



Appeal Decision

Site visit made on 14 and 17 December 2020

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/G5180/W/20/3252491

Foxhollow, Merlewood Drive, Chislehurst BR7 5LQ

- 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 R Stone against the decision of the London Borough of Bromley Council.
 - The application Ref DC/19/05257/FULL1, dated 12 December 2019, was refused by notice dated 21 April 2020.
 - The proposed development is erection of a two storey, 5 bedroom detached property on land rear of Foxhollow with associated car parking and amenity space.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the living conditions of neighbouring residential occupiers, with particular reference to outlook, light and privacy.

Procedural Matters

3. I visited the appeal site on 14 December 2020 and, due to the gated nature of the private road at Oakhurst Close, was required to arrange access to this road to complete my site visit on 17 December 2020, which was conducted at the same time of day.

Reasons

4. The appeal site is located off a private road, adjacent to other large, detached houses in garden settings, which provide them with good separation from their nearest neighbours. The proposal involves the demolition of existing outbuildings and the development of a 5 bedroom 2 storey house, designed in a flat roofed modernist idiom, with a double integrated garage and associated car parking and landscaping.
5. The proposed house would be approximately 30m wide and 7m deep and would be positioned along the rear of the appeal site. Its rear long timber clad wall, with very narrow and tall windows that serve circulation spaces and a dressing room, would be 2m from the boundary of the appeal site that is shared with the rear gardens of large 2 storey detached houses on Oakhurst Close.

6. These neighbouring houses on Oakhurst Close are set at a significantly lower level than the appeal site and have short and unusually steep rear gardens that slope upwards towards it. This results in their gardens having an already overbearing effect on the rear of these properties, limiting the outlook from the small flat garden area nearest to the houses but more particularly from their rear rooms on both storeys.
7. The ground level of the proposed house would be almost at the height of the roof ridge of the existing houses on Oakhurst Close, with approximately 22m between the rear wall of the proposed house and the rear wall of these existing houses. The full two storeys of the proposed house would, therefore, appear to be almost entirely above the roof level of these existing houses.
8. I find that, despite being set back slightly from the boundary, the proposed height and proximity of the proposed house to the existing houses at 9, 10 and 11 Oakhurst Close (No's 9, 10 and 11) would materially exacerbate the existing domineering and overbearing effect that their steep gardens already have on outlook. As apparent from my site visit, this would result in the proposed house being experienced as an oppressive presence, especially from the rear rooms and gardens of No's 9, 10 and 11, thereby causing unacceptable loss of outlook. The existing impact of the small steep rear gardens on outlook does not in itself justify making matters worse.
9. The appellant's sunlight and daylight assessment (SDA), for which the appellant has confirmed the drawings used, has been accepted by the council as accurately representing the proposal in relation to the existing situation and demonstrating the effect of the proposal on sunlight and daylight to neighbouring properties. I see no grounds for me to demur from this conclusion. However, it is noted that, whilst BRE Guidelines do provide a useful evaluation of the effect of planning proposals with regard to sunlight and daylight, they are not mandatory.
10. The appellant's SDA concludes that the reduction in daylight and sunlight would be within the acceptable limits set out in the BRE Guidelines and that, although the proposal would result in some slight loss of daylight and sunlight to some rooms of affected dwellings, the effect of the proposal would be unlikely to be noticeable to their occupiers. However, given the unacceptable overbearing effect of the proposed house on No's 9, 10 and 11, that I have identified above, the predicted loss of light, although not decisive on its own, would add to the proposal being experienced as an oppressive presence by the occupiers of No's 9, 10 and 11, especially during the winter months.
11. Although the rear windows in the wall of the proposed house that face towards Oakhurst Close are extremely narrow and serve only circulation spaces and a dressing room, they do appear to provide opportunities for overlooking of the properties at No's 9, 10 and 11, despite the proposal incorporating louvres.
12. I have had regard to the appellants suggestion that a condition could be applied to protect the living conditions of neighbouring occupiers, by requiring these windows to have obscure glazing to an appropriate height. However, whilst this could be potentially successful in removing opportunities for overlooking, it would not remove the feeling of overlooking and loss of a sense of privacy resulting from the location, height and proximity of the proposed windows to the rear rooms of the neighbouring houses at No's 9, 10 and 11, especially the first floor bedrooms. This perceived overlooking and loss of

