
Appeal Decisions

Site visit made on 12 September 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2018

Appeal A - Ref: APP/G5180/W/17/3192254

Flat 39, Blyth Wood Park, 20 Blyth Road, Bromley, BR1 3TN

- The appeal is made under s78 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant planning permission.
- The appeal is made by Mr R Pooke [hereafter "the appellant"] against the decision of the Council of the London Borough of Bromley [hereafter "the Council"].
- The application no: DC/17/03032/FULL1, dated 29 June 2017, was refused by notice dated 13 December 2017.
- The development proposed is described as: Change of use of ground and first floor from sports hall (Use Class D2) to residential (C3) incorporating the existing residential unit in the roofspace to form a single 4 bedroom dwelling, new vehicular access onto Bracken Hill Lane and associated replacement fencing (part retrospective) – revised application following application ref: 14/03400/FULL1 and subsequent planning appeal.

Appeal B - Ref: APP/G5180/C/17/3178933

Land at Flat 39, Blyth Wood Park, 20 Blyth Road, Bromley, BR1 3TN

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Robert Pooke [hereafter "the appellant"] against an enforcement notice issued by the Council of the London Borough of Bromley [hereafter "the Council"].
- The notice ref. EN/14/00163/OPDEV was issued on 4th May 2017.
- The breach of planning control as alleged in the notice is: Without planning permission:
 1. the erection of a wooden fence of a height more than 2 metres from ground level as measured from Bracken Hill Lane, the wooden fence is constructed on an existing brick wall and its position is shown by a blue line on the attached plan B; and
 2. the carrying out of excavation works to reduce the existing ground level, the construction of an enclosure made from breeze or similar blocks and brick edging, the deposit of hard core so as to form a hard surface and the removal of a section of an existing boundary wall so as to form a vehicular access point onto Bracken Hill Lane: the position of the access is shown outlined in green on the attached plan B and the hard surface is located to the rear.
- The requirements of the notice are:
 1. Reduce the height of the wooden fence described in paragraph 3 so no part of the fence is above 2 metres from ground level as measured from Bracken Hill Lane; and
 2. Remove from the Land the brick and blockwork enclosure and the hard core hard surface described in paragraph 3, reinstate the ground levels to those in existence before the unauthorised works and reinstate a brick wall at boundary of the land with Bracken Hill Lane to similar dimensions to that part of the wall in existence before the unauthorised works.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in s174(2)(a), (f) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Decisions

Appeal A - Ref: APP/G5180/W/17/3192254

1. The appeal is allowed and planning permission is granted for the change of use of ground and first floor from sports hall (Use Class D2) to residential (C3) incorporating the existing residential unit in the roofspace to form a single 4 bedroom dwelling, new vehicular access onto Bracken Hill Lane and associated replacement fencing (part retrospective) at Flat 39, Blyth Wood Park, 20 Blyth Road, Bromley, BR1 3TN in accordance with the terms of the application, Ref: DC/17/03032/FULL1, dated 29 June 2017, and the plans submitted with it, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Appeal B - Ref: APP/G5180/C/17/3178933

2. It is directed that the enforcement notice be corrected in paragraph 3 by:
 - (i) Insertion of "approximate" before "position" in the first sub paragraph; and
 - (ii) Insertion of "approximate" before "position" in the second sub paragraph.

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Preliminary matters – Appeals A and B

3. The Blyth Wood Park development (which originally included the appeal site) was subject to a planning condition (amongst others) that there should be no vehicular access to Bracken Hill Lane. The condition was imposed for the purpose of preventing use of Bracken Hill Lane, which was seen as "substandard", by additional traffic generated by the development.
4. The appeal building was first used as a leisure and sports facility in association with the Blyth Wood Park development accessed from within the site via Blyth Road. Planning permission was later granted for use of the upper floor as a flat and was subject to a condition that two parking spaces within the development should be kept available for the occupants of the flat.
5. As far as I am aware neither of these conditions have been the subject of enforcement action by the Council specifically.
6. The leisure and sports facility fell into disuse and the building (apart from the upper floor flat) became redundant. The appellant purchased the building and land in 2014 and surrendered the rights for the use of the parking spaces. I understand that the management company is seeking to enforce covenants that require the severance of the property from the Blyth Wood Park site.
7. In all these circumstances I cannot see that there is any realistic prospect of continued use of a parking facility at Blyth Wood Park. There is no valid fall back position in respect of parking as far as I am aware. I shall, therefore, decide these appeals on their individual merits and from the starting point that the property, at the moment, has no authorised parking facility.
8. The Council suggests that the property is being used as three flats. However, the application that is before me is for a change of use to a single dwelling and

the enforcement notice concerns only the access, parking area and fencing not the use of the building. Additionally, I cannot see that the proposed floor layout plans¹ would be incompatible with use as a single dwelling. Irrespective of how the Council thinks the property is presently used I shall determine these appeals on the basis that the application is for a single 4 bedroom dwelling. The suspected use as three flats must remain a matter for the Council and the appellant in the first instance.

9. There is a previous appeal decision dated 15 March 2016 which followed an earlier refusal of planning permission for change of use to form a 4 bedroom dwelling and including the formation of a parking area and access². That earlier proposal was different in some respects from the proposal that is before me in this current appeal. I shall deal with the current proposal on its own merits. Nonetheless, the findings of the previous Inspector are material considerations for this appeal.
10. It is suggested that trees on the site have been removed. There is photographic evidence that gives some support to this assertion. Part of the site is covered by a Tree Preservation Order [hereafter "TPO"] that was made in 1986. The TPO has the effect of protecting trees that existed at the time the TPO was made, within the area identified on the TPO plan.
11. However, the removal of unprotected trees and foliage cannot be regarded as unauthorised. The Council's Tree Officer has been consulted on a number of occasions but has not said that trees covered by the TPO have been unlawfully removed. Whilst expressing concerns about the loss of trees and foliage which it attributes to the development, the Council says it remains unclear as to whether any TPO trees have been felled and, as far as I am aware, no further action has been taken in respect of the matter. In all these circumstances I share the view of the previous Inspector that the assessment of effect upon the character and appearance of the area must be taken in the current circumstances rather than any historic situation. There is simply insufficient evidence before me to indicate that a different baseline should apply.
12. In July 2018 Government published the revised National Planning Policy Framework [hereafter "the Framework"]. The parties have been given an opportunity to comment. I have taken into account the comments received.

Planning policies – Appeal A and Appeal B ground (a) and the deemed application

13. I have been referred to a number of development plan policies. Those I consider most important for the determination of these appeals, and which are referred to the enforcement notice and reasons for refusal, are saved policies BE1 and T18 of the Bromley Unitary Development Plan. Taken together these policies seek to achieve development of a high standard and good layout, that respects the amenities of neighbouring residents and future occupiers and that does not adversely affect road safety.

¹ The appellant provided updated floor layout plans with his final comments. The Council has been given an opportunity to comment on these revised plans which are the plans upon which I shall base my decision.

² The access was wider than that now being proposed and swept to the south east, providing a parking area further into the site. It was proposed to use a no-dig Cellwood Tree Root Protection System to minimise damage to roots.

14. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise³.
15. Whilst pre-dating the Framework these policies are in general conformity with it and therefore carry substantial weight.
16. Reference has been made to draft policies found in the emerging Local Plan. However, I do not know the extent to which there are unresolved objections to the emerging plan and, therefore, I attribute little weight to these draft policies.

Main issues - Appeal A and Appeal B ground (a) and the deemed application

17. When taking into account the planning policies, the submissions made by all parties and the Council's reasons for refusing permission and taking enforcement action I consider the main issues for both appeals to be the effect of the development upon:
 - (i) Highway safety;
 - (ii) The character and appearance of the area; and
 - (iii) Living conditions of neighbours with particular regard to noise and privacy.

Appeal A – Reasons

18. The application (the subject of this appeal) has three elements – the change of use of the building to a dwelling, the access and parking area and the replacement fencing.
19. In respect of the change of use to a dwelling the Council's policies are permissive towards the conversion of redundant buildings to residential use. The Council raises no objection to the change of use in principle. I can see no reason, in principle, why permission should not be granted for this element.
20. Regarding the replacement fencing, much of the frontage along Bracken Hill Lane to its east side is characterised by similar fencing positioned above a small brick wall and to a similar height. The fencing accords with the existing character and appearance of the area. I can see no reason to withhold permission for the fencing.
21. I shall now go on to consider in detail the three main issues I have identified with particular regard to the access and parking area.

