



Appeal Decision

Site visit made on 26 May 2021

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

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/G5180/W/20/3265271

Land Rear of 166-172 Pickhurst Lane, Hayes, Bromley BR2 7JB

- 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 MSM Developers Ltd against the decision of the London Borough of Bromley Council.
 - The application Ref DC/19/05380/FULL1, dated 23 December 2019, was refused by notice dated 19 August 2020.
 - The development proposed is construction of a pair of semi-detached and two detached dwellings, with associated parking, bin storage and cycle storage facilities, with new vehicular and pedestrian access way.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by MSM Developers Ltd against the London Borough of Bromley Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues of the appeal are the effect of the proposed development on:
 - the character and appearance of the local area;
 - the living conditions of occupiers of nearby residential dwellings, with reference to privacy and disturbance;
 - trees on the site and adjoining land; and
 - badgers, as a protected species that are in and adjacent to the site.

Procedural Matter

4. Since Bromley Council's (the Council) refusal of the application Ref DC/19/05380/FULL1, the Mayor of London has adopted a new London Plan. In line with Planning Practice Guidance, my consideration of the issues of this appeal has, therefore, been on the basis of the National Planning Policy Framework (the Framework), the policies of the Bromley Local Plan (2019) (the Local Plan) and the London Plan (2021) (the London Plan). The appellant and the Council have confirmed that this is not prejudicial to their cases.

5. Although the Council indicated that an inspector would not need to access the appeal site to assess the impact of the proposal, my site visit included accessing the appeal site and adjoining premises at the occupier's request.

Reasons

Character and Appearance

6. The proposed 2 detached and pair of semidetached houses would be located on a plot of land comprising parts of what were or are the gardens of 164 to 172 Pickhurst Lane (No.164 to No.172). This would be accessed from Pickhurst Lane by repurposing the lane to an existing electrical substation an access shared with No.172. The garden land and the access lane form the appeal site.
7. The proposal would be adjacent to an existing earlier cul-de-sac development of detached houses on back garden land at Homevale Close. The two detached houses proposed would be of similar size to the houses in this adjacent development and with similar separating distances between themselves and the existing house at 2 Homevale Close (No.2).
8. Policy H2 of the London Plan sets out that Boroughs should pro-actively support well-designed new homes on small sites below 0.25 hectares. From the plot size figures provided, it appears that the appeal site falls into this size category.
9. The proposal would result in the development and loss of some back garden land, in an area where detached houses with long rear gardens form the local townscape. However, as the the proposal would repurpose the existing sub-station access lane, there would be minimal visual effect on the street scene of Pickhurst Lane.
10. Whilst not directly reflecting the design and spatial characteristics of the houses with long rear gardens on Pickhurst Lane, the proposal would, however, pick up on the design cues from the variety of suburban house designs to be found in this area and would more closely match the design, materials, form and spatial qualities of the existing garden land development at Homevale Close.
11. Through shortening the existing rear gardens and inserting 4 dwellings the proposal would result in a change to the character of the Townscape in this part of the local area. However, the proposal would not appear as anomalous within the local context, as it would reflect that of the adjacent garden land development at Homevale Close, be well designed, maintain the existing streetscene and would not, therefore, result in undue harm to the character and appearance of the local area.
12. For these reasons, the proposal would accord with Policies H2 and D3 of the London Plan and Policies 1,3,4, 8 and 37 of the Local Plan, in so far as they pro-actively support making the best use of land and new homes on small sites, requiring such development to be of a high standard of design and layout, with high standards of separation and respectful of local character.

