

Appeal Decision

Site Visit made on 11 November 2020

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2020

Appeal Ref: APP/G5180/W/19/3223615

Land at Gravel Pit Way, Orpington, BR6 0QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gravel Way Limited against the decision of London Borough of Bromley.
 - The application Ref DC/18/04985, dated 31 October 2018, was refused by notice dated 21 January 2019.
 - The development proposed is demolition of existing double garage and workshop, erection of two/three storey apartment block comprising 6 x one bed flats and 1 x two bed flat and alterations of existing access.
 - This decision supersedes that issued on 12 August 2019. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Application for costs

2. The appellant has applied for costs. This is the subject of a separate Decision.

Preliminary Matters

3. There have been no material changes to the statutory development plan since the Council's decision. The development plan still comprises the Bromley Local Plan (2019) (BLP) and the London Plan (2016) (LP).
4. The New London Plan (NLP) has progressed since the Council's decision on the appeal proposal. The Mayor of London is considering the response from the Secretary of State to the "Intend to Publish" version of the NLP. The policies of the NLP are at an advanced stage and where relevant now form a material consideration of the appeal proposal.
5. An important change in circumstance since the Council's decision on the appeal proposal is that the Council now accepts that it cannot currently demonstrate a five year supply of deliverable housing sites. An appeal decision in June 2019¹ established a housing land supply of 4.25 years which the Council acknowledge is a significant level of under supply. A consequence of this is that BLP Policy 1 on housing supply should be regarded as being "out of date" in accordance with Paragraph 11(d) of the National Planning Policy Framework (the Framework).

¹ APP/G5180/W/18/3206569 – former Dylan International Premises, Station Approach, Lower Sydenham

6. The tilted balance set by the Framework should therefore apply to the proposal. This requires granting permission 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.
7. Notwithstanding these changes in circumstance, the Council contends that benefits in relation to a contribution to housing supply would be outweighed by the degree of harm arising from the proposal's impact in relation to environmental considerations.

Main Issues

8. The main issues therefore are
 - (a) the effect of the proposal on the character and appearance of the area,
 - (b) the impact of the proposal on the living conditions of occupiers of neighbouring dwellings in relation to overlooking and
 - (c) the planning balance, and whether any identified harm would significantly and demonstrably outweigh the benefits of the proposal.

Reasons

Character and appearance

9. The appeal site fronts the eastern side of Gravel Pit Way and is formed from the rear part of the back garden to 21 Lancing Road. A fence has been erected to separate the site from the retained curtilage to no.21; the remaining garden for no.21 would be about 20m in depth. Lancing Road is suburban in character comprising detached houses. The odd numbered houses are on the outside of a bend in the road and have long splayed back gardens. There is a vehicle access to the appeal site from Gravel Pit Way adjacent to an access to the back garden to 19 Lancing Road. There is a high brick wall along the back edge to the footway to Gravel Pit Way abutting the back gardens in Lancing Road; that part of the wall bounding the appeal site has been replaced by temporary fencing. A double garage remains in the northern corner of the site but would be demolished for the development.
10. The application is for outline planning permission with access, appearance, layout and scale to be determined at this stage and landscaping to be the subject of an application for approval of reserved matters. As such, the siting and massing of the building would be fixed by the current proposal. The building would be three storeys facing Gravel Pit Way but two storeys at the rear and would have an irregular shape reflecting that of the site. It would have a flat roof and modern design and would be set back from Gravel Pit Way behind a repositioned access to enable provision of 5 parking spaces.
11. The proposal would be development on garden land, but it would not be backland development; it would be frontage development as it would front Gravel Pit Way. Policy 3 of the BLP states that new residential development on garden land will only be considered acceptable if specified criteria are met. These include there being no unacceptable impact upon the character, appearance and context of an area and on the residential amenity of future and existing occupiers.

