

Appeal Decision

Site visit made on 12 December 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 5th January 2017

Appeal Ref: APP/G5180/W/16/3160356

The Former Bowls Club Pavilion, West Common Road, Hayes, Kent BR2 7BY

- 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 Mrs Nicola Barnard, Bespoke Senior Leisure Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/03072/FULL3, dated 17 May 2016, was refused by notice dated 31 August 2016.
 - The development proposed is change of use of former bowls club pavilion (use class D2) to a 3 bedroom residential bungalow (use class C3) and construction of an all weather tennis court with 4 metre high chain link surround.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - Whether or not residential development would be justified in an area which is designated as Urban Open Space;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of future occupiers with specific reference to outlook, privacy and noise and disturbance; and
 - The effect of the proposal on the living conditions of occupiers of Burton Pynsent House with specific reference to privacy.

Reasons

Open Space

3. The Hayes Common Bowls Club site is accessed from West Common Road and lies to the south of Hayes School. The appeal site comprises a single storey bowls pavilion building with a defined bowls playing area to its northern elevation. Immediately to the west of the site is Burton Pynsent House (BPH) constructed within the last decade comprising 10 flats in a part two/part three storey block. The application site is within an area of Urban Open Space (UOS).
 4. Policy G8 of the Council's Unitary Development Plan 2006 states that proposals for built development in areas of UOS will be permitted only where the development is related to the existing use or the development is small scale and supports the outdoor recreational uses or children's play facilities on the site or any replacement
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buildings do not exceed the site coverage of the existing development on the site. Where built development is involved; 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.

5. The proposed change of use to residential and private tennis court is not related to the existing D2 outdoor bowls use. Criterion 1 of Policy G8 specifically states that in this context, neither residential nor indoor sports development will normally be regarded as being related to the existing use. I note that the tennis court would be available for residents of BPH and the Cricket Club members. However, there is no mechanism before me to ensure that this is the case.
6. I also note that the Bowling Club was a private members club. Paragraph 8.2 of the supporting text of Policy G8 recognises that not all UOS have public access but fulfil specific functions within their localities. Nevertheless, the limited use of a single tennis court for private use and residents of BPH and the Cricket Club would not be a suitable substitute for the loss of the existing outdoor recreational use which provided a community benefit for a wider section of the population than the proposed private tennis court. Furthermore, whilst the tennis court would replace the bowling green, the important facility of the Pavillon/clubhouse would be lost. Moreover, criterion B of Policy 7.18 of the London Plan states that the replacement of one type of space with another is unacceptable unless an up to date needs assessment shows that this is appropriate and no such evidence is before me.
7. Whilst the proposal would not exceed the site coverage of the existing building paragraph 8.5 of the UDP makes it clear that criteria iii) applies in cases where existing school or sports buildings have become redundant or no longer meet the standards of facilities expected by users. There is no evidence before me to demonstrate that this is the case. The proposal is, therefore, contrary to Policy G8 of the UDP.
8. The appellant contends that the entire site became Use Class C3 when the original planning permission¹ was granted. However, this permission clearly related to a mixed use development and the appeal site itself has permission for a replacement bowls pavilion, not residential development. It is not for me to decide the lawful use of the land under section 78; that option is still open to the appellant under section 191/192. Nevertheless, the appellant has applied for planning permission on the basis that it is required and I have determined the appeal on this basis.
9. Although the appellant points to the financial difficulties which the former Bowling Club experienced, no marketing of the site has taken place of the site for D2 use. Consequently, there is no cogent evidence before me to suggest that an alternative D2 use would not be viable on the site either now or in the future.
10. Attention is drawn to several applications within the Borough involving a change of use to residential development. In the case of BPH the proposal was for mixed residential and D2 use which involved replacement bowling and cricket pavilions and the retention of the former bowling club and cricket club. No such benefits are proposed in relation to the current proposal and consequently this case is not directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.
11. Very limited evidence is before me in relation to Hayes Court; however, the case appears to have involved some benefits in terms of the repair and renovation of a

¹ Planning application reference 05/02956/FULL1

grade II listed building. Consequently, the proposal is not directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.

12. Limited evidence is also available in relation to 65 Oakley Road which involved residential development on allotment gardens. However, I am not aware of the evidence which was before the Inspector and furthermore, it appears that the allotments had been vacant for over 10 years. Consequently, this case is not directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision.
13. Attention is drawn to two other areas of open space in the vicinity, although no details are provided. I note that Hayes Common is a large informal area of woodland with a network of footpaths and bridleways. The 'Ridgeway and Pickhurst Lane Recreation Ground' is also referenced which includes the Knoll an open common and woodland and Husseywell Open Space a small area of open space with a children's play area. These areas of open space do not, therefore, provide comparable facilities which limit the weight which I can attach to them in my Decision.
14. I, therefore, conclude that the proposal for a single dwelling does not justify the loss of the Urban Open Space. The proposal would, therefore, be contrary to Policy G8 of the UDP. Conflict also arises with criterion B of Policy 7.18 of the London Plan (2016) which states that the loss of protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area.

