



Appeal Decision

Site visit made on 10 June 2021

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal Ref: APP/G5180/W/20/3260616

Land adjoining 13/14 Trinity Close, Bromley, BR2 8ND

- 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 Mysave Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/20/01527/FULL1, dated 24 April 2020, was refused by notice dated 20 July 2020.
 - The development proposed is erection of a two storey side extension to provide two self-contained apartments and an enclosed staircase/entrance serving existing Unit Nos. 13-14, with associated parking, electric charging point and bin storage.
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Decision

1. The appeal is dismissed.

Main issues

2. The first two main issues are the effect of the proposed development on the character and appearance of the area, and on highway safety and the free flow of traffic. A further main issue is whether the proposed development would be at risk from flooding or increase the risk of flooding elsewhere.

Reasons

Character and appearance

3. Trinity Close is a cul-de-sac that contains, at its western end, maisonette properties fronting the road with garden areas to the side and rear. The appeal site comprises part of one of these garden areas, with the proposed development seeing an extension to the existing building to provide two dwellings within a two storey building, with a communal access to these and Nos 13 & 14. The appeal site has been the subject of a previous dismissed appeal in 2016 for the erection of a detached house (ref. APP/G5180/W/15/3130612).
 4. The siting of this new building would be set back from the road and continue the building line of the adjoining property to which it would be attached. This differs from the previous appeal, which was sited forward of the building line. The siting of the current proposal means that, in views along Trinity Close, there would be limited visibility of the works where views are generally dominated by the two storey building masses of the existing properties, with
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trees in front and behind the buildings. This general character and form of development would remain.

5. The previous Inspector found that building on this land would lead to a loss of spaciousness, leading to a cramped appearance untypical of the street, with that adverse impact exacerbated by the width, height and roof design of the proposed house.
6. The design of the building now proposed would have a similar appearance and form to the existing adjoining property. These matters lead to the current scheme relating well to the established appearance of the Close and form of building along the road. Together with the set-back from the street frontage, the retention of trees in front and to the rear of the building, and the limited visibility of the scheme, the overall impression of built development would thus not be intrusive or incongruous to the area. Previous concerns regarding the appearance of the development on the site have therefore been addressed.
7. Policies D1, D3 and D4 of the London Plan 2021, and Policies 4, 8 and 37 of the London Borough of Bromley Local Plan 2019 seek, amongst other matters, to ensure that new development is of a high standard of design and retains sufficient space around buildings. The proposals would satisfy these requirements, and hence no harm would occur to the character and appearance of the area.

Highways and traffic

8. The proposals would see a new vehicular access created to Trinity Close to provide an off-street parking space for each new dwelling, which I am informed accords with the Highways Authority's required standards. Due to the size of the dwellings proposed, and their nature as apartments within an area characterised by smaller dwellings, I concur this level of parking is appropriate for the scheme and would not lead to additional parking on the road from future occupants.
9. However, the proposed access would lead to the loss of one on-street car parking space. Local residents objected to the loss of on-street parking, citing the existing level of parking in the area. The Highways Authority reflected these concerns at the application stage with their request for additional information to establish whether the proposals would lead to harm to highway safety and free flow of traffic.
10. Additional information on this matter has been presented with this appeal, including the results of a parking stress survey. The area covered by this survey and the identification of on-street parking spaces is reasonable, and the results showed 72% of spaces occupied. I accept this was a snapshot, and represents a majority of space taken by parking, but the findings are reflected in comments made by third parties: reference is made to high levels of parking, inconvenience of not being able to park outside homes, and difficulties for turning, but I have not seen any objective and comprehensive evidence that indicates the level of on-street parking is so great at present as to represent unacceptable saturation or current harm to highway safety.
11. The proposed development would, through the removal of one space, lead to one additional vehicle needing to be accommodated on the street. This would increase parking use to 74%. From what I have read in the submissions, and seen at my site visit, I consider the generation of one additional vehicle parking

on-street would be a marginal increase that would not appreciably harm highway safety or the convenience of nearby residents to access or park on the street. The Highways Authority has the same view, having withdrawn their objection on this matter at the appeal stage. This reinforces my findings.

12. On the second main issue it is therefore my judgement that the proposed development would not be harmful to highway safety or the free flow of traffic. This satisfies the requirements of Policy 32 of the Local Plan and Policy T4 of the London Plan, which seek to ensure new development is not harmful to highway safety.