12. The building would be glimpsed from the footways in Lancing Road between the close spacing of the houses. But it would be a conspicuous feature from the rear windows and back gardens to the nearest dwellings. There would be a separation distance of about 27m to the rear wall of no.21 and similar distances to the adjacent dwellings. The gardens here are relatively open and laid to lawn with few trees or shrubs to filter views of the building. Land surrounding the building to the north, south and east of the appeal site is undeveloped garden land. The proposal would be an isolated development amidst these long back gardens and an incongruous feature in respect of its massing, depth and awkward design incorporating a non-rectangular footprint. In this context the proposal would not be in keeping with the area's prevailing open, suburban garden character.
13. There is a more urban character to Gravel Pit Way, a busy through road marked by yellow lines, pay and display parking bays and bus stops. Its western side has an open and utilitarian appearance comprising, car parks and the service areas and rear extensions to commercial properties fronting High Street and set back from the Gravel Pit Way frontage. A four storey building directly opposite the appeal site, rear of 251–259 High Street, is in the process of being converted from offices to a mixed use including 34 new flats. To the north, beyond the junction of Gravel Pit Way with Homefield Rise, are higher buildings fringing Orpington Town Centre.
14. The brick wall to the eastern side of Gravel Pit Way is a hard feature in the street scene, largely screening any garages, sheds and planting in the gardens behind, and reinforces the road's urban character. Nonetheless, the proposed three storey building would appear as a high, abrupt and relatively isolated feature on the eastern side of the road. Its massing would be considerably less than that of buildings to the western side of the road, but it would be sited much closer to the road and would be a prominent feature in the street scene. In these respects, the building would depart from the prevailing character of Gravel Pit Way.
15. The appeal site abuts the end of the back garden to 18 Homefield Rise. The block 18-44 Homefield Rise currently comprises a row of mainly two storey dwellings with gardens backing on to those in Lancing Road. However, this block is an allocated housing site for around 100 dwellings (a net increase of some 87 units). Permission has been refused and dismissed at appeal in 2017 for 103 dwellings at the site; the Inspector concluded that scheme would *"unacceptably interpose itself within the prevailing suburban townscape beyond the town centre"*².
16. Nonetheless, this edge of town centre block remained an allocated site within the BLP adopted in 2019 and the Council has recently granted permission for its redevelopment³. Phase 1 of the development would involve erection of one part 3/part 4 storey building at 18-28 Homefield Rise comprising 37 one and two bedroom apartments with 22 parking spaces. The plans show that there would be a predominantly 4 storey building reducing to 3 storeys at its rear to the Gravel Pit Way frontage. Its height and depth along this frontage would considerably exceed that of the two storey houses to be replaced. This demonstrates a form of development that is acceptable, which is likely to be delivered and which would result in a change in the character of the road.

² Appeal ref: APP/G5180/W/16/3183366

³ Planning application ref: 20/02697/FULL1

17. Such a building would have a greater height, massing and width to the Gravel Pit Way frontage than the building the subject of this appeal and would also be closer to that frontage. The proposal would be seen in the context of this adjacent building in street scene views along Gravel Pit Way. In this regard, the building proposed on the appeal site would appear less isolated when the adjacent site is developed. The character and appearance of the eastern side of Gravel Pit Way is in the process of change at its northern end, and the proposal would not be viewed as so out of keeping with the changing context of larger buildings and an expanding residential nature. It would also be seen against higher buildings beyond in Orpington Town Centre and in relation to the greater height and massing of buildings opposite on the western side of Gravel Pit Way.
18. In views from the houses in Lancing Road the building's three storey element would also be seen against this backdrop of higher buildings. But the two storey rear element would be perceived as a closer and more conspicuous feature. The building's massing and appearance would be obtrusive and harmful to the suburban character and open garden context of the immediate area. There would be lesser harm to the character of the area in the context of the street scene in Gravel Pit Way, and this harm would diminish with the construction of a large building on the Homefield Rise site. But the building as a whole would nonetheless unduly impact on the suburban character of land beyond the Gravel Pit Way frontage by reason of its depth, massing and appearance. It would fail to make an acceptable transition. Overall, there would be conflict with Policies 3, 4 and 37 of the BLP and Policies 7.4 and 7.6 of the LP. These require housing schemes to be of a high standard of design and layout and to respect local character; the proposal would not satisfy these policy aspirations. As there would be more than 1 metre to the side boundaries, the proposal would not be contrary to Policy 8 on side space.

