
Appeal Decision

Site visit made on 13 August 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2019

Appeal Ref: APP/D5120/W/19/3229506

Land to the rear of 3-9 Filston Road, Filston Road, Erith DA8 1QA

- 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 Mr Kang on behalf of Sea View CT6 Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 18/03069/FULL, dated 29 November 2018, was refused by notice dated 27 February 2019.
 - The development proposed is the erection of one 3 storey block of 4 residential apartments comprising 2 x 1 bed and 2 x 2 bed apartments with provision of bin and cycle storage and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of six redundant garages and the erection of one 3 storey block of 4 residential apartments comprising 2 x 1 bed and 2 x 2 bed apartments with provision of bin and cycle storage and associated works at land to the rear of 3-9 Filston Road, Erith DA8 1QA in accordance with the terms of the application, Ref 18/03069/FULL, dated 29 November 2018, subject to the conditions in the attached schedule.

Procedural Matters

2. I have taken the description of the proposal and the site address from the Council's decision notice, which are clearer than those provided on the application form.
3. Since the application was refused, a Phase 1 Habitat Ecological Survey¹ has been provided, as well as an Ecological Protection and Enhancement Report². As the Council is satisfied that the effects on ecological interests could be dealt with by condition, and I have no reason to disagree, I have not pursued the matters raised by the third reason for refusal.
4. The Council has also advised that the drainage of the site, which was the subject of the fourth reason for refusal, could be dealt with by condition.

Main Issues

5. It therefore follows that the main issues are:

¹ Hone Ecology Extended Phase 1 Habitat Report

² Hone Ecology Ecological Protection and Enhancement Report

- The effect of the proposal on the character and appearance of the area with particular regard to trees; and
- The effect of the proposal on the living conditions of the occupiers of properties fronting Filston Road with regard to outlook.

Reasons

Character and appearance

6. The main part of the appeal site is roughly rectangular in shape and comprises a garage court located to the rear of dwellings fronting onto Holly Hill Road and Filston Road. It has a narrow access from Filston Road, and includes a strip of land to the rear of gardens of dwellings fronting that road, which leads to a further garage.
7. The built development in the vicinity of the appeal site is predominantly residential, with generally terraced houses fronting onto the road behind small front gardens. The appeal site is surrounded on two sides by Holly Hill Open Space, an area of open grassland with groups of trees. One of these groups borders the appeal site. This group of trees is visible in the wider area, providing a pleasant back drop to the houses, and separating the built development from the open parts of the Open Space. Three of the trees abutting the site overhang the boundary, and have been recently cut back. Two of the trees are oak trees and are subject to a Tree Preservation Order³ (TPO).
8. The building would be built up to the boundaries of the site with the Open Space, so that it would be in close proximity to the adjacent trees. The main habitable rooms of the flats would look directly onto the adjacent Open Space, so that their outlook would be dominated by the trees. It is likely that the trees would require regular pruning in order to prevent them from overhanging the site boundary, and to allow some sunlight and daylight to reach the windows and private amenity spaces of the flats. I have seen no firm evidence that the pruning would be harmful to them. Moreover, the contribution that the affected trees make to the level of tree cover provided by the group would not be significantly reduced as a result.
9. The flats have been designed with large windows and external amenity areas, which would maximise outlook and access to sunlight and daylight. While the trees would restrict the daylight and sunlight to these areas, they would also provide a degree of privacy for future occupiers, given the location of the building abutting the site boundary where it would be open to views from the open space and nearby dwellings. Consequently, future pressure for more drastic works to the trees, that would undermine their contribution to the character and appearance of the area, would be unlikely.
10. The Council's concern that the oak trees could become infested with Oak Processionary Moths, which could cause future occupiers to have an allergic reaction, is a concern that could be repeated in many situations. I have seen no firm evidence that it is particularly likely to occur in this instance.
11. The design and materials of the building would contrast with existing houses in the area. The Council found that the site has no relationship with the nearby street frontages, and therefore a stand-alone building would be acceptable.

³ Ref TP/19/00003/TPO

Having viewed the site from the surrounding area, I concur with this view. However, a condition requiring the submission of details of external materials would allow the Council further control over the finished appearance.

12. For these reasons, I find that the proposal would not be harmful to the character and appearance of the area, with particular regard to trees. It therefore would not conflict with London Plan 2016 (the London Plan) Policy 7.21, of the London Borough of Bexley Unitary Development Plan 2004 (UDP) Policies ENV35 and ENV39, and London Borough of Bexley Core Strategy 2012 (CS) Policy CS17, insofar as they seek to ensure that new development is of a high standard of design and layout, which protects and retains existing trees of value, and makes a positive contribution to green infrastructure.

Living conditions

13. The building would be located to the rear of dwellings on Filston Road, and would be at a higher ground level due to the topography. However, it would be sited away from the boundary with the rear gardens of those dwellings, and the uppermost storey would be set in from the main flank wall. As a result, it would not appear unduly prominent or restrict the outlook from the rear habitable rooms or gardens of properties backing onto the site to a significant extent.
14. The proposal would conflict with the guidance in the Council's Design for Living Supplementary Planning Document 2006 (Design for Living SPD), in relation to the separation distances between elevations containing windows to main habitable rooms. As the windows in question would be at ground floor level, and would be set some distance away from the site boundary, this does not indicate that the proposal would be harmful to outlook, given that it would comply with the recommended distance between main habitable room windows and a flank elevation. In any event, I have taken into account the particular circumstances of the site, and found that the proposal would not be harmful to the living conditions of the occupiers of properties fronting Filston Road with regard to outlook.
15. Accordingly, it would not conflict with London Plan Policy 7.6, CS Policy CS01, or UDP Policies H8 and ENV39, which seek, amongst other things, to ensure that new development is not harmful to the amenity of surrounding land and buildings, with adequate separation from other dwellings.