Living Conditions

13. Although the access lane to the proposed houses repurposes the existing Sub-station access, it appears that this is currently only used periodically. The four proposed houses would have parking provision for eight cars, which, when

- combined with visitor and delivery vehicles using the lane, would result in an uplift in vehicular activity in this lane and the appeal site more generally.
14. This uplift would also not generate any through traffic and the additional vehicular and pedestrian traffic generated would only be associated with 4 houses. The eight parking spaces associated with the 4 proposed houses would also not present a direct concentrated noise intrusion from car door closing etc.
 15. I find that the noise and activity generated by the proposal would be similar to that of the neighbouring Homevale Close development, which is developed to a similar density. Therefore, it would not be so significant that it would generate a degree of noise and disturbance that would be out of keeping with this developed residential area.
 16. Given the distance between the two proposed detached houses and those properties on Constance Close, whose rear gardens adjoin the appeal site, notwithstanding the difference in ground level, the proposal would not result in an overbearing effect that would be detrimental to outlook from these neighbouring properties.
 17. Taking into account the position and orientation of the proposed houses and the windows locations in the nearest houses in Homevale Close, I do not find that the additional degree of overlooking of these properties from the proposed development that would be experienced as intrusive and would not impact unacceptably on privacy.
 18. However, the additional vehicular and pedestrian activity that would be generated by the proposal would also present greater opportunities for overlooking of the rear of No.170 and No.172. This overlooking would be to bathroom and bedrooms in these two houses. From my site visit it was evident that, due to the proximity of the vehicular access to No. 170, the overlooking afforded by the proposal would be greater than that from neighbouring gardens and would be to a degree that would be experienced by the occupiers of this property as intrusive, resulting in a loss of privacy. It appears that a similar loss of privacy would also be experienced by the occupiers of No.172.
 19. Whilst I find that the proposal would result in some additional noise and activity, when compared to the existing situation, this would not be so great that it would cause undue harm to the living conditions of neighbouring residential occupiers. However, the additional intrusive overlooking and resulting loss of privacy that I have found, would result in significant harm to the living conditions of the residential occupiers of No.170 and No.172.
 20. For these reasons the proposal would not accord with Policies 37 of the Local Plan and Policies D3 of the London Plan, which seek, amongst other matters, development that respects the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and deliver appropriate privacy.

Trees

21. Whilst the proposal would result in a loss of existing trees on the site, some of which appear to have already been cleared, it is acknowledged that there is no statutory tree protection covering those on the site.

22. The Council has argued that, due to the number of trees that would be lost and a lack of space for compensatory replanting, there would be little opportunity to offset this in any future landscaping scheme.
23. However, notwithstanding the loss of many of the existing trees on the site, I find that, given the proposed density of the development, there is enough scope to produce a landscaping scheme that could provide for suitable compensatory native tree planting. For this reason, I find that, in accordance with paragraphs 54 and 55 of the Framework and Planning Practice Guidance, a condition could be applied to a planning permission requiring the submission of such a landscaping scheme, including the appropriate measures relating to the survival and replacement of trees and plants in the scheme, and for the required protection of retained trees and those on adjacent land, including during construction. Such a condition would make an unacceptable development otherwise acceptable.
24. For this reason, I find that the loss of trees and harm to visual amenity, which would be contrary to Policies 37 and 73 of the Local Plan and Policy G7 of the London Plan, which require that proposals for new development will take particular account of existing trees on the site, could be mitigated through the application of a suitable condition on a planning permission.

Protected Species

25. Policy 72 of the Local Plan states that Planning permission will not be granted for development that will have an adverse effect on protected species, unless mitigating measures can be secured to facilitate survival, reduce disturbance, or provide alternative habitats. Similarly, Policy G6 of the London Plan seeks to support the protection and conservation of priority species and habitats and that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.
26. These aims are consistent with paragraph 170 of the Framework, which states that planning decisions should contribute to and enhance the natural environment, including by protecting and enhancing valued sites of biodiversity, minimising impacts on and providing net gains for biodiversity. Paragraph 175 also encourages net gains in biodiversity. Paragraph 175 further provides that, where significant harm to biodiversity resulting from development cannot be avoided, or adequately mitigated or, as a last resort, compensated for, permission should be refused.
27. The proposed development layout would result in the proposals two detached houses and their gardens being positioned close to what appears to be a major badger sett, with entrances on the appeal site and in the rear gardens of adjoining properties on Constance Close.
28. Badgers are common, subject even to official culling and legislative protection mainly for their welfare and against illegal and cruel persecution. That is not to say that any harm to them would not give rise to a planning objection, just as in the case of any other protected species. Moreover, in placing built development, parking and amenity space so close to the sett, the proposal ignores the 'avoid-mitigate-compensate' sequence of paragraph 175 of the Framework. However, if the layout is necessary to the development of the site for other reasons, the question becomes whether the proposed mitigation measures, including the badger fence would be effective.

29. As the appeal site is currently, the proposed badger fencing would be likely to enhance the situation of the badger sett and its occupiers, however, due to the proximity of the sett to the proposed houses, parking spaces and their small and active garden spaces, I am not satisfied that the proposed mitigating measures as a whole would fully mitigate the effect of the proposed development.
30. I find that, even with the proposed mitigation measures, this local badger population would be subject to more human pressure and interference than in their present secluded living and foraging area, which would be substantially reduced by the presence of the proposed housing development. This implies a reduction in the biodiversity value of the site in respect of its currently resident badger population that would cause significant harm to its biodiversity significance and potential, in conflict with the above policies.

Other Matters

31. The appellant has brought to my attention other allowed appeals for the council area and provided some edited content in so far as the appellant feels that these are relevant to this appeal. The appellant also rightly points out these appeals would have been determined on their own merits, and I have likewise considered this appeal on the same basis. I have, therefore, only afforded this little weight in my considerations.
32. Whilst the appellant has raised concerns with regard to the nature of the communication from the council on the issues raised by their proposal, these are not matters I can consider as part of this appeal and can be raised directly with the Council through their existing procedures.

Planning Balance and Conclusion

33. 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 5 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.
34. According to the Government's Housing Delivery Test: 2020 the Council has a significant projected housing shortfall on that required. The Council's projected housing shortfall is also below that identified in the London Plan (2021).
35. 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 and London Plan policies to be a material consideration within this decision, which carry full weight in so far as they conform to the Framework. Policies 37 and 72 of the Local Plan and Policies D3 and G6 of the London Plan are the most relevant to this appeal and are consistent with Sections 12 and 15 of the Framework, which seek to achieve well-designed places and the Conservation and enhancement of the natural environment.
36. As I have identified above, the appellant has not submitted material that would justify the significant harm to the living conditions of neighbouring residential

occupiers and the significant harm to biodiversity significance and potential of the appeal site, contrary to Local Plan Policies 37 and 72 as well as London Plan Policies D3 and G6.

37. 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 Framework. Section 12, Paragraph 127 of the Framework recognises that development should create places with a high standard of amenity for existing and future users. Section 15, paragraphs 170 and 175 state that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity value and, if significant harm to biodiversity resulting from a development cannot be avoided, then planning permission should be refused.
38. 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 Policies 37 and 72 of the Local Plan and Policies D3 and G6 of the London Plan should be given significant weight in this appeal.
39. Set against the harm identified, there would be social and economic benefits associated with the development. The appeal site is relatively small, at less than 0.25 hectares in terms of its ability to provide housing, and the proposal would provide two detached 3 bedroom houses and 2 semi-detached 3 bedroom houses. Although a modest 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, as further recognised in Policies H2 of the London Plan, which seeks to increase the supply of housing on small sites, and I have given this significant weight in my considerations. The proposal would also generate employment opportunities during its construction and through the employment of local services for its upkeep and maintenance when occupied. In connection with the addition of the dwellings proposed, these benefits attract modest weight in favour of the proposed development. With regard to the absence of harm I have identified above, these are neutral points in terms of my consideration.
40. Consequently, I conclude that the harm to the living conditions of neighbouring residential occupiers and the significant harm to the biodiversity significance and potential of the appeal site 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.
41. 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