privacy would add to the proposal being experienced as oppressive by the occupiers of these neighbouring dwellings. Such an approach would therefore not make an unacceptable development otherwise acceptable, as set out in paragraphs 54 and 55 of the National Planning Policy Framework (the Framework) and Planning Practice Guidance.

13. I therefore conclude that, for the reasons given above, the proposal would result in significant harm to the living conditions of the occupiers of No's 9, 10 and 11. This would be contrary to policy 37 of the Bromley Local Plan (2019) (the Local Plan) and section 12, Paragraph 127 f) of the Framework that seeks to ensure that developments create a high standard of amenity for existing and future users.

Planning Balance and Conclusion

14. Paragraph 11d, footnote 7 of the Framework states that where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the LPA cannot demonstrate a five year supply of deliverable housing sites), permission should 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.
15. When this is the case, and as this appeal relates to the provision of housing, the need for the proposal to be considered against paragraph 11d is triggered. However, although the proposal must be determined within the context of paragraph 11d, I consider the Local Plan policies are a material consideration within this decision, which carry full weight in so far as they conform to the Framework. The Local Plan Policy 37, which is most relevant to this appeal, is consistent with the Framework and specifically paragraph 127, which promotes health and well-being and a high standard of amenity for existing and future users.
16. According to the most up to date statistical projections¹ available to me and notwithstanding the appeal decision² and planning permission³ for new housing that the Council have brought to my attention, the Council has a projected housing shortfall on that required by the London Plan (2016) and can only demonstrate a 3.31 year housing land supply which represents a significant shortfall of that required.
17. I have also noted that the Council's projected housing shortfall is significantly below that identified in the Publication London Plan (2020). Given the consultation this has undergone, and the stage it has reached in the process of adoption, it can reasonably be expected that the policies in the Publication London Plan will ultimately be adopted. I have, therefore, given it moderate weight in the particular circumstances of this appeal in so far as it is relevant.
18. As I have identified above, the proposal would result in significant harm to the living conditions of the occupiers of No's 9,10 and 11, contrary to policy 37 of the Local Plan. In light of the Council's housing land supply position, paragraph 213 of the Framework makes it clear that weight should be given to existing development policies according to their degree of consistency with the

¹ London Borough of Bromley Housing Trajectory (September 2020)

² Appeal Ref: APP/G5180/W/18/3206569

³ Council Planning Ref: 18/00443/FULL1

Framework. Section 12, Paragraph 127 f) of the Framework recognises that developments should create a high standard of amenity for existing and future users. Even taking account of the objective of significantly boosting the supply of homes and the Council's supply position, the conflict between the proposal and the relevant parts of policy 37 of the Local Plan should be given significant weight in this appeal.

19. Set against the harm identified there would be social, economic and environmental benefits associated with the development. The appeal site is a 'windfall' site in terms of housing, in so far as it is a small site not previously identified in the Bromley Development Plan and presents an opportunity for the proposed large family type dwelling. Although a small contribution to the overall housing target for the London Borough of Bromley, small housing schemes do collectively make a major contribution to the number of new residential units and I have given this significant weight in my considerations. The proposal would also generate employment opportunities during construction, and through the employment of local services for its upkeep and maintenance when occupied. Furthermore, the house would be designed so as to be energy efficient and additional environmental benefits would include enhancements to encourage biodiversity across the site and new diverse landscaping and planting. In connection with the single additional dwelling proposed, these benefits attract modest weight in favour of the proposed development.
20. Consequently, I conclude that the significant harm to the living conditions of the occupiers of No's 9, 10 and 11 that I have identified, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
21. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Victor Callister

INSPECTOR