Other Matters

16. Local residents have raised a series of concerns. In terms of privacy, windows serving the upper floors that would look towards rear gardens or habitable rooms of properties on Holly Hill Road and Filston Road would be restricted to the communal stair well. It would be reasonable to require these windows to be obscure glazed so that any harmful overlooking of neighbouring gardens would be prevented, and control the insertion of additional windows.
17. The Highway Authority and the Council acknowledge the pressure on parking spaces in the locality, but conclude that the appellant's parking survey indicates sufficient on street parking is available in the locality. I have no reason to disagree. I note the concern regarding the capacity of local services such as doctors and public transport to meet the demands of additional residents, cumulatively with other development in the area, but there is no firm

evidence that this proposal would have any materially adverse effect on local services.

18. In terms of noise and disturbance during demolition and construction, a condition has been suggested by the Council. In view of the physical constraints of the site and its proximity to neighbouring dwellings, the condition is justified. The access to the rear of properties adjoining the site is a private matter to be resolved between the parties, and has no bearing on my decision. There are duties under other legislation to manage asbestos and there is no reason to duplicate this. I have seen no firm evidence that the proposal would cause subsidence or drainage problems for neighbouring properties.

Conditions

19. The Council and the appellant have suggested conditions to be imposed should the appeal be allowed. I have considered them in the light of the guidance contained in the Government's Planning Practice Guidance (PPG). In addition to the standard conditions, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, in the interests of clarity.
20. Conditions relating to finished levels, tree protection, materials, green roof, screens, refuse storage and means of enclosure are required in the interests of the character and appearance of the area and the living conditions of neighbours. Conditions relation to biodiversity enhancements and lighting are required in the interest of protecting biodiversity. Conditions relating to drainage, land contamination and foundation design are required to prevent pollution and to appropriately drain the site. In view of the physical constraints of the site and proximity to other dwellings, a condition in relation to demolition and construction management is justified. The Council has suggested a condition requiring that the proposal achieves the Gold Secured by Design award. It has not been demonstrated that this would meet the tests in the PPG, in particular in relation to whether it is necessary, precise or reasonable.
21. Conditions requiring details of privacy screens and to remove the permitted development rights for new windows for the upper floors on the north and east elevations are required to protect the privacy of neighbouring occupiers. The appellant has indicated that a condition requiring obscure glazing would be acceptable, and this would be necessary to prevent overlooking towards neighbouring properties.
22. Conditions suggested by the Highway Authority relating to parking provision and retention and cycle storage are necessary to ensure some on-site parking is provided and to promote sustainable transport.
22. A number of the conditions are required to be discharged before development commences and the appellant has been afforded the opportunity to comment on them.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

N Thomas

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A1336-001, A1336 P2, A1336-114, A1336-115, A1336-130, A1336-131, A1336-132, A1336-133, A1336-500, AS-TPP-29-1-18.1 Rev 2.
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) No development shall take place, including any works of demolition, until a Demolition, Construction Management and Logistics Plan has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) Construction methods and techniques;
 - ii) Management of construction and associated vehicle movements and parking, including deliveries of construction materials;
 - iii) Means of minimising noise and vibration (including any piling);
 - iv) Means of minimising dust and similar emissions;
 - v) Construction site lighting;
 - vi) The location of boards on the site to include details of the site manager, including contact details and 'out of hours' contact details.

The approved Construction Method Statement shall be adhered to throughout the demolition and construction period for the development.

- 5) Prior to the commencement of the development (excluding demolition), a scheme for a sustainable drainage system shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the dwellings hereby approved and thereafter retained. No drainage system for the infiltration of surface water drainage into the ground shall be permitted except where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

- 6) No above ground works shall take place until details of the design, specification, installation, monitoring and maintenance of the green roof have been submitted to and approved in writing by the local planning authority. The work shall be carried out in accordance with the approved details. The roof shall not be used for as an amenity or sitting out space and shall only be used for essential maintenance or repair or escape in case of emergency.
- 7) No above ground construction shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 8) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. A1336-113 P2 for a car to be parked and turned and that space shall thereafter be kept available at all times for the parking and turning of vehicles.
- 9) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. A1336-114 for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 10) No dwelling shall be occupied until details of the facilities for the storage or refuse and recycling have been submitted to and approved in writing by the local planning authority and provided in accordance with the approved details. The facilities shall be thereafter retained for that purpose.
- 11) No dwelling shall be occupied until privacy screens to prevent overlooking have been installed in accordance with details which shall have been submitted to and approved in writing. The screens shall be thereafter retained.
- 12) No dwelling shall be occupied until details of screen walls, fences and other means of enclosure have been installed in accordance with details to be submitted to and approved in writing by the local planning authority, and thereafter retained.
- 13) No dwelling shall be occupied until biodiversity enhancements, including bat and bird boxes, have been fully implemented, in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority, and thereafter be retained and maintained.
- 14) No dwelling shall be occupied until the windows at on the north and east elevations to the communal areas above ground floor level have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 15) No external lighting shall be installed until details of it have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed in accordance with the approved details.

- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed on the upper floors of the north and east elevations.
- 17) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, a remediation strategy detailing how this contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the local planning authority.
- 18) No piling or other foundation designs using penetrative methods shall be used except with the express written consent of the local planning authority.
- 19) No development shall take place until tree protection measures are installed in respect of trees adjacent to the site to be retained in accordance with the recommendations of the submitted Arboricultural Report. These shall be retained for the duration of construction. Nothing shall be stored or placed within any area fenced in accordance with this condition, nor shall these areas be used for any ancillary activity associated with the development. They shall be kept clear and ground levels within these areas shall not be altered.