



Appeal Decision

Hearing Held on 18 August 2020

Site visit made on 19 August 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2020

Appeal Ref: APP/G5180/W/19/3237365

134 Worsley Bridge Road, Beckenham BR3 1RP

- 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 C Williams against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/02051/FULL1, dated 9 May 2019, was refused by notice dated 12 July 2019.
 - The development proposed is demolition of the existing detached dwelling and construction of a replacement detached 4-bedroom dwelling with associated planting and landscaping works and new vehicular driveway.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Before the Hearing, the appellant submitted a set of massing models with an accompanying schedule of measurements, both of which show the extent of works that could be carried out as permitted development at the appeal property, if it were in use as a single dwellinghouse. The drawings supersede the massing model comparison, which was included within the design and access statement submitted with the original application. As the submitted drawings are for illustrative purposes and they do not evolve the scheme beyond which people's views were sought in respect of the planning application, I am satisfied that neither the Council nor any other appeal party would be prejudiced by my determination of the appeal on this basis.
3. The first reason for refusal includes reference to Policy 6 of the Bromley Local Plan (2019) (the 'BLP'). However, Policy 6 relates to residential extensions. The Council explain that this is a typographical error and that the reason for refusal should refer to Policy 4 of the BLP. I have dealt with the appeal on this basis.
4. The second reason for refusal includes reference to Policy 51 of the BLP and Policy 7.16 of the London Plan (2016) (the 'LP'). However, Policy 51 of the BLP relates to the extension or alteration of existing dwellings, whilst Policy 7.16 of the LP relates to development located within the Green Belt. The Council explain that this is a typographical error and that the reason for refusal should only refer to Policies 50 and 52 of the BLP and Policy 7.17 of the LP. I have dealt with the appeal on this basis.

5. The Council have referred to Policy G2: London's Green Belt of the Draft New London Plan (the 'DNLP') within their statement of case. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. The Secretary of State wrote to the Mayor of London on 13 March 2020 and issued an Annex containing directions. The Annex includes directions in relation to Policy G2 of the DNLP citing inconsistency with the Framework. For this reason, I attribute this policy very limited weight as a material planning consideration.

Background

6. On 9 November 2017 the Council granted a certificate¹ pursuant to Section 192 of the Town and Country Planning Act 1990 (the 'Act') which confirmed that proposed works to convert the appeal property from two flats into a single dwellinghouse would be lawful.
7. The existing use of the appeal property is described as a 'residential dwelling' on the application form. However, this was disputed by the Council who state that the property remains in use as flats, as evidenced by Council Tax records.
8. Before the Hearing, a set of identical existing floor plans were provided by both parties which showed the existing layout of the building as two flats. At the Hearing, the parties agreed that the existing use of the building is two flats and that the works to convert it into a single dwellinghouse have not been undertaken. I have dealt with the appeal on this basis.

Main Issues

9. The main issues are:
- Whether or not the proposal would be inappropriate development on Metropolitan Open Land having regard to the Framework and any relevant development plan policies.
 - The effect on the openness of the Metropolitan Open Land.
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on highway safety.
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Site and proposal

10. The appeal property is a two-storey detached building located on the corner of Worsley Bridge Road and Copers Cope Road within Beckenham. The site is located on Metropolitan Open Land ('MOL'). It is proposed to demolish the building and erect a replacement dwelling which would be served by a new vehicular access from Worsley Bridge Road.

