



Appeal Decision

Site visit made on 23 January 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 10th February 2017

Appeal Ref: APP/G5180/W/16/3161171
144 Blackbrook Lane, Bromley, Kent BR1 2HP

- 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 Kentwood Homes Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/02750/FULL1, dated 3 June 2016, was refused by notice dated 27 July 2016.
 - The development proposed is demolition of existing residential property and construction of four two bedroom apartments with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An appeal¹ for a similar proposal on the site was dismissed on 18 April 2016 on grounds relating to character and appearance and amenity space.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on the living conditions of future occupiers with specific reference to privacy, noise and disturbance and amenity space.

Reasons

4. The appeal site is situated on the corner of Blackbrook Lane and Wellsmoor Gardens. Wellsmoor Gardens is part of the Elms Estate which comprises a series of terraces of houses with open plan gardens grouped around communal greens. Opposite the site are large detached houses and a terrace of three storey houses sited gable end to Blackbrook Lane.
5. There are a variety of architectural styles on Blackbrook Lane, however, there is broad consistency in terms of layout with dwellings set in spacious plots set well back from the road with large gardens/driveways to the front with mature planting. A number of several large trees which visually dominate the corner are covered by a Tree Preservation Order. These factors combine to create a spacious and verdant character to the area.

¹ Appeal reference: APP/G5180/W/15/3139916

6. The appeal site is occupied by a detached traditional single-storey lodge house which faces in towards the site with a garage situated to the south. Due to its height and distance from the boundary, the existing building has a limited presence onto Wellsmoor Gardens with only the roof visible above the fence. Whilst the building has a greater presence on Blackbrook Lane it, nevertheless, allows views across the site. The previous Inspector acknowledged that the group of trees on the roadside boundary also contributed positively to the character of the area and I agree. I, therefore, consider that the site contributes to the spacious and verdant nature of the area.
7. The Inspector who considered the previous proposal stated that *'while the proposal would be no closer to Blackbrook Lane than the existing bungalow, it would be significantly higher than it and immediate surrounding houses. In addition the massing of the building would be large and bulky unlike the neighbouring small scale domestic architecture. Furthermore, it would be nearer to Wellsmoor Gardens than the existing building. As a result it would have a substantial presence on this prominent corner, close to the road, which would give it undue dominance in the street scene greatly reducing the openness of the site. The presence of dormer features on the roof together with the Juliette balconies would reinforce the obtrusiveness and incongruity of the building in an area where such roof features are not typical'*.
8. Amendments have been made to the scheme which seek to address the previous Inspector's concerns. The scheme has been reduced from 5 apartments to 4, the dormers have been removed and the height has been reduced to two-storey. In addition, one parking space has been omitted from the scheme and the bike store relocated. The communal garden has also been enlarged to serve flats 3 and 4. Consequently, the amount of hardstanding visible at the front of the site would be reduced.
9. The footprint of the proposal would be similar to that of the existing structures on the site; however, the existing house is single storey with a low pitched roof and the adjacent garage is a very modest single storey building. Consequently, the two-storey appeal proposal would result in a building of much greater mass and bulk compared to the existing building.
10. There are no detailed figures before me relating to the relative sizes of the footprint of the previous and current appeal proposals; however, the location of the proposal in the plot and the footprint of the proposed building would be broadly the same.
11. There would be a reduction in height on the Wellsmoor Garden elevation by 1.2m. In addition, the upper parts of the building would be set slightly back from Wellsmoor Gardens increasing the separation between the north-western corner of the building to the corner of the site. Nevertheless, the proposal would be significantly higher than the existing building and higher than properties on Wellsmoor Gardens which are of a more domestic scale. Consequently, I consider that the building would have a substantial presence on Wellsmoor Gardens.
12. The height of the proposal would be reduced by 0.4m on the Blackbrook Lane elevation and although it would be slightly further from the boundary with Blackbrook Lane than the existing building it would be considerably higher. Whilst the proposal would be two-storey, consistent with adjoining properties on Blackbrook Lane it would, nevertheless, be higher. The adjacent properties have a limited footprint and height and are generally located in deeper plots and set

further back from the road with gardens to the front. Furthermore, there is separation between the properties. These factors combine to reduce the mass and bulk of existing properties and lessen their visual impact on the street scene.

