

Appeal Decision

Site visit made on 23 November 2020

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020.

Appeal Ref: APP/G5180/W/20/3253377

**Site of Former 41 Sunningvale Avenue, Sunningvale Close,
Biggin Hill TN16 3BX**

- 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 Kent Residential Homes Ltd against the decision of the Council of the London Borough of Bromley.
 - The application, Ref. DC/20/00343/FUL, dated 20 January 2020 was refused by notice dated 22 May 2020.
 - The development proposed is the erection of two no. 2 storey 3 bedroom semi-detached dwellings with associated parking, bin stores and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two no. 2 storey 3 bedroom semi-detached dwellings with associated parking, bin stores and landscaping at the site of the former No. 41 Sunningvale Avenue, Sunningvale Close, Biggin Hill in accordance with the terms of the application, Ref. DC/20/00343/FUL, dated 20 January 2020, subject to the conditions in the attached Schedule.

Main Issue

2. The main issue is whether a tree subject to a Tree Preservation Order ('TPO') should be retained to safeguard the character and appearance of the area, taking account of all other material considerations.

Reasons

3. The appeal site forms a gap on the western side of Sunningvale Close between the recently constructed two pairs of semi-detached houses immediately to the north and three pairs to the south. The appeal scheme is for a pair of semi-detached houses similar those to the north which were granted permission on appeal in August 2019.
 4. The Council's only objection to the proposal is that it would result in the loss of an ash tree in the south eastern corner of the appeal site. The tree adjoins a proposed parking space in front of one of the houses and is close to the already constructed carriageway of the Close. It is considered by the Council
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that retention of the tree is essential as a mature feature providing a reference point to its wider sylvan setting.

5. However, in my view the long term health and safety of the tree and its longer term potential for visual amenity has been thoroughly compromised by the development that has taken place around it. This is to the extent that, despite drawing the eye and conferring some amenity, the ash is now somewhat incongruous in its much changed setting since the TPO was first made.
6. On the one hand it is isolated and too tall for a street tree on this highly constrained site within a relatively tight knit housing development. Alternatively, with a position right on the edge of the road, there is wholly insufficient space around the ash for it to be a feature tree with a complementary soft landscape setting and to appear as an integral part of the overall development of the Close. As the appellants argue, a replacement tree of a suitable species and proportionate size would in time become a far more appropriate visual amenity for the locality. And contrary to the Council's position, in the particular circumstances of this case I do consider the potential for ash dieback to have some materiality in the planning balance.
7. However, much more persuasive in weighing this balance is that the tree is preventing an infill development of two family houses that would complement the rhythm of the street scene and make a valuable contribution to the housing needs of the area. An alternative scheme ensuring the retention of both the ash and a yew tree to the rear is in my assessment highly unlikely to be feasible and would only be achieved by a siting and design of dwellings that would in itself appear a jarring feature in the street scene.
8. The Council says that the two additional units would make a 'minor contribution' to housing stock. In purely arithmetic terms this is correct, but it is the cumulative effect of such minor contributions that is an important part of the solution of meeting the housing needs of the Borough. For that reason, substantial weight should be given to making the most of opportunities as and when they arise, subject to other material considerations not being determinative against a grant of permission.
9. In this instance the weight of the planning balance is in any event tilted because of the Council's acknowledgment in September 2020 that it cannot demonstrate a 5 year housing land supply. Accordingly, the presumption in favour of sustainable development set out in paragraph 11 of the National Planning Policy Framework 2019 ('the Framework') applies. This means that permission should be granted for development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
10. To the extent that I have acknowledged in paragraph 5 above that the ash tree does provide some amenity (albeit I have then qualified this view), the adverse impact of its loss would not 'significantly and demonstrably outweigh' the important benefits of two additional family houses in this location.

11. On the main issue, I conclude that the ash tree need not be retained to safeguard the character and appearance of the area and its removal would enable the provision of two additional dwellings. In granting permission for the appeal scheme there would therefore be no conflict with Policies 37, 73 and 74 of the Bromley Local Plan 2019 or with Government policy in the Framework.

Other Matters

12. Local residents have raised a number of points in objecting to the application. These include the site being needed for a play area; a shortage of parking spaces; an increase in traffic, and too many houses in the Close. I have read these representations and noted the points made, but consider that they do not override the benefit of the family accommodation that two more houses would provide.

Conclusion and Conditions

13. For the reasons that I have explained I allow the appeal. The Council has suggested a substantial number of conditions, to which the appellants have not objected. However, these are standard conditions and some elements of them appear to apply rather more to larger construction sites than for just a pair of semi-detached dwellings. It is not feasible for me to separate the 'wheat from the chaff' as part of my decision.
14. Accordingly, whilst I agree that they can be used as the Council's legal position for enforcement, I also consider that the Council should apply them on a judicious basis and as part of an ongoing dialogue with the developer. Without this consultation and pragmatism, the conditions would not meet Government policy on conditions as set out in the Planning Practice Guidance (Paragraph: 001 Reference ID: 21a-001-20140306).
15. Between them the conditions will achieve certainty as to what has been approved; minimise flood risk; ensure adequate parking and highway safety; the protection of trees on the site, in particular a yew tree; ensure the health and safety of construction workers on the site, of existing residents in the locality and of future occupiers of the dwellings; achieve a high standard of construction; minimise noise and disturbance during construction, and safeguard the character and appearance of the area.