¹ Council Ref: 17/04258/PLUD

Whether the proposal represents inappropriate development

11. MOL is given protection equivalent to that for Green Belt by Policy 50 of the BLP and Policy 7.17 of the LP. In addition, it is common and accepted practice to consider MOL as equivalent to Green Belt in terms of the application of the Framework.
12. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt, and thus MOL, policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts, and therefore MOL, are their openness and their permanence.
13. Policy 52 of the BLP, amongst other things, allows for the erection of replacement dwellings where a building is in residential use on MOL and the resultant dwelling does not result in a material net increase in floor area compared with the existing dwelling.
14. Paragraph 145 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. However, an exception to this, as set out by criterion (d) of that paragraph, is "the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces".
15. The Framework does not specify what might be a 'materially larger' replacement building. However, the supporting text to Policy 52 of the BLP explains that "in general, an increase of over 10% would be considered material".
16. The existing building has a building footprint of 81 m², whilst the proposed dwelling would have a building footprint of about 200 m². In terms of gross internal floor area ('GIA'), the Council explain that the existing building has a GIA of 164m², whilst the proposed dwelling would have a GIA of 505m². No figures for the existing and proposed GIA have been provided by the appellant.
17. In terms of volume, the parties agree that the existing building has a volume of 630m³. However, the parties dispute the volume of the proposed dwelling. The Council state that it would have a volume of 1650m³ whereas the appellant contends that the volume would be 1413m³.
18. Even if I were to accept the appellant's lower volume calculation, the volume, footprint and GIA of the proposed dwelling would amount to an increase of more than 10% when compared to that of the existing building. Therefore, for the purposes of Policy 52 of the BLP, the proposed dwelling would be materially larger than the existing building. Indeed, the main parties agree that the replacement building would be materially larger than the existing building at the appeal site and thus represent inappropriate development.
19. Paragraph 143 of the Framework states that "inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances". I deal with this matter later in my Decision.
20. For these reasons, the proposed development would be inappropriate development on MOL and, in this regard, it would conflict with Policies 50 and 52 of the BLP and Policy 7.17 of the LP and with Section 13 of the Framework.

Openness

21. The replacement building would be materially larger than the existing building. On that basis, the main parties agree that the proposal would not preserve the openness of the MOL. I agree with this analysis.
22. For these reasons, the proposed development would not preserve the openness of the MOL and, in this regard, it would conflict with Policies 50 and 52 of the BLP and Policy 7.17 of the LP and with Section 13 of the Framework.

Character and appearance

23. The existing building dates from the early 1900's and has a brick and pebble dash exterior under a simple hipped roof form. The property occupies a spacious corner plot on the southern side of Worsley Bridge Road. On this side of the road there is a limited amount of residential development.
24. Immediately to the rear and side of the site there are playing fields associated with Kent County Cricket Club. Therefore, taking account of the immediate site context, when viewed from Worsley Bridge Road and Copers Cope Road, the existing building occupies a prominent location within the streetscene.
25. The surrounding area has a suburban residential character. Worsley Bridge Road is a long road and within the immediate area of the appeal site there are a mix of detached, semi-detached and terraced dwellings, which are predominately two-storey. The properties date from different architectural periods, but the consistent two-storey scale of the dwellings and the use of common materials, such as red brick, and the simple gabled or hipped roof forms, results in a design balance and symmetry which contributes positively to the character and appearance of the area.
26. The overall bulk, scale and mass of the proposed dwelling would be significant and excessive when compared with the proportions of the existing building at the appeal site. Moreover, the proposed dwelling would be sited significantly closer to Copers Cope Road and the rear boundary of the site, and thus the extent of built form on the site would appear disproportionate in relation to the amount of garden land, when compared to the spacious layout of the existing building.
27. In terms of the proposed design, despite the use of brick and slate tiles, the extensive and disproportionate use of fenestration throughout the proposed dwelling, in addition to the complex roof form with its prominent double gables, would be out of keeping with the local vernacular. The proposed development would appear stark and jarring from the street when viewed in the context of other dwellings within the local area.
28. Therefore, and taking account of the site's corner plot location with playing fields to the rear and side, the proposed dwelling would be seen as an incongruous and unduly prominent form of development when viewed from Worsley Bridge Road and Copers Cope Road, which would cause significant harm to the character and appearance of the area.
29. I recognise that the ridge height of the proposed dwelling would be similar to the existing dwelling. However, this would be achieved by significant excavations at the appeal site to create a lower ground floor level. When viewed from Copers Cope Road, which slopes downwards from the junction at

Worsley Bridge Road, the proposed dwelling would have an overtly three-storey appearance, which would be at odds with the surrounding properties on Worsley Bridge Road.

30. The appellant points out that there are a wide variety of property types in the local area, which includes several flatted developments that are three storeys or higher. The nearest of the examples put forward by the appellant is a flatted development at 227-231 Worsley Bridge Road, which is located about 200m away from the appeal site. However, this development is historic and predates the development plan and the Framework. In addition, it is an exception rather than the norm on this part of Worsley Bridge Road.
31. Similarly, the recent flatted developments on Worsley Bridge Road, near to Lower Sydenham station, known as the 'Dylon Works' and the 'Maybury Works' are also located a considerable distance away from the appeal site. The developments form part of a denser and thus more urban pattern of development near to Lower Sydenham station. Therefore, these developments do not contribute directly to the aforementioned and distinctive characteristics of the local area.
32. My attention has also been drawn to a standalone flatted development adjacent to Kent County Cricket Club on Copers Cope Road, which is located approximately 300m to the rear of the appeal site. Copers Cope Road is a lengthy road and the residential properties near to the flatted development typically have three floors of accommodation. This is materially different to the context of the appeal site, which comprises mostly two-storey development. Therefore, this development is not comparable with the appeal proposal.
33. For the reasons set out above, I conclude that the proposed development would cause significant harm to the character and appearance of the area. As such, the proposal would not accord with Policies 4 and 37 of the BLP, insofar that they collectively require new development to be of a high standard design and layout, whilst respecting local character, spatial standards, physical context and density.
34. Accordingly, the proposal would also be inconsistent with paragraph 127(c) of the Framework, which requires development to be sympathetic to the local character.

Highway safety

35. The proposed development would be served by a new vehicular access from Worsley Bridge Road. Immediately opposite the proposed access is an existing pedestrian refuge island.
36. The Council have expressed concern that drivers egressing from the proposed access would pose a danger to pedestrians who could be crossing the road from the pedestrian refuge island.
37. Owing to the layout of the proposed parking area, I am satisfied that vehicles would be able to manoeuvre and egress in a forward gear. In front of the proposed access, there is an existing pavement and then a grass highway verge. On my site visit, I observed that there were no items of street furniture or trees, which would obscure the view of pedestrians from drivers egressing from the appeal site. Therefore, drivers would have good visibility of on-coming traffic and pedestrians using the pedestrian refuge island.

38. I recognise that vehicles egressing from the appeal site would not be able to make a right turn due to the pedestrian refuge island. However, this in and of itself would not represent a danger to highway safety. By only being able to exit the appeal site in one direction, vehicles would not have to cross the path of on-coming traffic, which would be safer than being able to exit in either direction.
39. If I were minded to allow the appeal, a planning condition could be imposed to limit the height of boundary treatments on the site boundary facing Worsley Bridge Road to ensure that there were no obstructions to the visibility of on-coming traffic and pedestrians using the pedestrian refuge island.
40. For these reasons, and, given the relatively low number of vehicle movements associated with the use of a single dwelling, I conclude that the proposed development would preserve highway safety. As such, the proposal would accord with Policies 30 and 32 of the BLP and Policy 6.13 of the LP, which require new development to provide an appropriate level of off-street parking and ensure that such development does not have significant adverse impacts on road safety.
41. Given the above, I consider that the proposal would be consistent with paragraph 110(c) of the Framework, which states that developments should create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Other considerations

42. Subsequent to the grant of the certificate which confirmed that proposed works to convert the property into a single dwellinghouse would be lawful, the Council granted three certificates of lawfulness^{2,3,4} pursuant to Section 192 of the Act for extensive works to be undertaken to the appeal property by virtue of the provisions set out under Schedule 2, Parts 1 and 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO').
43. The works include the erection of a single storey rear extension with a depth of 8m; a loft conversion; a part one/two-storey rear extension; a single storey side extension; a detached single storey garage to the rear of the existing building; a detached single storey outbuilding to the side of the existing building; and the construction of a new vehicular access on to Worsley Bridge Road.
44. At the Hearing, the parties agreed that all of the works could not be implemented simultaneously due to the drafting of the GPDO. Nevertheless, significant extensions could be undertaken as permitted development by building a combination of the extensions and outbuildings, as confirmed by the various certificates.
45. The latest massing models submitted by the appellant show various scenarios of the works that could be undertaken. The models show that an 8m single storey rear extension, side extension, loft conversion and outbuildings could be

² Council Ref:17/005324/HHPA and 18/00164/PLUD – Erection of a single storey rear extension

³ Council Ref: 18/00643/PLUD – Loft conversion, part one/part two storey rear extension, a single storey side extension and a new access from Worsley Bridge Road

⁴ Council Ref: 18/01840/PLUS – Detached single storey garage to the rear and a detached single storey outbuilding to the side

erected simultaneously as permitted development and that such works would have a total volume of 1273m³.

