

Appeal Decision

Site visit made on 20 July 2021

by Mr C J Tivey BSc (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal Ref: APP/G5180/W/20/3261176

Site of Former 41 Sunningvale Avenue, Biggin Hill TN16 3BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Kent Residential Homes Ltd against the decision of the London Borough of Bromley Council.
 - The application Ref. DC/20/02518/FULL1 was dated 7 July 2020.
 - The development proposed is for the erection of two x 2 storey, 3 bedroom semi-detached dwellings with 4 parking spaces, bin store and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two x 2 storey, 3 bedroom semi-detached dwellings with 4 parking spaces, bin store and landscaping at site of former 41 Sunningvale Avenue, Biggin Hill TN16 3BX, in accordance with the terms of the application Ref DC/20/02518/FULL1, dated 7 July 2020, subject to the conditions set out within the schedule attached to this decision.

Preliminary Matters

2. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on the planning application, the subject of this decision letter. Since the Council's Officer report was written, and which stated that the development would have an unacceptable arboricultural impact through the loss of an Ash tree, the subject of a Tree Preservation Order, the decision of my colleague on appeal Ref. APP/G5180/W/20/3253377 was issued. This allowed the removal of the tree and consequently the Council has stated that it no longer seeks to contest the appeal.
3. The Council explains that they cannot demonstrate a five year housing land supply, consequently pursuant to paragraph 11.d) ii. of the National Planning Policy Framework (the 'Framework'), the presumption in favour of sustainable development applies. For decision-taking this means granting planning 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. The 'tilted' balance is therefore engaged and I have determined the appeal on this basis.

4. Furthermore, on 20 July 2021, an update to the Framework was published. My decision reflects this, having provided the main parties an opportunity to comment over any implications this might have for their respective cases.

Reasons

5. The site is located within a modern residential development and comprises an undeveloped plot sited between 11 and 17 Sunningvale Close. The subject tree is shown to be outside of the appeal site, hard up against the back edge of a narrow section of footway. Notwithstanding the appellant's stipulation that the tree would be retained, from my inspection on site, this would prevent the use of the proposed parking space on the southern side of plot 1.
6. Clearly by virtue of the previous appeal decision there can be no objection to the removal of the tree which incidentally I concur is in a poor state of health with extremely limited leaf growth and showing signs of Ash dieback. That said, it is not clear from the submissions before me, who actually owns the tree and bearing in mind that it is outside the appeal site and does not appear to be within the ownership or control of the appellant, I am not in a position to allow it to be felled as part of this appeal and suggest that felling would need to be the subject of a separate Tree Preservation Order application, unless the scheme the subject of APP/G5180/W/20/3253377 was implemented previously.
7. I note that certain minor amendments are proposed to the overall design and layout of the proposed houses from the extant scheme; these are generally minor in nature and would enable a new pair of semi-detached houses to be constructed within a private residential development of similarly designed dwellings. Consequently I consider that the character and appearance of the area would be maintained.
8. Notwithstanding the fact that I cannot permit the removal of the tree, I find that the proposal would not conflict with Policy 73 of the London Borough of Bromley Local Plan (2019) which requires proposals for new development to take particular account of existing trees on a site and on adjoining land which, in the interests of visual amenity, are considered desirable to be retained. The scheme also complies with Local Plan Policy 37 which requires all development proposals to be of a high standard of design and layout, be imaginative and attractive to look at and positively contribute to the existing street scene.

Other Matters and Planning Balance

9. I note the third party comments with regard to the quantum of development on the wider site and I consider that overall the quality of built form is of a good standard and makes efficient use of land. The road constitutes a cul-de-sac and is not heavily trafficked and there is no reason why children should not be able to play out in the street with supervision, as has been common place for generations. That said, I cannot comment on the history of decision making as it falls to me to solely deal with the proposal that is before me.
10. I acknowledge the other concerns raised by local residents with regard to a shortage of parking spaces and perceived lack of trees and green space; however, my colleague concluded in the determination of the previous appeal that such matters raised didn't override the benefit of the family accommodation that two more houses would provide and I have been given no

substantive reason to come to a different conclusion on this. The provision of market housing is afforded considerable weight in the planning balance and these benefits would not be significantly and demonstrably outweighed by any adverse impacts flowing from the proposal.