Martin Andrews

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision;
- 2) The development shall be carried out in accordance with the following approved plans: Drawing Nos. 3813: Proposed Location Plan; 3813-PD-2003 Rev. H: Proposed Site Plan; 3813-PD-2004 Rev. F: Proposed Floor Plans; 3813-PD-2007 Rev. D: Proposed Elevations;
- 3) (a) Prior to commencement of the development hereby approved (excluding any ground clearance or demolition) a scheme for the provision of surface water drainage shall be submitted to and approved in writing by the local planning authority; (b) Before the details required to satisfy Part (a) are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer in accordance with the drainage hierarchy contained within the London Plan Policy 5.13 and the advice contained within the National SuDS Standards; (c) Where a sustainable drainage scheme is to be provided, the submitted details shall provide information about the design storm period and intensity, the method employed to delay (attenuate) and control the rate of surface water discharged from the site as close to greenfield runoff rates (81/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water; (d) The drainage scheme approved under Parts a, b and c shall be implemented in full prior to first occupation of the development hereby approved;
- 4) Before commencement of the use of the buildings hereby permitted, parking spaces and/or garages and turning space shall be completed in accordance with the details as set out in this planning permission and thereafter shall be kept available for such use and no permitted development, whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not, shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages;
- 5) (a) Prior to commencement of the development hereby approved (excluding demolition) details of turning area(s) within the site shall be submitted to and approved in writing by the Local Planning Authority;
(b) The turning area(s) shall be provided before any part of the development is first occupied and shall be permanently retained thereafter;
- 6) While the development hereby permitted is being carried out, a suitable hard standing shall be provided with wash-down facilities for cleaning the wheels of vehicles; and any accidental accumulation of mud on the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day;
- 7) (a) Details of a scheme to light the access drive and car parking areas hereby permitted shall be submitted to and approved in writing by the

Local Planning Authority prior to the commencement of above-ground works;

(b) The approved scheme shall be self-certified to accord with BS 5489 – 1:2003;

(c) The lighting scheme shall be implemented in full accordance with details submitted under Part (a) before the development is first occupied and the lighting shall be permanently retained thereafter;

8) (a) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a survey of the condition of the road shall be submitted to and agreed in writing by the Local Planning Authority;

(b) Any damage caused to the surface of the road during the construction phase of the development shall be reinstated to a standard at least commensurate with its condition prior to the commencement of the development (as evidenced in details submitted to satisfy part (a) prior to first occupation of the development hereby approved;

9) No development shall commence on site (including demolition) until such time as a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. As a minimum the plan shall cover:

(a) Dust mitigation and management measures;

(b) The location and operation of plant and wheel washing facilities;

(c) Measures to reduce demolition and construction noise;

(d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:-

(i) Rationalise travel and traffic routes to and from the site as well as within the site;

(ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity;

(iii) Measures to deal with safe pedestrian movement;

(iv) Full contact details of the site and project manager responsible for day-to-day management of the works;

(v) Parking for operatives during the construction period;

(vi) A swept path drawing for any tight manoeuvres on vehicle routes to and from the site including proposed access and egress arrangements at the site boundary;

(e) Hours of operation;

(f) Other site specific Highways and Environmental Protection issues as requested on a case by case basis;

(g) The development shall be undertaken in full accordance with the details approved under Parts a-f;

- 10) Prior to commencement of development (excluding demolition) details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved levels;
- 11) (a) Prior to commencement of above-ground works, details (including samples) of materials to be used for the external surfaces of the building which shall include roof cladding, wall facing materials and cladding, window glass, door and window frames, decorative features, rainwater goods and paving where appropriate, shall be submitted to and approved in writing by the Local Planning Authority;
(b) The development shall be carried out in accordance with the approved details;
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority;
- 13) The development hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4 'wheelchair user dwellings' for the units identified in the application as wheelchair units and shall be permanently retained thereafter;
- 14) Prior to the commencement of the development hereby approved (including all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority;
(i) *Specific issues to be dealt with in the TPP and AMS:*
 - a) Location and installation of services/utilities/drainage; b) Methods of demolition within the root protection area (RPA as defined in BS5837:2012) of the retained trees; c) Details of construction within the RPA or that may impact on the retained trees; d) A full specification for the installation of boundary treatment works; e) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification; Details shall include relevant sections through them; f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses; g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing; h) A specification for scaffolding and ground protection within tree protection zones; i) Tree protection during construction indicated on a TPP and construction activities clearly identified as prohibited in this area; j)

Details of site access, temporary parking, on -site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires; k) Boundary treatments within the RPA. l) Methodology and detailed assessment of root pruning; m) Arboricultural supervision and inspection by a suitably qualified tree specialist; n) Reporting of inspection and supervision; o) Methods to improve the rooting environment for retained and proposed trees and landscaping; p) Veteran and ancient tree protection and management;

(ii) The development thereafter shall be implemented in strict accordance with the approved details.