Character and Appearance

15. The site contains a single storey bowls pavilion building with a bowls playing area to the north, beyond which lies a parking area with 26 spaces. Immediately to the west is BPH comprising 10 flats set within open grounds and beyond this lies the cricket pitch and pavilion. Hayes School lies to the north and residential gardens back onto the wider site to the east and south. With the exception of BPH and the bowling and cricket pavilion, the wider site provides an open setting with mature landscaping.
16. Whilst no physical alterations are proposed to the building itself the domestic paraphernalia associated with the residential use would detract from its openness. Furthermore, the proposed 4m high tennis court fence would enclose the existing open bowling green to the detriment of the open and spacious character of the area. This would have a more harmful effect than a 2m high fence which could be erected under permitted development rights. Moreover, the tennis court granted permission under the previous application was located to the southern boundary of the site making it less prominent. These factors do not, therefore, justify the harm which I have identified.
17. The fence and domestic paraphernalia associated with the residential use would be highly visible to residents of BPH and from the upper floors of properties which back onto the open space. Views would also be available when approaching the site along the access road.
18. The appellant has indicated a willingness to remove the chain link fence by way of a condition. However, presumably some means of enclosure would be required in order to control stray tennis balls and any means of enclosure would have the potential to affect the openness of the area depending on the height and design. An alternative means of enclosure is not before me for consideration. Furthermore, it would not address concerns regarding the domestic paraphernalia.

19. I, therefore, conclude that the proposal would be harmful to the character and appearance of the area. The proposal would, therefore, be contrary to Policy G8 of the UDP which states that *'in all cases, the scale, siting and size of the proposal should not unduly impair the open nature of the site'*. Furthermore, the proposal conflicts with Policy BE1 of the UDP which states that all development proposals will be expected to be of a high standard of design and layout. Moreover, conflict arises with Policy 7.18 of the London Plan.

Living conditions of future occupiers

20. The Council consider that the internal floor space would meet the minimum internal floorspace requirements set out in Policy 3.5 of the London Plan and the Nationally Described Space Standards² and that the internal layout and configuration is satisfactory. From everything which I have seen in submissions and on my site visit I have no reason to disagree.
21. High level windows would serve all three bedrooms resulting in a very limited outlook for future occupiers. Furthermore, the boundary of the site would immediately abut the south, east and west elevation of the pavilion building and consequently there would be no defensible space adjacent to the proposed bedrooms and kitchen. Whilst the high level windows would prevent any loss of privacy, the occupiers of those rooms could be subject to noise and disturbance from activity in the amenity space to the south which serves the residents of BPH.
22. Furthermore, the appellant states that the tennis court will be used on forty plus occasions each week by approximately 80 tennis players. The dwelling would be situated in very close proximity to the court and future occupiers would, therefore, be subject to noise arising from the use of the court including balls bouncing back and forth, talking and even the shouting or cheering of players. There is no evidence to suggest that any such noise would be attenuated.
23. For the reasons stated I conclude that the proposal would harm the living conditions of future occupiers in terms of outlook and noise and disturbance. It would, therefore, be contrary to criterion v of Policy BE1 of the UDP which expects development to respect the amenity of occupiers of neighbouring buildings and those of future occupants. Furthermore, the proposal conflicts with criterion iii of Policy H7 of the UDP which requires the site layout, buildings and space about buildings to be designed to a high quality and recognise as well as complement the qualities of the surrounding areas.
24. Moreover, conflict arises with Policy 3.5 of the London Plan which seeks to ensure that housing developments are of the highest quality internally, externally and in relation to their context and the wider environment.

Living conditions of existing occupiers

25. The Council consider that the high level windows which would serve the bedrooms and kitchen would result in a loss of privacy to the users of the private amenity space which serves BPH. I note that the windows on this elevation have a 1.7m floor to sill height which would limit the potential for overlooking of the amenity area. However, I note that the door which would serve the kitchen is clear glass extending virtually the full length of the door. Furthermore, if the door were to be opened there would also be opportunities for overlooking of the amenity area. Whilst conditions requiring obscure glazing could have been imposed had I decided to allow the appeal, it would not be reasonable to require that the door be fixed

² Technical housing standards-nationally described space standard DCLG 2015

shut. Moreover, the proposed dwelling would be occupied permanently as opposed to the more intermittent use of the Bowling Club.

26. I, therefore, conclude that the proposal would harm the living conditions of existing occupiers due to a loss of privacy. The proposal would, therefore, be contrary to Policies BE1 and H7 of the UDP and criterion d of Policy 7.6 of the London Plan which states that buildings and structures should not cause unacceptable harm to the amenity of surrounding land and buildings.

Other Matters

27. The Council cannot demonstrate a five year supply of housing. Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of housing sites.
28. Policy G8 seeks to restrict new development in areas of Urban Open Space generally which includes new housing development. However, the fundamental thrust of the Policy is to prevent all built development, not just housing in order to protect Urban Open Space which is consistent with paragraph 74 of the Framework which states that existing open space, sports and recreational buildings and land, including playing fields should not be built on subject to a number of criteria. Consequently, I consider that Policy G8 can be attributed significant weight in my decision.
29. Policy BE1 of the UDP and Policy 3.5 of the London Plan relate to the quality and design of new development and are not, therefore, policies for the supply of housing. They are not automatically out of date by virtue of paragraph 49 of the Framework. I can see no conflict of the policies with the Framework and consequently significant weight can be attached to them in my Decision.
30. There is very limited evidence before me as to whether Policy H7 relating to housing density and design is a policy for the supply of housing in the context of paragraph 49 of the Framework. However, I have identified that there would be significant harm with regards to the loss of open space; to the character and appearance of the area and to the living conditions of existing and future occupiers arising from the proposal which would be contrary to paragraphs 17, 56 and 74 of the Framework. The proposal would not, therefore, constitute sustainable development as required by paragraph 14 of the Framework.
31. Furthermore, whilst the proposal would have some benefits in terms of a contribution, albeit limited, to housing supply I consider that the adverse impact of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

32. I, therefore, conclude that for the reasons stated and taking all other considerations into account that the appeal should be dismissed.

Caroline Mulloy

Inspector