

Appeal Decision

Site visit made on 4 January 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 13 February 2017

Appeal Ref: APP/G5180/W/16/3160736

Applegarth, Chislehurst Road, Chislehurst BR7 5LE

- 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 South East Living Group against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/03224/FULL1, dated 5 July 2016, was refused by notice dated 30 August 2016.
 - The development proposed is the demolition of existing property and the erection of a 2 ½ storey building comprising 4 two bedroom apartments with car parking, cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue raised by this appeal is the effect the proposed development would have on the living conditions of occupiers of adjoining residential properties with particular reference to outlook and privacy.

Reasons

3. Applegarth is a large detached bungalow situated within generous grounds which extend to the front and rear, parts of which are well screened by planting. The proposed building would occupy a similar position within the site as the existing one, albeit with parts extending further to the north. It would have accommodation over three floors although the top floor would be contained within a predominantly hipped, pitched roof. As well as inspecting the appeal site, during my visit I was able to view the site and its relationship to surrounding properties from inside Chellows, Sandfield Cottage and flats 5 and 7 Kingsmere. This included their gardens, or in the case of the latter two, their patio and balcony.
 4. The rear aspect and garden of Chellows, a two storey house, currently has a secluded character and feel. This is derived to a considerable degree from the absence of visual intrusion of the built form of, or overlooking from, Applegarth. Only a limited element of the single storey form of Applegarth could be glimpsed from this adjoining property due to its height and in part to existing planting along the boundary. This arrangement makes an important positive contribution to the living conditions of the occupiers of Chellows and the two properties have a sensitive relationship to one another as a result.
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5. The proposed building would be offset sideways from Chellows to a similar degree to that which Applegarth is. At its nearest points the proposed building would be set back farther from the rear of Chellows than Applegarth with the first floor element set back farther still. However, notwithstanding this set back and the planting which exists on both side of the party boundary, the proposed building would be considerably more conspicuous than the existing arrangement.
6. Two windows to the Lounge/Dining/Kitchen room of Flat 3 would enable future occupiers to look out into habitable rooms and the rear garden of Chellows and these views would only be slightly oblique. The projecting ground floor element of the proposed building situated below these windows would only have a very limited effect on reducing the extent to which Chellows and its garden could be overlooked.
7. The existing planting along the boundary would go some way to reducing the extent of overlooking as would proposed planting in this location. However, proposed planting would take some time to become established to the extent that it could prevent overlooking and there is no guarantee that existing planting on either side of the boundary would remain in the long term. The appellant's 'Intervisibility Section' does not lead me to agree that the combined effects of any boundary fence, planting and relationship between the first floor windows and single storey projection would significantly reduce the extent of overlooking which would occur. Appropriate boundary treatments could, however, avoid any such harm arising from the closer ground floor windows in the new building.
8. The separation distance between these windows and the closest windows in Chellows would be at least 25m according to the appellant's dimensions. This is a distance over which the level of intrusiveness experienced within habitable rooms in Chellows would be reduced by a limited amount although areas of the garden would be considerably closer. The appellant considers that this would exceed the distance beyond which privacy levels would be maintained and cites a number of other local authorities' privacy standards of between 18m and 22m. However, the Council in this case has no such minimum distance in its policies or guidance and I cannot give those of other authorities any weight.
9. In any event, taking into account the relative degree of seclusion and privacy the occupiers of Chellows currently enjoy would mean that even with the proposed separation distance their privacy within both the house and garden would be eroded to an unacceptable level. This would harm their living conditions. Whilst the effect of the taller built form would not in itself be so intrusive as to reduce the outlook to an extent that would significantly harm Chellows' occupiers' living conditions, it would nevertheless compound the harm arising from a loss of privacy.
10. I am conscious that only the effect on Chellows was specifically mentioned in the Council's refusal reason and that the Council's committee report and statement consider effects on other adjoining dwellings to be, on balance, acceptable. However, as a result of the difference in levels between the site and level of privacy the occupiers currently enjoy to the rear and in their garden, Sandfield Cottage to the north west also has a particularly sensitive relationship with the appeal site.

