



Appeal Decision

Site visit made on 5 May 2021

by A Thompson BSc BTP MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021.

Appeal Ref: APP/D5120/W/21/3266941
513 Foots Cray Road, London, SE9 3UG

- 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 D Carpenter against the decision of Council of the London Borough of Bexley.
 - The application Ref 20/02895/FUL, dated 8 November 2020, was refused by notice dated 5 January 2021.
 - The development proposed is demolition of existing outbuildings and extensions. Erection of 2 bed detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Mayor of London published the London Plan 2021 (new London Plan) in March 2021, after the appeal was made. I note that the new London Plan replaces all previous versions of the London Plan. Accordingly, policy 3.5 of the London Plan (2016), which is referred to in the Council's decision notice, is no longer relevant.
3. The appellant and the Council have been given the opportunity to comment on these changes in the development plan in relation to the determination of this appeal and I have had regard to the response received from the appellant and the new London Plan policies drawn to my attention. As the new London Plan forms part of the development plan, I have given it appropriate weight in relation to this appeal.
4. On 19 January 2021 the Government published the 2020 Housing Delivery Test (HDT) results. The HDT status of the London Borough of Bexley has changed from "none" to "Buffer". Both parties were invited to comment on this matter and I have taken into account the response received from the appellant.
5. Finally, I have taken into account the submission from the appellant advising that since the appeal was submitted, the Council have approved two applications for the site.¹ No submission has been made by the Council on either approval.

¹ 21/00366/FUL & 21/00299/LDCP

Main Issues

6. The main issues are the effect of the proposed development on (a) the character and appearance of the host property and surrounding area and (b) the living conditions of occupants of the proposed dwelling.

Reasons

Character and appearance

7. My attention has been drawn by the appellant to design policies D3-D6 of the new London Plan. From my assessment of those four policies, I consider that Policy D3 'Optimising site capacity through the design-led approach' to be directly relevant to the consideration of this issue.
8. In the context of seeking to optimise site capacity, Policy D3 of the new London Plan requires that new development proposals should enhance local context by delivering buildings and spaces that positively respond to local distinctiveness. I do not consider that Policy CS01 of the London Borough of Bexley Core Strategy 2012 (Core Strategy) and the policies H3, H8 or ENV39 of the Bexley Council Unitary Development Plan 2004 (UDP) appear to be at odds with Policy D3, nor is this argued by the appellant. In addition, I do not consider there is any general inconsistency between any of these policies and the design policies of the National Planning Policy Framework (Framework).
9. The appeal site forms a substantial part of the garden area of a corner plot for a semi-detached 2 storey dwelling at No 513 Foots Cray Road (the host dwelling). The host property and the adjoining dwelling face towards the junction of Foots Cray Road and Telford Road, and as a result, the appeal site has an irregular shape and a visually prominent location.
10. Both parties acknowledge the significant difference in scale, age and design between the row of substantial two/three storey Victorian villas that front Foots Cray Road immediately to the north west of the appeal site and the smaller scale, traditional semi-detached properties built in the last century, including the host property, that front both Telford Road and Foots Cray Road to the south east.
11. At present, the spacious side garden and the angled orientation of the host property provides a clear break between the contrasting styles of buildings at this location and responds well to the plot's corner location.
12. The proposed development comprises a substantial L shaped chalet bungalow with gable roof. Although most soft landscaping on the appeal site had been removed at the time of my site visit, the plans indicate that a substantial brick wall which, may predate the host property and, fronts the Foots Cray Road for a considerable proportion of the frontage, would be retained.
13. The boundary wall would shield much of the ground floor of the building when viewed from Foots Cray Road at the northern end of that frontage. Although the gable roof design would mimic that found on the adjoining Victorian villas (509-511 Foots Cray Road), the overall scale of the building would be too substantial to appear akin to an ancillary building such as a coach house or a large garage. On the other hand, it would appear markedly different in scale and overall massing to either of the next-door buildings.

14. In addition, the development would eliminate the sense of space between the existing buildings when viewed from the junction of Foots Cray Road and Telford Road and result in a cramped layout of buildings of disparate scale and massing. In addition to the proposed building appearing oversized for the plot available, the land retained by the host property would also be very limited and appear undersized for the scale of the property and at odds with the relatively spacious plots found for similar properties nearby.
15. As a result of these factors the proposed development would appear discordant in terms of its overall scale and massing and result in a cramped and cluttered layout for the appeal property and host property at odds with the broader pattern of development. The proposed development would therefore have a significant and adverse effect on the host property and surrounding area on this visually prominent site.
16. While I note the appellant has submitted an amended layout plan to set the building back to the principal building line of No.511, I do not consider this would materially reduce the adverse impact the proposed building would have on the street scene.
17. Having regard to my findings, I conclude on this first issue that the proposed development would significantly harm the character and appearance of the host property and surrounding area. Accordingly, the proposal would be in conflict with policy CSO1 of the Core Strategy, policies H3, H8 and ENV39 of the UDP and the Local Development Framework Supplementary Planning Document – design for living - Bexley's residential design guide 2006 (Design Guidance). These policies and guidance, amongst other things, seek to ensure that new development is compatible with the character and appearance of the area and does not adversely affect the street scene. Given my findings regarding the alignment of the relevant policies of the Core Strategy and UDP with Policy D3 of the new London Plan, I find that the proposals would also be in conflict with Policy D3 of the new London Plan in so far as they fail to enhance local context or positively respond to local distinctiveness.
18. In reaching this conclusion, I have paid particular attention to the submission by the appellant regarding the impact of the possible implementation of two recent approvals to extend the host property at first floor level to the side and grant a lawful development certificate for the erection of a detached outbuilding for use as a garage, games room and storage. The appellants advise that they would implement both recently approved schemes, if this appeal were to be dismissed and that the built form across the site in this event would exceed that proposed if the current appeal were allowed.
19. There is a clear prospect that these alternative schemes may be implemented and therefore they are material considerations in this appeal. However, the first floor side extension would match the design and materials of the host building and be suitably visually subservient to it, with both a lower ridge height and set backs from the front and rear elevations. The existing boundary wall would shield much of the proposed outbuilding from public view and because this building is single storey and flat roofed, it would be far less visually intrusive than the appeal scheme.
20. In my view the provision of a well-designed side extension and a substantial, but relatively low profile outbuilding (that would result if these recent approvals were implemented) would have a substantially less harmful effect on the

character and appearance of the host property and surrounding area than the current appeal scheme. Although the provision of an additional dwelling (which would be achieved through implementation of the appeal scheme but not the recent approvals) weighs in favour of the appeal scheme, there is no development plan basis for suggesting that any new dwelling thus provided does not need to comply with other important policy requirements. As a consequence, I do not consider that the fallback schemes provide sufficient justification to outweigh the harm I have identified.

21. I have also had regard to the other developments nearby that have been drawn to my attention by the appellant. While I accept that the modern infill development at 1A Aldwick Close may have a similar 1.5 storey design to the appeal proposal, the pattern, layout, age, scale and design of the neighbouring development is demonstrably different from the appeal site. 516 Footscray Road, although close to the appeal site, is located at the end of a long drive and is largely hidden from public view by mature planting. The proposed development would also significantly exceed the overall massing and height of the detached garages or other similar scale ancillary buildings found on some other sites nearby, nor would it appear akin to an ancillary building for either of the next door properties.
22. While the existence of these other developments nearby is material in this case, I cannot attach substantial weight to them given those differences. I must in any event also assess each case on its merits first against the prevailing policy background.

Living Conditions

23. The Council's second reason for refusal identifies conflict with three policies of the UDP, namely H6, H7 and H11. Policy H11 is directed at residential conversions, not new developments, and there is no evidence before me from the Council about the nature of the conflict with this policy, nor is the basis for any conflict readily apparent. Accordingly, I find that there is no conflict with Policy H11 of the UDP.
24. Policy H6 of the UDP is directed at ensuring the provision of adequate usable on-site amenity space. The Council officer's report advises that the proposed dwelling would provide a private outdoor amenity space of approximately 80-90 sqm which it considered to be acceptable. Given this evidence, I find no substantive conflict of the proposed development with Policy H6, although I would note that the fragmented nature of the outdoor amenity space available and the close proximity of adjoining properties would result in the quality of the space of available being generally poor.
25. The Council's primary objection is in relation to the outlook available from the proposed development. Policy H7 of the UDP requires that residential development provides a reasonable degree of privacy and outlook for space within and outside the dwellings and the supporting Design Guidance recommends a gap of 16 metres from habitable rooms to a flank wall. Of the four design policies D3-D6 of the new London Plan that have been drawn to my attention by the appellant as relevant, policy D3 also requires that development proposals should deliver appropriate outlook, privacy and amenity. Policy D6 sets out a range of qualitative design aspects to be addressed in housing developments including the site layout, orientation, and

- design requirements to ensure the provision of high quality, comfortable and attractive homes.
26. Policy H7 of the UDP appears broadly consistent with the thrust of Policies D3 and D6 of the new London Plan and all these policies appear generally consistent with the Framework which requires that new development delivers a high standard of amenity for existing and future users.
27. In this case, a number of factors combine to substantially reduce outlook from within and outside the dwelling: the large scale and footprint of the property compared to the limited size and irregular shape of the plot, the close proximity of two neighbouring properties and the need to avoid harm to the privacy of their occupiers through the provision of boundary fencing; and the retention of a substantial wall along much of the road facing boundary of the site close to the south west elevation of the building.
28. These factors result in a development that, at ground floor level, would offer very limited outlook from 3 of the 4 elevations of the property. Longer views might be possible towards the south east, but even this outlook would be significantly constrained by the converging alignment of the flank wall of the host property and the substantial boundary wall and further disrupted by vehicles parked in the proposed parking bays which would occupy much of the gap between these walls.
29. I noted on my site visit that the timber gates at the northern end of the wall had been replaced by an open railing gate which would improve outlook from the proposed dining room but only to a limited extent. Setting the building back to align with the principal building line of No.511, which has been offered by the appellant, would increase the depth of outlook on the south west elevation of the development. But this change in location would further diminish the very poor quality of outlook from the north east elevation of the property and therefore offers no net benefit in terms of outlook.
30. At first floor level, the constraints imposed by the need to avoid overlooking and the design of the property result in the provision of limited fenestration, particularly in the rear bedroom which is limited to a high-level window and roof light which would offer some outlook to the south east.
31. In conclusion on this second issue, I find that the proposed development would offer poor levels of outlook for future occupiers. The development would therefore harm the living conditions of occupants of the proposed development and be contrary to the policy H7 of the UDP and the provisions of the Design Guidance. In addition, I consider the proposed development would conflict with Policies D3 and D6 of the new London Plan. The plan policies and guidance seek amongst other things to ensure new development provides high quality homes that provide reasonable outlook for future occupants of those buildings.

Other considerations

32. The provision of an additional dwelling would accord with the provisions of policies H1 and GG4 of the new London Plan which seek to ensure the delivery of additional dwellings in London and Policy CS01 of the Core Strategy which seeks to meet Bexley's housing needs. However, given the minor contribution the development would make to overall supply, this adds only moderate weight in favour of development. On the limited evidence before me, I am not

persuaded that policies GG2 and H2 of the new London Plan can be argued to weigh substantially in favour of the proposed development, given the appeal site does not fall within the definition of previously developed land, although I accept the development would make more effective use of the site and is relatively accessible by public transport which add limited weight in favour of the appeal proposals.

33. The evidence before me from the appellant suggests that there is a shortfall of some 120 dwellings (3% of the 4110 dwellings required over 5 years) in meeting the housing requirement figure for Bexley set out in the new London Plan, once a buffer of 20% has been added in accordance with the latest HDT assessment.
34. Although the overall shortfall appears relatively small, in the absence of any substantive evidence on this matter from the Council, I consider that the provisions of Paragraph 11(d) of the Framework are engaged.
35. As the site is not within an area, or would affect an asset, of particular importance, paragraph 11(d)(i) is not relevant to the determination of this appeal. However, paragraph 11 (d)(ii) should be applied, and this requires an assessment of the proposal against the policies in the Framework taken as a whole.
36. The Framework seeks to ensure that developments add to the overall quality of the area and achieve a high standard of amenity for existing and future users and thus the relevant provisions of the development plan I have identified, although deemed out of date due to the Framework Footnote 7, are largely consistent with the Framework. Therefore, even taking into account the Council's failure to deliver sufficient housing, the conflict between the proposal and the policies of the development plan should be given significant weight in this appeal.
37. Set against the harm identified, the new dwelling would make a minor contribution to the Borough's supply of housing, be relatively accessible by public transport and make more efficient use of the site. While such benefits accord with the Framework, they do not justify a development that would be unacceptably at odds with its other clear aims.
38. In short, I find that the adverse impact on the character and appearance of the host property and surrounding area and harm to the living conditions of future occupiers of the new building would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
39. I note that the appellant had pre-application engagement with the Council, which included written advice indicating that there may be some limited opportunities to provide a modest dwelling on the appeal site. However, as the advice from the Council makes clear, pre-application advice is given without prejudice to the consideration by the Council of a subsequent formal planning application. Given the comments were made at the outset of the process, without the benefit of consideration of any proposals for only one dwelling at that stage, this consideration adds only very limited weight in favour of the proposal.

Conclusion

40. Although the proposed development would accord with some policies, it would not comply with the development plan when read as a whole. There are no considerations, including the provisions of the Framework, or other material considerations in favour of the proposals which outweigh this. Consequently, for the reasons I have set out above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Anthony Thompson

INSPECTOR