Highway safety

22. Bracken Hill Lane is a cul-de-sac fronted by a number of residential properties. For much of its length, including where it abuts the appeal site, it has no footpath to its eastern side. It is subject to a no-parking restriction for one hour a day (weekdays) to deter commuter parking.
23. Following the previous Inspector's decision a radar speed survey was undertaken. I am told that the equipment was placed on posts erected within the site providing a clear view of approaching vehicles in both directions and that the survey was undertaken in consultation with the Council's Highways Officer. On the findings of the survey the appellant's Highways consultant and

³ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

the Council's Highways Officer agreed that 2.0 x 15.6 metres visibility splays in both directions would be acceptable. The appeal proposal includes provision for these sightlines.

24. It has been shown, additionally, that the geometry of the parking area is such that a car could turn round in the presence of another car and leave the site in a forward gear.
25. Neighbouring residents say that vehicles travel at higher speeds than those recorded and other concerns have been raised about the validity of the survey. However, as far as I am aware no further survey work has been undertaken. The Council has argued its case from the position of the perceived intensive use of the property and its suspicion of use as three flats. It has brought no further technical evidence to support its assertion that the proposed access lacks adequate sightlines⁴.
26. It is not for me, in this appeal, to consider the implications of a use as three flats. The matter before me is a proposal for a 4 bedroom dwelling. Whilst I have regard to the neighbours' concerns, the appellant continues to hold the view that the survey was correctly undertaken and it was agreed to by the Council's Highways Officers at the time. In the absence of any contrary evidence from the Council I am satisfied by the technical evidence and its findings in respect of the visibility splays and their adequacy for a single dwelling.
27. The visibility splays would be formed by the removal of fence panels to either side of the access. The splays largely fall within the parking area where levels have already been reduced. There is a small triangular area of land within the root protection area of tree T1 where some further shallow excavation may be needed to reduce the land to 1.0m height. However, there is no objection from the Council's Tree Officer. The matter can be covered by a planning condition requiring a method statement for these works.
28. Concerns have been raised about the possibility of the visibility splays being obstructed by on-street parking. I acknowledge that there will be times when on-street parking may occur. Extra care would be needed when exiting on those occasions. However such situations are not unusual and the appellant can only reasonably be expected to protect the splays to the extent of the land which he owns or controls. When taking into account the numbers of vehicles using Bracken Hill Lane, traffic speeds and traffic conditions generally this is not an issue which changes my view on the acceptability of the access and proposed splays.
29. With regard to the planning condition that restricts vehicular access to Bracken Hill Lane, this was imposed in the context of a large residential development (the Blyth Wood Park development) with leisure complex which took its main access from Blyth Road. The circumstances now are significantly different, the proposed access being to a single dwelling with the appeal site being severed from Blyth Wood Park. The existence of this condition does not alter my conclusion on the acceptability of the appeal development.

⁴ The third reason for refusal is that the proposal would lack adequate sightlines which would therefore prejudice road safety conditions along Bracken Hill Lane.

30. In all these circumstances I find that the development would not lack adequate sightlines and would provide for satisfactory road safety conditions. There would be no conflict with policy T18.

Character and appearance

31. The area is essentially of residential character and appearance with properties fronting Bracken Hill Lane (mainly to its west side) having frontage parking. Its east side, for a considerable stretch, is bounded by a brick wall with fencing above which runs the length of the Blyth Wood Park development and behind which the appeal property and its land is positioned. Apart from the appeal access the wall/fence is unpunctuated and is a distinctive feature in the street scene.
32. I acknowledge that the formation of the access, involving the loss of a section of wall giving views towards a parking area may be perceived as adverse. The parking area will be further exposed by the removal of fencing panels to either side of the access to form the visibility splays. However, this has to be weighed against the reasonable expectation that a dwelling should have a parking facility, that frontage parking is characteristic in the area and that, for its most part, the wall will be retained.
33. The works to form the parking area, in part, have already been carried out. These works have involved excavations and the removal of soil within what is shown to be the root protection areas of protected trees. However, the Council's Tree Officer has not recommended any remedial works as such, only that further tree protection measures should be secured through planning conditions for the duration of the works. There is no evidence to suggest that the health of the trees has been put at risk by the appeal development.
34. Whilst introducing a significant amount of hard surfacing the area would not be disproportionate to the large size of the site.
35. There is no doubt, over recent years, that there has been a loss of foliage and verdant character along the frontage. Previously views from the street and neighbouring properties were of trees and foliage whereas now much more of the Blyth Wood Park development, and the appeal property, is exposed. However, there is no clear evidence that this change in character is directly attributable to the appeal development and my decision will be based on the current circumstances rather than the historic situation.
36. In all these circumstances I find that the changes to the character and appearance of the area resulting from this development do not give rise to unreasonably harmful effects. On balance I find no conflict with policy BE1.