Living conditions

19. The separation distance of about 27m between the rear wall of the two storey element of the proposed building and the rear wall of 21 Lancing Road would be adequate to safeguard mutual privacy levels. There would be similar separation distances to the rear walls of 19 and 23 Lancing Road, sufficient to safeguard privacy inside these dwellings. The angle of viewing would not be as direct, and the separation distances would be greater from the development to other houses in Lancing Road.
20. The back gardens to the Lancing Road houses are currently overlooked from the upper floor windows of neighbouring dwellings, but this tends to be across the mid and rearmost parts of the gardens. By contrast, the proposed first floor rear facing balcony would afford views to the presently more private patio areas close to the nearest houses. The appellant's sectional drawing at appendix 4 of their statement demonstrates that the Lancing Road houses would be on slightly higher land thus reducing the differential in levels, but the balcony would still afford views over boundary enclosures and result in a sense of overlooking. The extent of screening required to mitigate overlooking would be extensive and would undermine the amenity value of the balcony. The removal of the balcony from the proposal could be secured by a planning condition, but similar overlooking relationships would remain from the first floor rear facing windows.

21. The submitted plans indicate a distance of 8.7m between the rear wall to the building and the fence to the retained garden at no.21. The fence would form a visual screen that would offset overlooking in the retained garden to no.21 to a degree; the resulting relationship would be similar to that within higher density back to back housing commonplace elsewhere. But there would be no such dividing fence for the back gardens to nos. 19 and 23. The first floor rear windows would afford close views of these adjacent gardens. First floor side windows would be only about 3-4m from the boundary with no.23. The back gardens to the Lancing Road houses tend to be well-maintained indicating that they form an important amenity for residents. The massing of the rear upper floor element and the presence of clear glazed windows within it to rear and flank elevations would result in a sense of being overlooked and a diminution of the amenity value of the more intimate parts of the back gardens extending from the rear walls of these adjacent houses.
22. There is a curved beech hedge across the width of the garden to no.23 midway along its length that would align approximately with the rear wall of the two storey element of the proposed building. The hedge separates the lawn and flower beds closest to the house from a more functional area to its rear. The building's three storey element would be close to this rearmost section of the garden; as the plans do not include flank windows in the three storey section, there would not be a comparable loss of privacy here. This part of the garden would also be adjacent to the development site at 18-44 Homefield Rise.
23. The plans show no side windows to the three storey element facing the rearmost part of the garden to no.19 close to the vehicular access. There would be no material loss of privacy here. A planning condition could be used to control the subsequent insertion of side windows.
24. Nevertheless, the first floor balcony and windows to the two storey element would result in a significant degree of overlooking and a loss of amenity within the rear part of the gardens to adjacent dwellings. The proposal would thereby result in harm contrary to Policies 3 and 37 of the BLP and Policy 7.6 of the LP which require there to be no unacceptable impact on the residential amenity of future or existing occupiers through matters including loss of privacy.

Housing supply

25. The site is in a sustainable location close to shops, services and public transport options and is therefore in a suitable location for a development for additional housing. The proposal would also be compliant with LP Policy 3.4 on the density range for development and those parts of LP Policy 3.5 relating to housing standards. As the emerging new London Plan (NLP) is at an advanced stage, it is material to consider relevant policies. The proposal would be in accordance with the strategic NLP Policies GG2 and GG4 on delivering housing for Londoners and with Policy H2 on the contribution made by small sites.
26. The proposal is a small scheme and would make a modest contribution towards local housing supply. The importance of this benefit however is increased by the recent shortfall in housing supply against targets and by the imminent increase in the target for Bromley set by NLP Policy H1 from 641 to 774 dwellings per annum.