11. As a result of its height, the proposed building would be conspicuous from that property. The proposed second floor balcony would enable future occupiers of flat 3 to look directly into the rear windows and garden of Sandfield Cottage. The effects arising from a gable window serving a bedroom in flat 4 on the same floor would be less marked as a result of its set back from the main part of the proposal's rear elevation.
12. However the combination of the relatively lower level of Sandfield Cottage and the elevated position of the balcony would mean that the generous distance separating the two would not sufficiently mitigate overlooking and the perception of being overlooked to a degree that would avoid a loss of privacy. The building's relative prominence would also have an overbearing effect experienced from this neighbouring property. Consequently unacceptable harm to the living conditions of the occupiers of Sandfield Cottage would arise.
13. The fact that this balcony would be inset within the roof slope would not materially reduce the level of harm which would arise, particularly due to the relative orientation of the balcony to the rear of Sandfield Cottage. Similarly, although it would serve a bedroom rather than main living space it cannot be reasonably assumed that its use, particularly in fine weather, would be so infrequent as to avoid any harm.
14. I am mindful that the effect on Sandfield Cottage was not an explicit issue in the appeal¹ which dismissed a previous scheme on the site. However, the Council's committee report mentions that balconies had been re-introduced to the rear of the proposal, amongst other changes, and the current scheme is materially different in a number of respects to that previous one. However I am also conscious that in an appeal previous to that², again considering a materially different scheme albeit one with balconies to the rear at second floor level, the Inspector in that case found that the living conditions of the occupants of Sandfield Cottage would be harmed by way of loss of privacy and harm to their outlook.
15. The proposal would therefore materially harm the living conditions of occupiers of Chellows and Sandfield Cottage. It would conflict with UDP³ Policies BE1 and HE7 which require that development recognises and complements qualities of the surrounding areas and that the amenity of occupiers of neighbouring buildings is respected and not harmed by inadequate privacy, amongst other criteria. This approach accords with the National Planning Policy Framework's (the Framework) core planning principle of always seeking to secure a good standard of amenity for all existing occupants of land and buildings.
16. The proposal would result in a larger building being adjacent to the nearest flats in Kingsmere. Its height, mass and elevated relationship to that building would have a limited effect on light reaching, and outlook from, windows in the flank elevation of flats nearest the boundary, particularly at ground floor. However these windows are either secondary to main rooms served by larger windows in the front and rear or serve non-habitable rooms.
17. The proposal would be noticeable from living room windows and outside from the patio or, on upper floors balconies, in those flats. Nevertheless, it would

¹ APP/G1580/W/15/3136787.

² APP/G5180/W/14/3000122.

³ London Borough of Bromley Unitary Development Plan, 2006 (UDP).

not appear overly intrusive in the outlook from those views as a result of its relative situation. Consequently the proposal would not harm the living conditions of occupiers of Kingsmere in respect of these, and other, aspects.

Other Matters

18. I am conscious that the appellant has made considerable efforts to design a scheme which would reduce the harmful effects of those schemes previously dismissed on appeal. This is in particular with the location, form and scale of that part of the new building which would be closest to Chellows, and that this led to a positive recommendation by Council officers. However, this has not led me to the view that the appeal proposal before me, considered on its own merits, would avoid the harm I have identified above.
19. The scheme would have the result of delivering a net increase of three dwellings and the associated economic and social benefits this would achieve. However, even considering the Framework's aim to boost significantly the supply of housing these benefits would be limited. The appellant considers these benefits would be heightened as they consider that the Council cannot demonstrate a five-year supply of deliverable housing sites. However the Council disagree with this view and refer to their report of November 2016 which concludes that such a supply exists.
20. However, even if I were to conclude that there is a shortfall in the five-year supply of the scale suggested by the appellant and that relevant policies for the supply of housing (which could include UDP Policy H7) should not be considered up-to-date as a result, the adverse impacts of granting permission on neighbours' living conditions would significantly and demonstrably outweigh the benefits of doing so.

Conclusion

21. For the above reasons, and having had regard to all other matters raised, the proposal would harm the living conditions of occupiers of adjoining residential properties, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR