



Appeal Decision

Site visit made on 23 July 2019

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th August 2019

Appeal Ref: APP/G5180/W/19/3225411

Robins Court, 77 Bromley Road, Beckenham BR3 5PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Robert Turner (Turnbull Land) against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/03861/OUT, dated 23 August 2018, was refused by notice dated 8 February 2019.
 - The development proposed is described as the "demolition of two existing apartment buildings and construction of two new apartment blocks comprising: 3 x 1 bed and 20 x 2 bed apartments, with associated access and parking".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with only access for consideration. Matters relating to layout, appearance, landscaping and scale are reserved for future determination. The appellant has provided an indicative layout and elevations that I have treated as illustrative for the purposes of this appeal.
3. The appellant has provided additional plans which they state offers an alternative layout for the site and children's play area as well as increasing the amenity area for each apartment. I have considered these drawings under the principles established by the Courts in *Wheatcroft*¹ and I am satisfied that the drawings do not change the development to such a degree that to consider them would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal on the basis of the drawings submitted with the application and the additional drawings.
4. The Council's decision notice refers to policies from the draft London Plan. However, as this plan has yet to be publicly examined, I only afford it limited weight.

Main Issues

5. The main issues are:
 - the effect of the development on the character and appearance of the area and the living conditions of future occupiers with particular regard to outlook and natural light.

¹ *Bernard Wheatcroft Ltd v SSE & Harborough DC* [1982] P&CR 233

- whether the development would result in an over-concentration of two bedroom units;
- the effect of the development on trees,
- the effect of the development on highway safety and parking; and
- whether the development would achieve at least a 35% carbon reduction on site.

Reasons

Character and Appearance

6. The site contains two existing apartment buildings that benefit from large curtilages that extend to rear of the properties. The appeal site lies within a largely residential area that contains a variety in style and size of dwellings. The area has a pleasant open, spacious and verdant suburban character that is reinforced by the presence of mature landscaping about and between dwellings. Properties in the area tend to benefit from large gardens, which on the whole, are undeveloped which adds to the open character of the area.
7. The proposal seeks to demolish the existing buildings and replace them with a further two buildings of apartments. The illustrative plans detail a four storey building to the front of the site (Block A), which would contain 19 flats. This building would have an access through it to parking areas to the rear and a further two storey building (Block B) that would contain four additional apartments.
8. Notwithstanding that layout, scale and external appearance are reserved matters, whatever its final form, it is clear that to accommodate the proposed apartments, an in-depth development would need to occur at the site. In addition, while I accept that the frontage building seeks to complement other large developments in the vicinity, such as Robins Court and Bromley Park Nursing Home, developing the site at such a density would nonetheless represent a very large building with a massing that would dominate the site and given the lack of spacing about the building, would give the development a somewhat constrained appearance. This would result in a visual intrusion into the street scene which would be out of keeping with the prevailing, more spacious character of the area.
9. In addition, the proposal to develop the land to the rear of the site would be significantly at odds with the characteristic form of frontage development that prevails in the area. This would fail to reflect or respect the grain of the area and would appear as a backland form of development, quite out of keeping with its established character. The harm that I have identified would be visible through any access into the site and from those properties that surround it. Moreover, I am not persuaded that the existing site represents a discordant element in the street scene as a result of the development of Albany House to the west of the appeal site. Although Albany House has parking areas to the rear of the building, which includes garaging, this is not directly comparable to a two storey apartment block as proposed.
10. Furthermore, the appeal site makes a positive contribution towards the pleasant and verdant character of the area and although illustrative, the layout leaves little meaningful room for additional landscaping at the site. In addition, while I accept that the trees and shrubs in the rear garden are not outstanding specimens, some are nonetheless identified by the appellant's Arboricultural Impact Assessment²

² Canopy Consultancy Tree Survey Report August 2018

(AIA) as good specimens which add to the overall quality of the area. The loss of so many trees to facilitate the development would further erode the pleasant suburban quality of the area.

11. The Council has also raised a number of issues relating to the standard of accommodation and refers to Standard 31 of the London Plan 2016 (LP), which requires a minimum floor to ceiling height of 2.5m for 75% of the development. This is supported by the nationally described space standards³ which seek the same level of accommodation. While the Council is satisfied that Block A would comply with this minimum space standard, as there are no elevational details of Block B, it cannot be certain that this part of the development would also comply with the standard. Moreover, the development fails to provide adequate private amenity space as a result of inadequate sized balconies and the children's play area being placed adjacent to the car park also demonstrates that the site is being overdeveloped. Further concerns are also raised regarding the location of the access to Block B and to the outlook afforded to some of the proposed apartments that would either be single aspect or that their outlook and light would be compromised as a result of the layout adjacent to fences, trees and neighbouring land.
12. I note that the appellant has provided revised plans that include elevational details of Block B, revised amenity spaces for each apartment and repositioning the children's play area within the site. Moreover, the revised plans alter the layout of Block B so that the outlook from apartments no longer overlook the adjoining development. As layout and scale of the development are reserved matters, it is clear that the appellant would not be tied to the illustrative plans and an alternative way of developing the site may be possible, which could overcome the Council's concerns regarding the quality of the accommodation proposed. Nevertheless, this does not overcome the harm to the character and appearance of the area that I have identified above.
13. Thus, the development would result in material harm to the character and appearance of the area. It would be in conflict with Policy 7.4 of the LP and Policies 3, 4 and 37 of the London Borough of Bromley Local Plan 2019 (the BLP) which seek, amongst other things, to ensure that developments positively contribute towards the existing street scene, and that there is no unacceptable impact on the character, appearance and context of an area.

Over-concentration of Two Bed Units

14. The development proposes 20, two bed units as part of the scheme which would result in an additional increase of 13 two bed units taking into account the existing development. The appellant argues that there is no requirement to justify its choice of units and that, as a small scale development it should be considered in the context of the prevailing housing mix in the locality. The Council argue that the development would result in an over-concentration of this type of accommodation in the area which in turn would fail to provide a more balanced mix of tenure.
15. While I accept that the appellant has the right to seek planning permission for the type of development that it sees fit for a site, this nonetheless does not remove the need to comply with adopted development plan policies. In this instance, the erection of 23 apartments, of which 20 would be two bed units, would not offer a mix of housing types and size as envisaged by Policy 3.8 of the LP. Moreover, notwithstanding that detached and semi-detached properties exist in the area, I have no substantive evidence before me to conclude that the type of

³ Technical Housing Standards – nationally described space standard March 2015

accommodation proposed has taken into account the housing requirements of different groups, as required by Policy 3.8 of the LP and the National Planning Policy Framework (the Framework).

16. Thus, the development would be in conflict with Policies 3.8 and 3.9 of the LP which seek, amongst other things, to that there is a genuine choice of homes and that developments offer a range of housing choices in terms of the mix of housing types and size and to promoter mixed and balanced communities.

Trees

The site contains a number of trees, some of which are protected by a Tree Preservation Order⁴ (TPO), Trees fronting onto Bromley Road are also the subject of a TPO⁵ and are unaffected by the development, save for T34 which has been diagnosed as having severe die back as a result of bacterial cancer and as such, would be removed as a result of good practice. The appellant undertook a tree survey which includes an AIA in support of the planning application. This identified a number of trees and hedges to be removed to facilitate the development and the proposed access, none of which are covered by a TPO.

17. The Council highlight the proximity of the development in relation to trees T17 and T22 which would be required to have their crowns lifted to enable the development to take place. The illustrative layout originally showed T17 and T22 close to the rear boundary of the apartment block proposed to the rear of the site. However, as layout is a reserved matter, the appellant provided an alternative which repositioned the apartment block away from T22, although it would remain very close to T17.
18. Notwithstanding that T17 and T22 are to the north of the site, and that layout is a reserved matter, in both scenarios provided by the appellant it depicts the trees very close to Block B which may affect their longevity. I have carefully considered the appellant's argument that safeguards could be employed to ensure the protection of these trees, which could be secured by a suitably worded condition. However, In such circumstances I am inclined to adopt a precautionary approach and on the basis of the information before me, I cannot be satisfied that the wellbeing of trees that are the subject of a preservation order would not be harmed as a result of the development.
19. Thus, the development would be in conflict with Policy 7.19 of the LP and Policy 73 of the BLP which seek, amongst other things, to ensure that developments take particular account of existing trees on the site which, in the interest of visual amenity, are considered desirable to be retained.

Parking

20. The Council argue that as the appellant has failed to provide a transport statement, it has not demonstrated the impact of the development on the transport network and that the adequacy of parking provision cannot be fully assessed. The appellant provided a transport statement⁶ which concluded that 21 parking spaces would be provided on the site. The Council consider this to be inadequate and require 23 spaces to be provided.
21. The site has a Public Transport Accessibility Level rating of 3 and in such circumstances, Policy 30 of the BLP requires a minimum of 0.7 and a maximum of 1 parking space for 1 and 2 bed units. The Council confirm that for a development

⁴ Trees T17 and T22 are subject of TPO 716/91

⁵ TPO 1678/00

⁶ Sarnlea Consulting Engineers dated February 2019

of 23 units it would equate to between 16 and 23 spaces. Furthermore, Table 6.2 of the LP sets out its maximum parking standards and requires for 1 and 2 bed units, less than 1 per space per unit. Thus, in this instance, the provision of 21 or 22 spaces would comply with both the BLP and the LP. Moreover, as layout is a reserved matter, the final level of parking could be agreed at a later stage. Furthermore, notwithstanding the level of car ownership in the Borough, there are realistic opportunities to access alternative modes of transport in the area.