13. In contrast, the appeal proposal would appear as a single block of significant mass and bulk in a shallower plot in close proximity to both Blackbrook Lane and Wellsmoor Gardens. Consequently and notwithstanding the amendments, I consider that the proposal would have a substantial presence on this prominent corner, dominate the street scene and greatly reduce the openness of the area.
14. The previous Inspector raised concerns regarding the removal of trees at the front of the site and the limited potential for replanting due to the proximity of the proposal to the boundary. There is dispute between the parties as to whether the trees on the appeal site are covered by Tree Preservation Order (TPO) No 6 (1958), an area TPO. It is proposed to remove and replace trees T2, T3, T6 and T7 and retain T4 and T8 as shown on drawing number 583/03.
15. A further arboricultural report has been commissioned which states that the revised scheme and the enlarged separation distance between the building and trees resolves the perceived spatial limitation. The report also states that there is adequate space for new tree planting. However, although additional planting would soften the appearance of the development to a degree, there is no guarantee that this vegetation would remain in perpetuity. Even trees covered by a Tree Preservation Order may need to be removed and replacement planting inevitably takes time to establish. Consequently, notwithstanding whether the trees are covered by a TPO, I only place limited weight on the value of vegetation in screening the development during its lifetime.
16. Paragraph 65 of the National Planning Policy Framework (the Framework) states that planning permission for buildings which promote high levels of sustainability should not be refused because of concerns about incompatibility with an existing townscape if those concerns have been mitigated by good design. However, paragraph 56 of the Framework states that good design is a key aspect of sustainable development is indivisible from good planning and should contribute to making places better for people. Furthermore, paragraph 60 of the Framework states that it is proper to reinforce local distinctiveness. The proposal would fail to accord with these aims.
17. I note the representations regarding the sustainability of the location and the comments of the Inspector who examined the Bromley Unitary Development Plan in relation to a site 200m to the south of the appeal site. Nonetheless, for the reasons stated I consider that concerns regarding the incompatibility of the proposal have not been mitigated by good design. The scheme has not, therefore, altered sufficiently to reach a different conclusion to my colleague.
18. I, therefore, conclude that the proposal would be significantly harmful to the character and appearance of the area. The proposal would, therefore, be contrary to saved policies H7, H9 and BE1 of the Unitary Development Plan (2006) which together require that development should be of a high standard of design and layout and should complement the scale, form and layout of adjacent buildings and not detract from the existing street scene and separation spaces.

Living conditions

19. Saved Policy H7 of the UDP requires that adequate private or communal amenity spaces are provided to serve the needs of the particular occupants. The proposed flats have two bedrooms and could, therefore, be occupied by families.
20. Flats one and two have their own private amenity space. Flats 3 and 4 would share a communal garden which would be situated to the front of the development. The proposed garden would be larger than previously proposed and would only serve the occupants of two flats. However, the communal garden would, nevertheless, be situated to the front of a bedroom of flat 2. The appellant considers that suitable screening could be provided together with obscure glazing in order to ensure privacy for future occupants. However, as this would be the only window serving the bedroom it would result in a poor outlook for future occupiers. It would also not address the issue of potential noise and disturbance.
21. In addition, the amenity space would not be private due to its location at the front of the property. This combined with the comings and goings to the bike store and proximity to the parking area would also limit the attractiveness of the amenity space for future occupiers. Consequently, notwithstanding the provision of balconies, I do not consider that the proposal would provide amenity space of an appropriate quality for future occupiers of flats 3 and 4.
22. Furthermore, the bike stores would be located in close proximity to the window of one of the bedrooms of Flat 2 which would reduce the privacy of future occupiers who would also be subject to noise and disturbance as a consequence of the comings and goings associated with the bike stores.
23. For the reasons stated, I conclude that the proposal would provide poor quality living conditions for future occupiers with regards to privacy, noise and disturbance and amenity space. The proposal would, therefore, be contrary to saved Policy H7 of the UDP and paragraph 17 of the Framework which requires a good standard of amenity for future residents.

Other matters

24. Attention is drawn to an appeal decision² in which the Inspector concluded that the Council could not demonstrate a five year supply of housing. However, in November 2016 the Council's Five Year Supply Housing Supply Paper was considered and agreed by the Council's Development Control Committee on 24 November 2016. Consequently, the Council contends that it can now demonstrate a five year housing supply within the Borough. The appellant points out that this position has not yet been tested and also points to the challenge in relation to the emerging Local Plan. 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.
25. As I have no further evidence relating to this issue, I have adopted a precautionary approach and assessed this appeal on the basis that a five year supply has not been demonstrated. Policy BE1 relates to the design of new development and Policy H9 relates to the separation of new residential development from the side boundaries of sites. The policies are not, therefore, policies for the supply of housing and consequently, they are not automatically out

² Appeal reference: APP/G5180/W/16/3144248

of date by virtue of paragraph 49 of the Framework. I can see no conflict of the policies with the Framework and significant weight can, therefore, be attached to them in my Decision.

26. 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 to the character and appearance of the area arising from the proposal which would be contrary to paragraph 56 of the Framework which states that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. I have also identified that the proposal would harm the living conditions of future occupiers which would be contrary to paragraph 17 of the Framework. The proposal would not, therefore, constitute sustainable development as required by paragraph 14 of the Framework. The adverse impact of the proposal would, therefore, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

27. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

Caroline Mulloy

Inspector