Flood risk

13. The submissions at the application stage stated that a small part at the rear of the appeal site is within Flood Zone 2, with the proposed building in Flood Zone 1 which the Planning Practice Guidance: Flood Risk and Coastal Change (PPG) identifies as being at low risk of flooding. The same submission has been made at the appeal stage and, accordingly, the appellants consider that a Flood Risk Assessment (FRA) is not necessary as they consider the proposed development to be at a low probability of flooding and to not cause flooding elsewhere.
14. However, the Environment Agency were consulted during the course of the application and they stated that the site lies within Flood Zone 3 as shown on the Environment Agency Flood Map, which the PPG identifies as having a high probability of flooding. The Council's submission at the appeal stage reiterates this position, though clarified the site is partly in Zone 3 and Zone 2 with an extract of the Environment Agency Flood Map to illustrate this.
15. I accept that the Flood Map that has been provided is somewhat coarse in reproducing data, but nonetheless it is clear to me that part of the appeal site is well within an area liable to flood and that is Flood Zones 2 and 3. Furthermore, it is clear to me from this map that the area liable to flood extends up to where the proposed building would sit, and that the proposed dwellings would be located on land shown on the Map as being within Flood Zone 2. I have not been provided with any robust evidence that contradicts the content of that Map, nor to counter the Environment Agency's evidence. Hence, based on the evidence before me, I come to the conclusion that the proposed building would sit in an area at risk of flooding¹.
16. It is therefore necessary for a site-specific FRA to be provided for the development² to establish the risks of flooding from all sources, the potential to increase flooding elsewhere, measures to deal with these effects and risks, and evidence to allow the decision-maker to apply the Sequential Test, if necessary and in relation to the Exception Test, if applicable. In the absence of any FRA I am therefore not satisfied that the proposed development would be safe from flooding, nor increase flood risk elsewhere.
17. The appellants inform me that there was no objection on the grounds of flooding to the previous proposal on the site that was considered at appeal. However, I must determine the current appeal on the evidence before me and the current circumstances concerning the land, and it is clear to me from what I have read that the site is at risk of flooding.

¹ Paragraph 003 of the PPG defines 'areas at risk of flooding' as principally land within Flood Zones 2 and 3

² In accordance with footnote 50 of the National Planning Policy Framework

18. On the third main issue it is therefore my conclusion that the proposed development has not satisfied the requirements of paragraph 155 of the National Planning Policy Framework to show that development should be avoided in areas at risk of flooding by directing development away from areas at highest risk, and that here development is necessary in such areas then the development should be made safe for its lifetime without increasing flood risk elsewhere. The proposals are therefore contrary to Policy SI 12 of the London Plan, and Policy 115 of the Local Plan, which require the submission of an FRA in flood risk areas and seek to address existing flood risk, and reduce flood risk and the impact of new development.

Other considerations

19. The Council have drawn my attention to issues of land ownership. I saw at my site visit that the 'red line' area shown on the submitted drawings includes land that appears to be associated with properties to the west, and that land in places includes outbuildings. I also saw that there are a number of fences within the appeal site that appear to be recently erected and delineate garden areas to the adjoining maisonettes. Adjoining residents have also questioned the appellants' rights to develop the land in the manner shown to me.
20. I established at my site visit that the proposed dwellings could be built as shown without intruding on land to the west that is now associated with other properties and contains buildings that would otherwise physically constrain development. There would also be sufficient amenity space for the proposed dwellings when taking into account those physical constraints. Any disputes on land ownership within the appeal site – indicated by recent fencing and in written submissions to me – would not physically restrict building the proposed development. Any such ownership disputes fall outside my consideration in this appeal. My findings therefore remain unchanged as a result of any land ownership issues.

Balanced conclusions

21. The main parties agree the Council cannot demonstrate a five year supply of deliverable housing. Paragraph 11d) of the Framework states that where the policies which are most important for determining an application are out-of-date³ then planning permission should be granted.
22. This is unless two circumstances apply. First, in this appeal there are no policies in this Framework that protect areas or assets of particular importance⁴, and so the provisions of paragraph 11d)i. do not apply. Second, I have found earlier that the proposed development would be contrary to Policy SI 12 of the London Plan, Policy 115 of the Local Plan and the Framework. Thus, in accordance with paragraph 11d)ii of the Framework, I must consider whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. The proposed development would provide two dwellings that would contribute to the housing shortfall in a site well-located for new housing due to nearby

³ 'Out of date' includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

⁴ As defined by footnote 6 of paragraph 11d.

- services. The Framework seeks at paragraph 59 to significantly boost the supply of homes. In light of this I attach significant weight to this matter.
24. There would be an economic benefit from construction jobs arising due to the new building. This would be a short term benefit and, due to the modest scale of the scheme, relatively limited in effect. I therefore attach little weight to this matter.
25. The risk to flooding for the proposed dwellings, and flood risk elsewhere is a matter of considerable concern to me. I am simply unpersuaded that the proposed dwellings would not be at risk nor lead to a risk elsewhere, based on what I have read. Paragraph 155 of the Framework is clear in the advice regarding when inappropriate development is proposed in areas at risk of flooding: it '*should be avoided*'. I therefore attach very significant weight to this matter.
26. It is my overall conclusion that there would be greater adverse impacts of granting permission than the arguments in favour. Accordingly, I find that these adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. The proposal therefore does not benefit from the presumption in favour of sustainable development set out in paragraph 11 of the Framework. The proposed development is not in accordance with the development plan and there are no material considerations that indicate permission should be granted. The appeal is dismissed.

C J Leigh

INSPECTOR