Living conditions

37. Whilst the proposal does not add to the number of residential units on the site (there being a flat on the upper floor to start with) I acknowledge that there is potential for more people to live in the enlarged accommodation. The comings and goings of vehicles and general activity associated with the dwelling and parking area may be discernible to some neighbouring residents. However, the site is within a fairly high density residential area where there is already a degree ambient noise and activity associated with every day living. In my view access and parking to a single dwelling would not add to the amount of noise

and disturbance in the area to any material extent. No new windows are proposed that would add to the degree of overlooking and there is a reasonable distance between the appeal building and the surrounding dwellings.

38. In all these circumstances I do not find that the development would unacceptably affect living conditions of neighbours. On this matter also I find no conflict with policy BE1.

Conditions

39. A number of conditions have been suggested by the Council. The appellant raises no objection in principle to these conditions which I shall now go on to consider.
40. A condition for the commencement of development within 3 years is unnecessary. The application, in part, is retrospective. Development has already begun.
41. In the interests of certainty I shall impose a condition requiring that the development is carried out in accordance with the approved block plan and floor layout plan. In the case of the floor layout plan I shall refer to that submitted with the appellant's final comments which shows the most recent proposals for the internal arrangements.
42. I shall impose a condition to require details for the drainage and surfacing of the parking area, and its completion in accordance with the approved details; and to require that the area is then kept free from impediment to its intended use thereafter. This condition is necessary to ensure the safe and efficient use of the parking area and to ensure the area is adequately drained using sustainable methods to prevent water run-off into the highway. I shall require completion of these works prior to the bringing into use of the parking area.
43. A condition requiring the provision of visibility splays is also needed in the interests of highway safety.
44. To protect the existing trees during further construction works, I shall impose a condition requiring the submission and approval of a method statement before any further works are undertaken. A condition to prevent storage under the spread of the trees is also needed.
45. I have amended the suggested wording in some of the above conditions for clarity and to ensure compliance with national policy and guidance. There are no other conditions suggested and none that I consider necessary.

Conclusion

46. The development can be made acceptable by the imposition of conditions. For the reasons given above I conclude that the appeal should be allowed.

Appeal B – Reasons

Matter concerning the notice

47. Plan B which accompanies the notice does not accurately show the works, albeit that not all of the works had been undertaken at the time the notice was issued. In particular, the access is located a little further to the north than shown on Plan B and, thus, the stretch of fencing also is not quite in the right

position on the plan. The Council says that it intended the plan to be for identification purposes only.

48. As, in any event, there is only one access this inaccuracy does not lead to a confusing notice. I am satisfied that the notice is sufficiently clear for a recipient to understand what is being alleged and what must be done to rectify matters and is, therefore, capable of correction. I shall therefore correct the notice in paragraph 3, under the available powers of s176(1)(a) of the Act, by clarifying that the positions of the fence and access are "approximate". No injustice will be caused to either party in me so doing.

The appeal on ground (a) and the deemed application

49. Some of the works covered by the enforcement notice (the fence in part and parking area for example) will now be authorised by the permission I intend to grant under Appeal A. The notice shall cease to have effect so far as inconsistent with that permission⁵.
50. However, the permission under Appeal A will not provide for the access in its present position. Also, it cannot be assumed that the Appeal A permission will be fully implemented. In these respects the notice continues to serve a useful purpose. It is, therefore, still necessary for me to consider the appeal on its various grounds insofar as it relates to the access.

Highway safety

51. In respect of the access in its present position, no sight lines have been demonstrated. There is no pavement to the front of the access (just a narrow kerbed strip) and a tall boundary wall/fence to either side along the site boundary. On exiting the site the bonnet of a car would need to enter the carriageway before the driver could see whether anything was coming. I take into account that the road is a cul de sac, and that the evidence does not suggest there are large volumes of traffic or that traffic travels at speed. Nonetheless this does not justify an access with no sight lines at all.
52. I therefore conclude that the access in its present position, and without sight lines, is harmful to highway safety and contrary to policy T18.