46. The appellant argues that such permitted development would have a greater impact on the MOL than the appeal development. Therefore, he contends that the fallback position should be afforded significant weight, which would represent very special circumstances to justify the proposal.
47. The Courts have set out a two-stage approach where a determination must first be made concerning whether the fallback position is a material consideration, before weight is ascribed. The first stage is to determine whether there is a greater than a theoretical possibility that the development might take place. The second stage is that if it is found that there is a greater than theoretical possibility, then the decision-maker should exercise their planning judgement to determine what weight should be ascribed to the fallback position.
48. The Council explain that the respective certificates were granted on the basis that the property was in use as a single dwellinghouse. As the use of the property remains as two flats, they argue that the various extensions and outbuildings cannot be built as permitted development and therefore they argue that the certificates do not constitute a fallback position.
49. However, at the Hearing the Council confirmed that if the property were to be converted back into a single dwellinghouse, the householder works that are the subject of the respective certificates could be subsequently implemented as permitted development.
50. The appellant explains that the appeal property will be vacated in October 2020 and once vacant, it is the owner's intention to convert the property into a single dwellinghouse. If the appeal fails, once converted, the owner would exercise their permitted development rights to extend the property, as deemed to be lawful by the respective certificates.
51. Whilst I recognise that it may be the owner's intention to convert the property into a single dwellinghouse, at this time, the appeal property remains in use as two flats. The flats do not benefit from permitted development rights under Schedule 2, Part 1 of the GPDO. Consequently, the various extensions, alterations and outbuildings that are the subject of the certificates granted by the Council cannot be constructed at the appeal site. Given that the change of use has not occurred to a single dwelling, I consider there is only a small 'greater than theoretical possibility' that the appellant's fallback position would occur. As such, I afford the fallback position limited weight as a material consideration.
52. Notwithstanding the above, even if I were to accept the appellant's position and afford significant weight to the fallback position, if the permitted developments were implemented, the appeal property would retain a two-storey scale and the design and appearance of the proposed extensions would be in-keeping with the local vernacular. In addition, the overall volume of built form would be less than the appeal proposal with a significant amount of the built volume provided by single storey outbuildings, which would appear subservient to the host building.

53. Given the above, I conclude that the extensions, alterations and outbuildings that could be constructed at the appeal property, if it were in use as a single dwellinghouse, as confirmed by the respective certificates, would result in less harm to the openness of the MOL and the character and appearance of the area, compared to the appeal proposal.
54. At the Hearing, the appellant argued that an additional two-storeys could be constructed at the appeal property as permitted development⁵ and that such works would further increase the volume of permitted extensions. However, the new permitted development rights for upward extensions are subject to limitations and conditions, as set out within the GPDO, as well as being subject to requirements for prior approval. Given that prior approval has not been given for an upward extension at the appeal property, I afford this matter limited weight.
55. Consequently, these considerations, along with the other matters identified in the evidence either individually or collectively, do not clearly outweigh the identified harm to the MOL so as to amount to the very special circumstances necessary to justify the development.

Conclusion

56. In conclusion, the appeal proposal would be inappropriate development in the terms set out by the BLP, LP and the Framework and it would fail to preserve the openness of MOL. Moreover, the proposal would cause significant harm to the character and appearance of the area. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, for the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell

INSPECTOR

⁵ By virtue of the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 and the Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020.

APPEARANCES

FOR THE APPELLANT:

Mr P Hadley BA(Hons) DipTP MRTPI Robin Escott Planning LLP

Mr S White QC Landmark Chambers

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Bord BA(Hons) PGDip MRTPI Council of the London Borough of Bromley

OTHER INTERESTED PARTIES

Mr I Young Chair, North Copers Cope Road Action Group

DOCUMENTS SUBMITTED AT HEARING

1. Additional proposed condition relating to site levels.