Other Matters

27. I have addressed many of the issues raised by local residents' objections to the proposal. Some have drawn comparison between the current proposal and previous proposals for smaller developments at the rear of both 19 and 21 Lancing Road⁴. However, those proposals would have been considered in relation to different local and national planning policy regimes. Reference has been made to the approval of proposals for flats elsewhere around Orpington, indicating a sufficiency of local supply, but the fact that the Council cannot demonstrate a five year housing land supply is a material consideration that adds weight to the need for additional housing.
28. Reference has been made to the presence of bats in the area and that they may be using the garage to be demolished as a roost. There is no firm evidence before me that this is the case. Bats are protected species⁵. In the event of another application being submitted for development on the site it would be appropriate for this issue to be investigated further.

Planning balance

29. The conflict with Policies 3, 4 and 37 of the BLP and LP Policies 7.4 and 7.6 in relation to the effect on the character of the area relates primarily to the siting and massing of the rear part of the proposed building as perceived from the Lancing Road houses. This part of the scheme would fail to make an acceptable transition from the urban character of the three storey element on the Gravel Pit Way frontage to the suburban garden character at the rear and the resultant policy conflict attracts substantial weight. The conflict with Policies 3 and 37 of the BLP and Policy 7.6 of the LP in respect of loss of privacy through the overlooking of neighbouring dwellings relates primarily to the rear two storey element of the building. This warrants significant weight in consideration of the serious impact resulting on living conditions.
30. The provision of 7 dwellings with a satisfactory layout in a sustainable location would be in accordance with local and London wide policies on housing supply. The current housing land supply of 4.25 years which the Council acknowledge is a significant level of under supply adds weight to the importance to be attached to housing supply policies. The proposal of 7 units would make a modest contribution towards housing need. But in my judgement this benefit would not outweigh the harm arising from conflict with the policies relating to character and living conditions. The proposal would thereby conflict with the development plan as a whole.
31. However, as the Council cannot currently demonstrate a five year supply of housing land then the tilted balance at Paragraph 11(d) of the Framework is engaged. Planning permission should therefore be granted 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. The proposal would be in accordance with the Government's objective of "*significantly boosting the supply of homes*" set at Paragraph 59 of the Framework. Similarly, the proposal would "*promote an effective use of land in meeting the need for homes and other uses*" as required by Paragraph 117 of the Framework.

⁴ 10/00070/FULL1 and 10/01316/FULL1

⁵ The Conservation of Habitats and Species Regulations 2017 Schedule 2

32. But Paragraph 117 also states, *"while safeguarding and improving the environment and ensuring safe and healthy living conditions"*. Paragraph 127 (c) requires planning decisions to ensure that developments *"are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)"*. In relation to living conditions, Paragraph 127 (f) requires decisions to ensure that developments *"create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users"*.
33. The contribution to housing need attracts significant weight. In relation to the tilted balance, this benefit would not be outweighed by the principle of the use of garden land for housing, or by harm arising from the relatively isolated appearance to the development in the Gravel Pit Way street scene. This road is urban in character and should be able to accommodate appropriate innovation and change including increased densities. Development of the Homefield Rise site is likely to hasten the change in the character of Gravel Pit Way. Harm arising from the frontage element of the proposal would not therefore outweigh the benefit accruing to meeting housing need.
34. However, the harm that would arise from the depth of the two storey element of the building, its protrusion into the distinctly different character area of suburban gardens attracts substantial weight. Overlooking from clear glazed first floor windows and the balcony attracts significant weight. This part of the building would not result in an acceptable transition from the urban character of Gravel Pit Way to the suburban context of the garden land to the rear. It would not be sympathetic to local character or retain a high standard of amenity for existing users. The adverse impacts arising from the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
35. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is one such material consideration but even with application of the tilted balance at Paragraph 11 the decision on the proposal should not be taken otherwise than in accordance with the development plan.

Conclusion

36. The massing and depth of the rear element of the building would unacceptably impact on the suburban garden character of adjacent land and on the living conditions of occupiers in Lancing Road. For the reasons given, and having regard to all other matters raised, the appeal should be dismissed.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR