
Appeal Decisions

Site visit made on 5 November 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 January 2020

Appeal A Ref: APP/E5330/W/19/3225752

Orchard Cottage, Heathway, Blackheath, SE3 7AN

- 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 Piltdown Properties Limited against the decision of the Royal Borough of Greenwich Council.
 - The application Ref 18/3334/F, dated 26 September 2018, was refused by notice dated 21 November 2018.
 - The development proposed is demolition of existing dwelling and erection of two detached 4 bedroom dwellings with associated parking, secure bin and cycle storage, amenity space and landscaping.
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Appeal B Ref: APP/E5330/W/19/3225753

Orchard Cottage, Heathway, Blackheath, SE3 7AN

- 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 Piltdown Properties Limited against the decision of the Royal Borough of Greenwich Council.
 - The application Ref 18/4494/F, dated 21 December 2018, was refused by notice dated 22 March 2019.
 - The development proposed is demolition of existing dwelling and erection of two detached two storey 4 bedroom dwellings with associated parking, secure bin and cycle storage, amenity space and landscaping.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed, and planning permission is granted for demolition of existing dwelling and erection of two detached two-storey 4 bedroom dwellings with associated parking, secure bin and cycle storage, amenity space and landscaping, at Orchard Cottage, Heathway, Blackheath, SE3 7AN, in accordance with the terms of the application, Ref 18/4494/F, dated 21 December 2018, subject to the conditions listed in the attached schedule of conditions.

Procedural Matters

Appeal A

3. Since the determination of application Ref 18/3334/F, the National Planning Policy Framework (the Framework) has been revised. Policies within the Framework are material considerations which should be considered for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment upon the Framework as part of the appeal and I have therefore determined the appeal on that basis.

Appeal B

4. I have removed the phrase "revised proposal following refusal of application 18/3334/F" from the description of development, as this is not a description of any part of the development.

Main differences between the two proposals

5. The main differences between the 2 schemes are their roof designs, height and mass and the extents of hard and soft landscaping.

Main Issues

6. The main issues in both appeals are:
 - whether the development would preserve or enhance the character or appearance of the Blackheath Conservation Area (CA), and
 - whether the proposed development would harm the living conditions of the existing, adjoining occupants of the Little House and No 10 Heathway, with particular regard to siting, scale and outlook.

Reasons

Character and appearance of the CA

7. The site comprises a detached two-storey dwelling of 1960s/70s design and associated residential curtilage, located on the southern side, and towards the western end, of Heathway, a residential street which lies within the CA. The site backs on to the rear gardens of locally listed buildings on St John's Park. The dwelling has evidently not been inhabited for some time and vegetation on the site was overgrown when I visited it. The dwelling is set back within the site, close to its centre, and is orientated with its principal elevation facing a side boundary and side elevations of No 10 Heathway, to the west. Such factors identify it as an anomaly within the street scene.
8. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of a CA, which is therefore a matter of considerable importance and weight. In addition, paragraph 193 of the Framework requires decision-makers to give great weight to the conservation of a designated heritage asset. CAs are designated heritage assets. Paragraph 197 of the Framework also requires decision-makers to take into account the effect of development on the significance of non-designated heritage assets.

9. The Blackheath Conservation Area Appraisal (CAA) divides the CA into 4 broad areas. Heathway lies within area 3, which covers the Angerstein Estate, Shooters Hill Road and the roads to the north. Heathway is an unmade winding lane which has been formed principally by the gradual, varied development of the rear gardens of large houses fronting Vanbrugh Park and St John's Park. Hence, its character is of back-land residential development. The mature trees which have been retained along the lane following its historical development give it a semi-rural, verdant appearance. The dwellings are mainly detached and semi-detached at two to three storeys high. There is an eclectic mix of architectural styles. Although most of the properties have dual-pitched roofs, some have flat roof designs. The dwellings are of varying sizes and a broad palette of materials has been used. The CAA notes that none of the buildings are listed and only 2 properties are considered to be buildings of quality, ie the Coach House and the Little House. Within this context, I consider the appeal property/site to make a neutral contribution to the street scene and the CA.