Character and appearance

53. The access does not, in itself, result in the loss of trees. I cannot see that an access at this point would have any greater impact upon the character and appearance of the area than that I intend to grant permission for under Appeal A. I find no unreasonable effects upon the character and appearance of the area and no offence to policy BE1.

Living conditions

54. The access would have no greater effect upon the living conditions of neighbours than that I intend to grant permission for under Appeal A. I find no unreasonable effects upon living conditions and no offence to policy BE1.

Conclusions on ground (a) and the deemed application

⁵ S180 of the Act states that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with the permission.

55. In respect of the character and appearance of the area and the living conditions of neighbours I find no unacceptable harm. However, I find the access in its present position and without visibility splays to be harmful to the interests of highway safety and contrary to policy T18. There are no material considerations that indicate a decision other than in accordance with the development plan. The appeal on ground (a) fails and the deemed application shall be refused.

The appeal on ground (f)

56. The fence, except the panels falling within the proposed visibility splays, will be authorised by the planning permission as will the parking area. The requirements of the notice, insofar as they relate to these matters, cease to have effect.

57. In respect of the access, the notice requires its closure by the reinstatement of the brick boundary wall. No lesser steps have been suggested specifically and neither is there any obvious alternative that I can identify.

58. It would not be possible for me to vary the notice by substituting the Appeal A plan as this shows a different access. Ground (f) concerns what is necessary to remedy "the breach" or the harm caused by "the breach". "The breach" is the access and associated works that existed at the time of the issuing of the notice. A proposal for a different access would be outside of the scope of ground (f). The appellant is, of course, entitled to implement those works in any event by virtue of the planning permission to be granted.

59. The appeal on ground (f) fails.

The appeal on ground (g)

60. It is argued that the time period is too short to complete the extent of works required. However, planning permission is to be granted for much of the development. The required works, essentially, comprise the closing of the access by the re-instatement of the wall.

61. Whilst a longer time period would, no doubt, be helpful to the appellant I must also consider the interests of securing a timely remedy to the harm that has been identified. I consider, in all these circumstances, that a period of two months as specified in the notice is a reasonable and proportionate timescale.

62. The appeal on ground (g) fails.

Conclusion

63. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector

Appeal A - Ref: APP/G5180/W/17/3192254

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

2445-15-PL101, Rev P5
BRO/14041A/P Rev B
2. The parking area hereby permitted shall not be brought into use until:
 - (i) Details for the drainage and surfacing of the area have been submitted to and approved in writing by the Local Planning Authority;
 - (ii) The drainage and surfacing of the parking area has been carried out in accordance with the approved details; and
 - (iii) The parking area has been completed in accordance with the approved details.

Thereafter the parking area shall be kept available for use at all times for the parking and turning of vehicles free from any impediment to its designated purpose.
3. The parking area hereby permitted shall not be brought into use until visibility splays to both sides of the access have been provided in accordance with the details shown on the approved plan 2445-15-PL101, Rev P5. Thereafter the visibility splays shall be permanently retained and kept free from obstruction(s) above 1.0m in height relative to carriageway level.
4. No building materials, equipment, vehicles, plant, oil or other petroleum products shall be stored or allowed to stand within the branch spread of the trees to be retained on site, with the exception of the hard surfaced parking area.
5. No further development, site clearances or excavation works shall be undertaken, and no equipment, plant, machinery or materials for the purpose of the development shall be taken onto the site, until an arboricultural method statement detailing the measures to be taken to complete the development and protect trees has been submitted to and approved in writing by the Local Planning Authority. The statement shall include details of:
 - (i) The root protection areas for the trees;
 - (ii) Type and siting of any protective fencing, and maintenance of any protective fencing for the duration of the project;
 - (iv) Methods of any further site clearance;
 - (v) Depth, extent and means of any further excavation and details of method of construction for new surfacing within the protected zone;
 - (vi) The nature and installation of any new surfacing within the protected zone; and
 - (vii) Methods for any necessary watering of the trees during the course of the project.

The development works shall thereafter be carried out in accordance with the approved method statement which shall remain effective until the development is complete and all plant, materials, machinery and equipment required for the development have been removed from the site.