Conclusion and Conditions

11. Having regard to the reasons set out above and to all other matters raised, I conclude that the appeal should succeed.
12. The Council has set out a suite of proposed conditions and for the benefit of consistency I consider that those previously imposed upon APP/G5180/W/20/3253377 should be largely transposed to this proposal.
13. In addition to setting the standard time limit condition and requiring the development to be carried out in accordance with the approved plans, other conditions requiring surface water drainage measures, the laying out of parking spaces prior to commencement of the use of the dwellings, details of vehicle wash-down facilities, street lighting and a road conditions survey, a Construction and Environmental Management Plan, proposed slab levels, along with details of materials to be employed and tree protection measures for the retained Yew tree, as well as requiring the development to be built in accordance with the criteria set out in Building Regulations M4 and the removal of Permitted Development rights for further extensions and erection of outbuildings are all necessary in the interests of protecting the character and appearance of the area and the living conditions of both existing residents and future occupiers of the proposed development.

C J Tivey

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision
- 2) The development shall be carried out in accordance with the following approved plans: Drawing Nos. 3813-PD2003 Rev. J; 3813-PD-2004 Rev. H; and 3813-PD-2007 Rev. E.
- 3) (a) Prior to commencement of the development hereby approved (excluding any ground clearance or demolition), a scheme for the provision of surface water drainage shall be submitted to and approved in writing by the local planning authority; (b) Before the details required to satisfy Part (a) are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer in accordance with advice contained within the National SuDS Standards; (c) Where a sustainable drainage scheme is to be provided, the submitted details shall provide information about the design storm period and intensity, the method employed to delay (attenuate) and control the rate of surface water discharged from the site as close to greenfield runoff rates (81/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water; (d) The drainage scheme approved under Parts a, b and c shall be implemented in full prior to first occupation of the development hereby approved.
- 4) Before commencement of the use of the buildings hereby permitted, the parking spaces shall be completed in accordance with the details as set out in this planning permission and thereafter shall be kept available for such use.
- 5) (a) Details of any scheme to light the car parking areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of above-ground works; (b) The approved scheme shall be self-certified to accord with BS 5489 – 1:2003; (c) The lighting scheme shall be implemented in full accordance with details submitted under Part (a) before the development is first occupied and the lighting shall be permanently retained thereafter.
- 6) (a) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a survey of the condition of the road leading to the site shall be submitted to and agreed in writing by the Local Planning Authority; (b) Any damage caused to the surface of the road during the construction phase of the development shall be reinstated to a standard at least commensurate with its condition prior to the commencement of the development (as evidenced in details submitted to satisfy part (a) prior to first occupation of the development hereby approved).
- 7) No development shall commence on site until such time as a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. As a minimum the plan shall cover:
 - (a) Dust mitigation and management measures;
 - (b) The location and operation of plant and wheel washing facilities;
 - (c) Measures to reduce demolition and construction noise;

(d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:-

- (i) Rationalise travel and traffic routes to and from the site;
- (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity;
- (iii) Measures to deal with safe pedestrian movement;
- (iv) Full contact details of the site and project manager responsible for day-to-day management of the works;
- (v) Parking for operatives during the construction period;
- (vi) A swept path drawing for any tight manoeuvres on vehicle routes to and from the site including proposed access and egress arrangements at the site boundary;

(e) Hours of operation;

(f) Other site specific Highways and Environmental Protection issues as requested on a case by case basis; and

(g) The development shall be undertaken in full accordance with the details approved under Parts a-f;

8) Prior to commencement of development details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved levels.

9) (a) Prior to commencement of above-ground works, details (including samples) of materials to be used for the external surfaces of the building which shall include roof cladding, wall facing materials and cladding, window glass, door and window frames, decorative features, rainwater goods and paving where appropriate, shall be submitted to and approved in writing by the Local Planning Authority; (b) The development shall be carried out in accordance with the approved details.

10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B, C, or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted.

11) The development hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4 'wheelchair user dwellings' for the units identified in the application as wheelchair units and shall be permanently retained thereafter.

12) Prior to the commencement of the development hereby approved (including all preparatory work), a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan (TPP) and an arboricultural

method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority;

(i) Specific issues to be dealt with in the TPP and AMS:

a) Location and installation of services/utilities/drainage; b) Methods of demolition within the root protection area (RPA as defined in BS5837:2012) of the retained trees; c) Details of construction within the RPA or that may impact on the retained trees; d) A full specification for the installation of boundary treatment works; e) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification; Details shall include relevant sections through them; f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses; g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing; h) A specification for scaffolding and ground protection within tree protection zones; i) Tree protection during construction indicated on a TPP and construction activities clearly identified as prohibited in this area; j) Details of site access, temporary parking, on -site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires; k) Boundary treatments within the RPA. l) Methodology and detailed assessment of root pruning; m) Arboricultural supervision and inspection by a suitably qualified tree specialist; n) Reporting of inspection and supervision; o) Methods to improve the rooting environment for retained and proposed trees and landscaping; p) Veteran and ancient tree protection and management;

(ii) The development thereafter shall be implemented in strict accordance with the approved details.