Appeal A

10. The proposal would, after demolishing the existing dwelling and clearing the site of much of its vegetation, provide 2 detached dwellings, of identical design, all-be-it with their layouts reversed, both with 3 storeys, the third formed within the flat-top mansard style roof. The dwellings would front Heathway and be sited further forward within the site than the existing dwelling. The neighbouring property No 10 is two-storeys high, designed with a flat roof; the neighbouring property Little House is 1.5 storeys high with a dual-pitched roof that includes dormer windows. Due to their 'block', 'flat' design, overall size, scale and mass, steeply pitched roof slopes, vertical emphasis coupled with higher roof heights than both the immediate neighbouring properties and eaves heights substantially higher than the Little House, the dwellings would unacceptably dominate the neighbouring properties and result in them appearing incongruous within their immediate setting and the CA.
11. For these reasons, I conclude that the proposed development would be harmful to the street scene and would not preserve or enhance the character or appearance of the CA, even though the extent of harm would be less than substantial.
12. As regards the relationship of the proposed development with non-designated heritage assets, I consider that the proposed dwellings are a sufficient distance from the locally listed properties on St John's Park, and with the presence of trees and other vegetation between the site and these properties, I conclude that the proposal would not harm any non-designated heritage assets.
13. I note concerns raised by the Council in respect of what it considers to be removal of a significant amount of vegetation from the site and extensive areas of hard surfacing proposed at the front of the properties. However, the submitted Arboricultural Report indicates that most of the trees that would be removed are of low quality and/or have serious defects, and most are self-seeded or large, overgrown shrubs. The Council did not object to the removal of trees as proposed and noted that none of the trees within the site are worthy of tree protection. In addition, although the Council considered there would be too much hard landscaping at the front, they considered there was scope for suitable tree planting if the proposed hard surfacing area was reduced.

14. Furthermore, I observed during my site visit that many of the properties on Heathway have hard surfaces at the front and some have little vegetation, including more recent developments located at the western end. Within this context, should the appeal have been allowed, a condition could have secured appropriate landscaping in order to preserve the character and appearance of the CA. In this particular respect, the proposal would accord with policies DHI and OS(f) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) (CS), in so far as they relate to trees and landscaping and which, among other things, seek to protect trees and achieve suitable replacements where appropriate.
15. Notwithstanding my conclusion regarding trees and landscaping, I have concluded that the proposal would result in environmental harm to the CA. As such, it would not accord with policies DHI, DH(h) and DH3 of the CS; policies 7.4, 7.6 and 7.8 of The London Plan: The spatial development strategy for London, consolidated with alterations since 2011 (2016) (LP) or with the heritage policies contained in the Framework. Collectively, and among other things, these policies seek to ensure all developments are high-quality design, take account of the scale, height, bulk and massing of the adjacent townscape and historical features and their settings, and preserve or enhance the character or appearance of the CA.
16. In accordance with paragraph 196 of the Framework, where less than substantial harm to the significance of a designated heritage asset occurs, it should be weighed against the public benefits of the proposal. Although the 2 dwellings would provide a modest contribution to the supply of housing in the area, I consider this benefit would not outweigh the environmental harm to the CA which I have identified.
17. I note that Policy DH(a) of the CS, referred to in reason for refusal 2, relates to residential extensions. I therefore consider it not to be relevant to this appeal.

Living conditions – existing adjoining occupants

18. As noted above, the proposed dwellings would be much higher than both the adjacent properties, with a maximum height of approximately 8.8 m. The proposed dwelling on plot 1 would be sited around 2.3m from the side boundary with the Little House and most of it, around 11 m, would extend beyond the rear elevation of the Little House. The side elevation of the proposed dwelling that would face the Little House would only have one small window at ground-floor level. As such, a mass of brickwork, at three-storeys high, would be presented close to the side boundary with the Little House. I consider that the siting, size, scale and mass of the proposed dwelling on plot 1 would significantly enclose the rear side boundary of the Little House and would be unacceptably overbearing to the occupants of the Little House. Furthermore, it would result in the outlook from rear windows and the rear garden of the Little House being of poor quality which would add to the harm to the living conditions of the occupants.
19. The proposed dwelling on plot 2 would be sited on the boundary with No 10. It would extend beyond its rear elevations and its small, enclosed rear patio area, which is the only rear outdoor amenity space associated with the property. No 10 has a large glazed opening on a side elevation at the rear of the property which faces the appeal site. There is a fence sited on top of a boundary wall that currently contributes to enclosing the rear patio of No 10 and provides

some screening from the principal elevation of the existing dwelling. However, the side elevation of the proposed dwelling on plot 2 that would face No 10 would project significantly above its boundary wall/fence. Furthermore, it has no windows or doors in it, and except for a proposed single-storey extension at the rear of the proposed dwelling, there are no other means of relief in that proposed elevation. Hence, the elevation would be a mass of brick. I consider the siting, size and mass of the proposed dwelling on plot 2 would therefore result in increasing the sense of enclosure in relation to the rear patio area of No 10 and would also be unacceptably overbearing and harmful to the living conditions of the occupants.

20. I acknowledge that the proposed orientation of the dwellings, ie fronting Heathway, would be an improvement on the existing situation in respect of overlooking of the immediate neighbouring properties. I also note that the appellant contends in their statement that the parcel of land to the rear of No 10, edged blue on the submitted plans, has now been transferred to the ownership of No 10, which the appellant considers would enhance the outlook from this property. However, I have no evidence before me that the transfer of the land has been legally secured, and in any event, should this land now be associated with No 10, this, and the proposed orientation of the dwellings, would not overcome the harm to the living conditions of the occupants of the existing adjoining properties I have identified.
21. In this context, the proposal would harm the living conditions of the existing, adjoining occupants of the Little House and No 10 Heathway due to the enclosing, overbearing impact on both properties and the loss of outlook from the Little House. Consequently, the proposal would not accord with policies DH(b) of the CS or 7.6 of the LP, which require developments not to harm the amenities of neighbouring occupiers due to, among other things, an unneighbourly sense of enclosure or by being unacceptably overbearing.

Appeal B

Character and appearance of the CA

22. Within the context of paragraphs 6-9 above, which are also relevant to Appeal B, the proposal would, after demolishing the existing dwelling and clearing the site of much of its vegetation, provide 2 detached dwellings, of near identical design. Both dwellings would be two-storey. They would front Heathway and be sited further forward within the site than the existing dwelling. The proposed dwelling on plot 1 would also be sited a little further forward than the proposed dwelling on plot 1 in Appeal A. The dwellings would have a series of low level, shallow/dual-pitched roofs set behind a parapet at the front.
23. Other than the third-floor/roof design and some false, bricked up window openings on some side elevations to break up the brick mass, the design of the proposed dwellings would be identical to the design of the proposed dwellings in Appeal A. In respect of Appeal A, the Officer Report stated that, due to the variety of architectural styles along Heathway, "the architectural style employed is supported". I note the Council's reason for refusal 2 in respect of Appeal B relates to "the design, detailing and siting being a poorly resolved pastiche development".

24. However, I consider that there are some pairs of properties that are very similar in appearance, if not quite identical, that form part of the eclectic mix of architectural styles along Heathway. In addition, given the properties are a mix of detached and semi-detached, old and modern, of varying sizes and constructed using with a broad palette of materials, I consider the roof and eaves heights of the proposed dwellings would sit comfortably with the roof and eaves heights of the immediate neighbouring properties. I also note that the mix of soft and hard landscaping proposed would maintain the leafy, semi-rural character of the area and as such, the design of the proposed dwellings would not be out of keeping with the area. I conclude therefore that the proposal would preserve the character and appearance of the CA.
25. In light of the above, the proposed development would accord with policies DH1, DH(h), DH3, OS(f) of the CS, 7.4, 7.6, 7.8 of the LP, heritage policies in the Framework and guidance in the BCAA.
26. As with Appeal A, Policy DH(a) of the CS relates to residential extensions and therefore is not relevant to this appeal either.