22. In addition, the appellant's transport statement also concludes that the level of traffic generated by the development would be immaterial in terms of highway safety. While it may be preferable to upgrade the access road that serves the site which is in a poor state of repair, I note that the Council's highway response did not raise any objection to the development on highway safety grounds and from my own observations, I have no reason to disagree.
23. Thus, the development would not be in conflict with Policies 30 and 32 of the BLP and Policy 6.13 of the LP which seek, amongst other things, to ensure that adequate parking is provided for a development and that road safety is not significantly affected.

Carbon Reduction

24. The appellant has provided an energy statement⁷ which concludes that carbon reduction can be achieved through the installation of photovoltaic panels on the roof of the proposed development. While the Council accept this method of reducing carbon, it would not meet the 35% reduction required and additional contributions would be required, which the Council state is insufficient.
25. The supporting text to policy 124 of the BLP states at paragraph 7.0.72 that the Council will set a price at which the carbon shortfall will be calculated. This would be published through a Supplementary Planning Document and in the absence of that document, I cannot confirm which level of contribution would satisfy the shortfall. Thus, as the Council have failed to demonstrate substantively that the proposed contribution is not the correct amount, I find that the appellant's calculations as set out in the energy statement sufficient in this regard.
26. Thus, the development would not be in conflict with policy 124 of the BLP and Policies 5.2 and 5.3 of the LP which seek, amongst other things, to minimise carbon dioxide emissions from developments.

Other Matters

27. The appellant has provided planning obligations by way of a unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990. The obligation seeks to provide a carbon off-setting contribution in accordance with Policy 5.2 of the LP, Policy 124 of the BLP and the London Borough of Bromley Planning Obligations Supplementary Planning Document 2010 (the SPD). In addition, the UU also secures contributions towards education and health in accordance with Policy 125 of the BLP and the SPD. However, the contributions for infrastructure provision would only be necessary to make the development acceptable in planning terms and thus, this aspect of the UU is a neutral factor in the case rather than a benefit.
28. The Council also consider that the development should provide affordable housing as part of the development in accordance with Policies 3.9, 3.10 and 3.13 of the LP, Policy 2 of the BLP and the SPD. The appellant has submitted a viability

⁷ Energy Statement AJ Energy Consultants Limited dated February 2019

assessment⁸ which concludes that the development would be unviable if it provided the affordable housing required by the Council. Moreover, the appellant argues that as the Council has not put forward a challenge to the assessment, there is no requirement for me to take a different view, which is supported by an appeal decision at Oaklands Road⁹. Nevertheless, given that I am dismissing the appeal on the substantive issues, I need not consider this matter in any further detail.

29. I also acknowledge the various developments that the appellant refers to in support of the appeal, including the decision at 135/137 Albermarle Road¹⁰. However, this decision and the remaining sites referred to were all made before the Framework was published and before the current BLP was adopted. Thus, although they were considered on their individual merits, they were also considered against a different policy context.
30. I accept the Framework states that small and medium sites can make an important contribution towards meeting housing needs and that in seeking to make better use of land appropriate densities should be achieved by adopting a flexible approach relating to daylight and sunlight. Nevertheless, this does not remove a developments requirement to be acceptable in other respects.

Planning Balance

31. The appellant argues that the Council cannot demonstrate a five year supply of deliverable housing sites. As such, the tilted balance at paragraph 11 of the Framework is engaged and the policies which are the most important for determining the appeal are out-of-date. I recognise that the proposal would boost the supply of housing in the Borough which would result in support for the local economy both during the construction and when the development is occupied. As such, the proposal would have both social and economic benefits which weigh in favour of the development.
32. Nevertheless, I have found that the proposal would be contrary to the Development Plan for the reasons as set out above. Thus, even if I were to conclude that there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the harm I have found is serious and this significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development as envisaged by the Framework does not apply in this case. There are no other material considerations that indicate a decision other than in accordance with the Development Plan.

Conclusion

33. Thus, for the reasons given above, and having regard to the Development Plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR

⁸ Financial Viability update dated March 2019

⁹ APP/G5180/W/15/3135138 dated 3 March 2016

¹⁰ APP/G5180/A/10/2124706 dated 25 August 2010