



Appeal Decision

Site visit made on 28 June 2019

by D Child BA BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2020

Appeal Ref: APP/D5120/W/19/3223631

53 Mill Road, Erith DA8 1HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Finkelstein of the Sparkstone Group against the decision of the Council of the London Borough of Bexley.
 - The application Ref 18/01735/FUL, dated 27 June 2018, was refused by notice dated 5 November 2018.
 - The development proposed is the redevelopment of the site to provide two, single-storey two-bedroom detached dwellings with four car parking spaces and private amenity space.
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Decision

1. The appeal is allowed, and planning permission is granted for the redevelopment of the site to provide two, single-storey two-bedroom detached dwellings with four car parking spaces and private amenity space, at 53 Mill Road, Erith DA8 1HW, in accordance with the terms of the planning application, Ref: 18/01735/FUL, dated 27 June 2018, subject to the conditions set out in the schedule below.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. It has been put to me that given the age of the Bexley Council Unitary Development Plan 2004 (the UDP) its saved policies might be considered out of date. Nevertheless, I concur with the Council, in accordance with Paragraph 213 of the National Planning Policy Framework 2019 (the Framework), that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework.

Main Issues

4. The main issues are the effects of the proposed development upon:
 - The character and appearance of the area, having particular regard to the scale of the development proposed, its layout, and trees;

- The living conditions of existing and future occupants, having particular regard to privacy, outlook and outdoor amenity space; and
- Biodiversity and protected species.

Reasons

Character and appearance

5. The appeal site is located within a predominantly residential area, opposite St Paul's church. Either side, dwellings on surrounding streets are generally terraced. Most display small front yards and shallow rear gardens and a dwelling has been constructed in a rear garden to the west. Against this background, the rear garden of the host dwelling is comparatively deep.
6. Because the site is located at the rear of the host dwelling, the scheme would not be significant in views from Mill Road. Furthermore, the Council accepts that the relationship with the street scene is acceptable following its approval of a similar relationship on land to the rear of 55 and 57 Mill Road¹. Accepting that each case must be considered on its own merits with regard to the individual circumstances, I see no reason to disagree with this assessment.
7. The proposed layout would be apparent from first-floor windows of neighbouring properties, and the rear garden of the host dwelling would be shorter than in the case of some neighbouring dwellings. However, the resulting garden size would not be at odds with the predominant character of the area and the size of the host dwelling's rear garden would not be apparent from surrounding streets.
8. Although I acknowledge that a strict numerical calculation is not the only consideration, the proposed density would be within the ranges set out in the 2016 London Plan (the London Plan). Furthermore, although they would be sited relatively close to each other, the proposal would allow for adequate separation between dwellings.
9. The proposal would not follow the density or hipped roof design of the dwelling built in the rear garden to the west. However, the overall footprint and scale of the proposed dwellings and their separation from the common boundary would be broadly consistent with it. Their design would follow the predominant roof shape in the area and, although the proposal is for two dwellings, they would be single storey. As a result, I am not persuaded that the scale of the development or the massing and form of its roofs would draw attention to the layout, or make it appear cramped as a result of its density.
10. In the absence of an arboricultural assessment, or detailed landscaping proposals, I acknowledge the Council's concerns over the potential loss of mature trees. However, at my visit there were no mature trees of significant wider amenity value on the site. Furthermore, a suitably worded planning condition could provide the dwellings with a positive landscape setting.
11. For the above reasons, I therefore find that the proposed development would not be harmful to the character and appearance of the area, having particular regard to the scale of the development proposed, its layout, and trees.

¹ LPA Planning application reference 17/01258/FUL

12. Accordingly, the proposal would accord with saved UDP Policies ENV35, ENV39, H3, H6 and H8, and Policies CS01, CS17 and CS18 of the London Borough of Bexley Core Strategy 2012 (the Core Strategy). Together these policies require that all new developments are satisfactorily located and maintain and improve the best elements of Bexley's suburban character. Also, that the space around buildings and their landscaping, and separation between plots should be compatible with the surrounding area. It would not conflict with Policies 7.21 or 7.4 of the London Plan, which, in addition require new development should have regard to the form, function, and structure of an area and the retention of existing trees. While the Framework seeks to resist inappropriate development of residential gardens, for the above reasons I have found that it would not be harmful to the local area.

Living conditions

13. The main living areas and outdoor amenity space of the proposed dwellings would be located at opposite ends of the buildings and thus face away. However, the bedroom windows would face each other, and the separation distances would be significantly below the guidance in the Council's Design for Living Supplementary Planning Document 2006 (the SPD). Moreover, the windows of bedroom one in the northernmost unit would be at a high level. Nevertheless, the design of this unit incorporates a dual aspect outlook from the bedrooms. Because of this a planning condition could reasonably require obscure glazing/fixing of the bedroom windows in the southeast elevation in order to protect the privacy of future occupants, while allowing for a reasonable outlook given their use.
14. I acknowledge the Council's concern that the outlook from windows in the western elevations would be limited by their proximity to the boundary. However, with the exception of bedroom one in the northernmost unit, these windows would serve a bathroom and a toilet, and kitchen diners that are dual aspect with an outlook across the proposed gardens.
15. Because of their staggered layout the proposed dwellings would project beyond the front and rear elevations of the dwelling to the west. However, they would be inset from the common boundary and their roofs would slope away above relatively low eaves. As a consequence, the proposal would not be overbearing in the outlook from this neighbouring dwelling. Due to a high boundary fence, there would be no undue loss of privacy for its occupants.
16. Subject to the prior approval of boundary treatment, I agree with the Council that the proposal would not harm the privacy of occupants of the host dwelling or the occupants of dwellings on Stonecroft Road.
17. The front, rear, and side gardens of the host dwelling would be limited in size. However, because the host dwelling is relatively small in scale, they would provide safe, secure, and usable opportunities for outdoor seating that would be commensurate with its small size. Furthermore, the gardens of the proposed dwellings would meet the requirements of London Plan Policy 3.5, and the SPD.
18. For the above reasons, I therefore find that the proposal would not harm the living conditions of existing and future occupants, having particular regard to privacy, outlook and outdoor amenity space. The development would not therefore conflict with the residential amenity protection aims of saved UDP Policies ENV39, H7 and H8, or the SPD.

Biodiversity and protected species

19. The site is already in use as a garden and there is no evidence to suggest that protected species are likely to be present or that their habitat would be harmed. Furthermore, the use of conditions to require appropriate biodiversity enhancement and landscaping measures would be capable of delivering net gains for biodiversity, consistent with Paragraph 170 d) of the Framework. As such, the proposal would not conflict with the biodiversity protection and enhancement aims of Core Strategy Policies CS17 and CS18, or Policy 7.19 of the London Plan.

Other Matters

20. I acknowledge the concerns of local residents in relation to the width of the access and the potential impact of street lighting on views of the night sky. However, the Council did not refuse planning permission for highway safety reasons. The area is suburban in character and no street lighting is proposed.
21. The proposal would accord with the broad thrust of the Framework to boost the supply of housing and make a small but useful contribution. I am also mindful of Paragraph 68 of the Framework which, amongst other things, states that small and medium sites can make an important contribution to meeting the housing requirements of an area and are often built out relatively quickly. Moreover, I have found that the proposal would not result in any adverse impacts that would significantly and demonstrably outweigh the benefits in the context of Paragraph 11 of the Framework.

Conditions

22. I have considered the use of conditions recommended by the Council and the appellant's comments. A time limit for commencement condition is necessary, and, to provide certainty, the approved plans need to be specified. In the interests of protecting the visual amenity of the area, conditions are necessary to specify the external surfaces and boundary treatment, and to require a landscaping scheme.
23. A condition is necessary to ensure that the site is free from unexpected contamination, and, in the interests of highway safety, a condition is necessary to require the formation of parking areas prior to first occupation of the dwellings. To ensure the development accords with Paragraph 110 e) of the Framework, a condition is necessary to require charging facilities for plug-in ultra-low emission vehicles.
24. Having regard to the potential for extensions to affect the living conditions of neighbours, and in accordance with Paragraph 53 of the Framework, I concur with the Council that there is clear justification for the removal of these permitted development rights. To protect the privacy of future occupants of the development, windows in the southeast elevation of the unit adjacent to 53 Erith Road should be required to be obscure glazed and fixed.
25. So as to ensure that the development provides (or can be adapted to provide) satisfactory accommodation for people whose mobility is impaired, and water efficiency, conditions should require that the expectations of the London Plan for the Optional Building Regulations Requirements are met. To ensure that refuse is properly managed, a condition is imposed to agree the precise details of the storage of refuse and recycling, including any means of enclosure.

26. I note the officer report refers to a condition to require cycle storage facilities and that the appellant would be agreeable. However, no such condition was included in the list of conditions supplied by the Council. In any event, there is sufficient space within the site for the secure storage of cycles. A condition is not therefore necessary.

Conclusion

27. For the above reasons, I conclude that the appeal should be allowed.

D Child

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 strict accordance with the following approved drawings: PL00 'Location Plan'; PL00; A17543/PL01 'Block Plan'; A17543/PL10 'Proposed Ground Floor Plan'; A17543/PL11 'Proposed Roof Plan'; A17543/PL12 'Proposed Elevations'; and A17543/PL13 'Proposed Elevations'.
- 3) 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), there shall be no enlargement, improvement or other alteration of the dwellings hereby approved.
- 4) No development shall take place until a schedule of materials and finishes and, where so required by the Local Planning Authority, samples of such materials and finishes to be used for the external walls and roofs of the dwellings shall have been submitted to and approved by the Local Planning Authority in writing.
- 5) No development shall take place until a landscaping scheme, including all boundary treatments, shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented before the development is occupied, or of any phase of the development as may be agreed with the Local Planning Authority and shall thereafter be maintained for five years. Trees and shrubs which die during this period shall be replaced.
- 6) No development shall take place until a scheme for the provision of bird and bat roost features, to be incorporated within or on the fabric of the dwellings, shall have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved scheme prior to first occupation of each dwelling.
- 7) No development shall take place until details of arrangements for storage of refuse and recycling, including means of enclosure for the area concerned where necessary, shall have been submitted to, and approved in writing by the Local Planning Authority. The approved arrangements shall be completed before any part of the development is first occupied and shall be retained thereafter.
- 8) The dwellings hereby permitted shall not be occupied until the areas shown for the parking of vehicles has been laid out, surfaced and drained, in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter the vehicle parking areas shall be kept available at all times for the parking of vehicles.
- 9) The dwelling adjacent to 53 Mill Road hereby permitted shall not be occupied until the bedroom windows on the southeast elevation have been fitted with obscured glazing, and no part of those windows that are less than 1.7 metres above the floor of the room in which they are 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 windows are installed. Once installed the obscured glazing shall be retained thereafter.

10) The dwellings hereby permitted shall not be occupied until an electric vehicle charging point has been installed to serve one of the parking spaces to each of the dwellings. Cable and circuitry ratings shall be provided to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. Thereafter the electric vehicle charging points so provided shall be retained.

11) If any unforeseen contamination is encountered on the site, a risk assessment of the potential contamination shall be carried out by a suitably qualified person. Thereafter a remediation scheme to deal with the contamination shall have been submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall be implemented, and a completion report provided. The scheme will need to demonstrate that the development site is suitable for its intended use before the commencement of development. Where no contamination is identified during construction, a signed verification report to confirm this should be submitted to and approved in writing by the Local Planning Authority.

12) The dwellings shall comply with Building Regulations Optional Requirement Approved Document M4 (2) Category 2: Accessible and adaptable dwellings (2015 edition). Evidence of compliance shall be submitted to the building control body appointed for the development to enable the building control body to check compliance.

13) The dwellings shall comply with Building Regulations Optional Requirement Approved Document G2 - Water efficiency (2015 edition). Evidence of compliance shall be submitted to the building control body appointed for the development to enable the building control body to check compliance.