Living conditions – existing adjoining occupants

27. As regards the relationship with No 10, removing the third-storey/mansard style roof has alleviated the concerns I expressed in Appeal A regarding the effect that the proposed dwelling on plot 2 would have on it. I consider the extent of additional mass resulting from the proposed dwelling, which would project above and to the side of the existing boundary wall with fence, would not be of a scale that would harmfully increase the sense of enclosure or harm the outlook for existing occupants of No 10.
28. In respect of the Little House, the Council has not raised any concerns regarding the effect of the proposal on the living conditions of occupants of the Little House, and I have no reason to do so either. I note that the occupant of the Little House expressed concerns regarding the proposed house on plot 1 being overbearing, taking light and reducing privacy levels.
29. However, the extent of brickwork that would form the side elevation of the dwelling on plot 1 in Appeal A would be significantly less, as a result of removing the intended third-storey/mansard style roof. The proposed dwelling on plot 1 would also be significantly further forward in the plot than the existing dwelling, and a little further forward than the equivalent in Appeal A. The existing dwelling, along with trees and vegetation that are on or close the boundary, already reduce light to the Little House. Given the existing site circumstances, I consider that the effect of the proposed dwelling on plot 1, in respect of its presence and light levels, would not be harmfully different than the relationship between the 2 existing properties.
30. I note that there are no windows proposed at first-floor level on the side elevation of the proposed dwelling on plot 1. Furthermore, overlooking that currently exists, due to the orientation of the existing dwelling, would be removed. In addition, there would be an acute angle between the proposed front bedroom windows and a window on the side gable of the Little House at first-floor level. Bearing these factors in mind I consider that existing privacy levels would be maintained.

31. In light of the above, I conclude that the proposal would not significantly harm the living conditions of existing occupants of adjoining properties. As such, the proposed development would accord with policies DH(b) of the CS and 7.6 of the LP.

Other Matters

32. The appellant has drawn my attention to several planning approvals and/or appeal decisions regarding residential development within proximity of the site. However, I do not have the full details of these cases before me and cannot be sure that they would represent comparable cases. In any event each case must be dealt with on its own merits.
33. In addition to the matters discussed above, concerns have been raised by residents related to both appeals in respect of biodiversity, highway safety and parking, drainage, construction management arrangements and property values. Each of these matters is addressed below.
34. The Preliminary Ecological Appraisal submitted with the applications sought primarily to see if the site had the potential to support protected species and protected habitats. The impact of the proposed development on relevant designated sites and habitats of principle importance was also considered. Subject to various mitigation and enhancement measures, to be secured by condition, I am satisfied that no protected species or protected habitats would be adversely affected by the proposal in Appeal B.
35. The nature of the lane is such that vehicles travelling along it are likely to be doing so at slow speeds. The site is located within an area with good access to public transport. The proposed rear garden outbuildings could accommodate on-site cycle storage. A range of shopping and other facilities and services to meet day-to-day needs are accessible on foot, in Blackheath village centre. Each plot would provide one on-site car parking space. Bearing these factors in mind I am satisfied that the proposed development in Appeal B would not result in any significant issues related to parking or highway safety.
36. It is noted on the planning application form of Appeal B that the appellant proposes to deal with surface water run-off via a soakaway and foul drainage via a mains sewer. These facilities would be required to be installed in accordance with relevant building regulations.
37. Managing the effects of the construction process can be addressed via a suitable condition.
38. The courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration.¹

Conditions

39. Suggested conditions for Appeal B have been considered in light of advice contained in the Planning Practice Guidance (PPG), the tests within the Framework and parties' comments. Some have been amended or amalgamated for clarity, precision, elimination or duplication taking account of policy,

¹ Planning Practice Guidance Paragraph: 008 Reference ID: 21b-008-20140306, Revision date: 06 03 2014

guidance and comment. The appellant has raised no objection to conditions where a pre-commencement condition clause has been suggested.

40. I have attached conditions related to the following: plans, materials, demolition and construction management, tree protection, landscaping, refuse storage and collection, ecology/biodiversity and 'accessibility'. Respectively, the reasons for attaching the conditions, and why they are pre-commencement, are as follows:

- to identify the approved plans;
- to preserve the character and appearance of the CA;
- to ensure the free flow of vehicles and pedestrians and to protect occupants of neighbouring properties from noise disturbance and air pollution (required prior to commencement in the interest of highway safety and to protect neighbouring residential amenity);
- to ensure the future well-being of trees to be retained and to preserve the character and appearance of the CA (required prior to commencement to ensure the future well-being of trees to be retained on site);
- to protect the character and appearance of the CA and in the interests of biodiversity (required prior to commencement to ensure landscaping of the site can take account of mitigation and enhancement recommendations in the Preliminary Ecological Appraisal);
- in the interests of public health and highway safety;
- to ensure protection of protected species and/or protected habitats, and to provide biodiversity enhancements in accordance with paragraph 174 of the Framework (required prior to commencement to take account of mitigation and enhancement recommendations in the Preliminary Ecological Appraisal), and
- to demonstrate that the approved dwellings will comply with the optional Building Regulations requirement M4(2), 'accessible and adaptable dwellings' in order to meet the needs of different groups and comply with policies 3.8 of the LP and H5 of the CS (required prior to commencement to avoid having to adapt any part of the dwellings at a later stage).

Conclusion

41. For the reasons outlined above I conclude that Appeal A is dismissed, Appeal B is allowed, subject to the conditions within the attached schedule.

J Williamson

INSPECTOR

Schedule of Conditions - Appeal B APP/E5330/W/19/3225753

- 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: HW/616/01, HW/616/BP01 Rev C, HW/616/SP01 Rev B, HW/616/SS01 Rev B, HW/616/02 Rev B, HW/616/03 Rev A.
- 3) No development above slab level shall take place until a detailed schedule of materials to be used in the construction of the external surfaces of the dwellings hereby permitted, have been submitted to and approved in writing by the local planning authority. The details shall include provision of a sample panel of brickwork, prepared on site for inspection and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details and sample, which shall not be removed from the site until completion of the development.
- 4) Prior to the commencement of the development, including demolition, a Demolition and Construction Method Statement for the development shall be submitted to and approved in writing by the Local Planning Authority. The Method Statement shall include full details of the following:
 - specification of equipment likely to produce noise and/or vibration disturbance beyond the site boundaries and the likely levels;
 - noise screening measures;
 - for monitoring noise levels and procedures to be put in place where agreed noise levels are exceeded;
 - identification of relevant personnel and their roles and responsibilities regarding managing and reporting on noise and vibration measures;
 - site hoarding;
 - wheel washing facilities, including location and equipment to be used;
 - dust suppression methods and equipment to be used and at what stage during the different stages of demolition and construction;
 - confirmation if a mobile crusher will be used on site and if so a copy of the permit and intended dates of operation;
 - site plan identifying the location of site entrance and exit, wheel washing facilities, hard standing or equivalent areas for vehicle parking and storage of plant and/or machinery, hoarding (distinguishing between solid hoarding and other barriers such as heras and monarflex sheeting), stock piling area(s), dust suppression equipment, water supplies and the nearest neighbouring receptors.

The development shall be carried out in accordance with the approved Demolition and Construction Method Statement.
- 5) Prior to the commencement of the development, or any clearance of existing vegetation, a Tree Protection Plan (TPP) shall be submitted to and approved in writing by the Local Planning Authority. The TPP should follow the recommendations set out in BS 5837: 2012 Trees in relation to design, demolition and construction–Recommendations (or in an equivalent British Standard if replaced). The TPP should clearly indicate

on a dimensioned plan, superimposed on the building layout plan, and in a written schedule, details of the location and form of protective barriers to form a construction exclusion zone, the extent and type of ground protection measures, and any additional measures needed to protect vulnerable sections of trees and their root protection areas where construction activity cannot be fully or permanently excluded. The development shall be carried out in accordance with the approved details.

Prior to commencement of development, or any clearance of existing vegetation, a scheme of hard and soft landscaping (including details of any trees or hedges to be retained and proposed plant numbers, species, location and size of trees and tree pits), and details of the management and maintenance of the landscaping for a period of five years, shall be submitted to and approved in writing by the local planning authority. The soft landscaping shall include mature trees with height at planting of a minimum of four metres.

All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the development, in accordance with the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

- 6) Details of refuse storage facilities and collection arrangements for the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details prior to the dwellings being first occupied.
- 8) Prior to commencement of development, details of ecology/biodiversity mitigation and enhancement measures, as recommended in the Phase 1 Habitat Preliminary Ecological Appraisal by the Ecology Partnership, dated August 2018, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the approved dwellings being first occupied.
- 7) Prior to commencement of development, drawings illustrating that the dwellings hereby permitted comply with Building Regulation requirement M4(2) 'accessible and adaptable dwellings', shall have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the approved dwellings being first occupied.

<<<<End of Schedule>>>>