed as the retirement age rises the proportion of the population in work at 60 seems likely to rise. However, I accept that many residents would be of greater age and fully retired.
21. The prediction of likely traffic impacts is not an exact process, and I note that the database used for such purposes does not include the precise type of development proposed here. The ownership of a car would not be unusual for anyone over 60 and in receipt of minimal care assistance. For that reason it seems to me that the low rate of car ownership adopted to assess traffic impacts may be underestimated. That would have an impact on the optimal number of parking spaces provided on site. It is also likely that the trip generation and timings used are erroneous because of the number of working people who may reside at the development. I am not persuaded that the minimal change to trip rates between the former car home with 58 occupants

and this proposal with the potential for over 200 occupants can be substantiated.

22. I also share the concern of the Council that the number of car parking spaces proposed may prove to be inadequate, although I accept that it would not be necessary to apply the full residential standard here. Information taken from the evidence submitted shows that at other sites of this type there is up to 40% car ownership. I have nothing before me which justifies the assumption made that at this location the expectation would be about 23% car ownership. It would of course be possible for the operator of the site to restrict the availability of parking spaces available to residents, but that would not preclude vehicle ownership and consequent parking elsewhere at nearby street locations.
23. I observed the traffic conditions close to the appeal site on my site visits. The Transport Statement submitted appears to reflect a short term visit only and at a different time to my more comprehensive observations. The Transport Impact Assessment appears to rely on data collected when roadworks were affecting flows of vehicles. During my visits I saw that peak traffic flows on Orchard Road are heavy, with congestion backing up past the appeal site. At least some of this is the result of parking associated with the nearby schools which on occasion causes difficulty for the flow of 2 way traffic. Later in the day the flows are noticeably lighter but parking was still evident on Orchard Road with the result being partially blocked cycle lanes. Given that it is my judgement that the trip rate for occupants of the site is likely to be an underestimate, that occupants may well be in paid work, and that parking on site is likely to be inadequate, it follows that the site is likely to add to congestion at peak times and to on street parking stress in general.
24. There is a regular bus service passing the site, and the site itself is within walking distance of Bromley town centre (about 1.3km) and reasonably close to rail stations (though I bear in mind that people of advancing years may not relish that walk). That may result in some reduction in the propensity to use private vehicles, but as this proposal specifically seeks to restrict occupation to those over 60 it is also likely that occupants would be less inclined to walk or cycle. I acknowledge that the introduction of a travel plan, as proposed, would assist. However, this would not necessarily reduce travel by private vehicles to a significant degree.
25. Overall therefore, in my judgement there is likely to be a greater impact on traffic and highway conditions than suggested. The adjacent roads are very busy at peak times and although any traffic increase and parking stress resulting from this proposal may not be pronounced, there is likely to be a greater impact than suggested in the Appellant's representations. But it is clear from the NPPF that planning permission should only be refused if the residual cumulative impacts of development are severe. I am not able to make a realistic assessment in this case of whether the impact would be severe since I find the Appellant's evidence rather unconvincing. However, on balance it is my judgement that the proposal would be likely to exacerbate traffic and parking problems in the locality to some degree. As I am dismissing this appeal for other reasons it is not necessary for me to reach a definitive conclusion on this issue.

Other Matters

26. At a late stage in these proceedings I was provided with a Unilateral Undertaking (UU) pursuant to S106 of the 1990 Act. This sets out the means by which the occupancy of the development would be managed and controlled. There is nothing within the UU which I find to be contrary to the Community Infrastructure Levy Regulations (albeit that it would require correction in at least one part) and were I to allow the appeal I would be able to take the UU into account in reaching a decision.

Overall Conclusion

27. This is a case which turns principally on matters of judgement. I have found that the proposed development would not respond well to its context and would be harmful to the character and appearance of the area. I have also found an unacceptable impact on the living conditions of adjoining occupants. There is conflict with the development plan and NPPF as a result. In my judgement the impact of the development on traffic and parking is likely to be understated by the Appellant, though I cannot find that residual impacts would be severe based on the information before me. My conclusions on the first 2 issues are sufficient to reach a view that the appeal should fail. Overall it seems to me that this is a case where the Appellant has been trying to achieve too much on a site with significant constraints.

28. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR