



Appeal Decision

Site Visit made on 28 October 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17/12/2021

Appeal Ref: APP/G5180/W/21/3271589

21 Lancing Road, Orpington BR6 0QS

- 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 outline planning permission
 - The appeal is made by Mr Haskins - Haskins Designs Limited against London Borough of Bromley.
 - The application Ref 21/00366/OUT, is dated 18 January 2021.
 - The development proposed is demolition of existing double garage and workshop and erection of two/three storey apartment block comprising 4 x 1 bed flats and 1 x 2 bed flat and alterations to existing access.
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Decision

1. The appeal is allowed and outline planning permission is granted for demolition of existing double garage and workshop and erection of two/three storey apartment block comprising 4 x 1 bed flats and 1 x 2 bed flat and alterations to existing access at 21 Lancing Road, Orpington BR6 0QS in accordance with the terms of the application, Ref 21/00366/OUT, dated 21 January 2021, subject to the 15 conditions set out in the attached schedule.

Preliminary Matters

2. The applicant details on the planning application forms simply state 'Haskins'. I have included the appellant's title in my banner heading as provided on their appeal forms.
3. The Council has set out the grounds on which it has resolved to contest the appeal within its statement of case. Furthermore, the appellant contends that the Council cannot demonstrate a deliverable 5-year supply of housing sites and the Council has not provided any evidence to the contrary. As a result, paragraph 11d of the Framework is engaged and the Council's policies relating to the delivery of housing are out-of-date. I have given regard to these matters in defining the main issues.
4. In the period since the planning application was submitted to the Council, the London Plan 2021 (LP 2021) has been published (March 2021) and now forms part of the development plan for the area. The Government has also published the revised National Planning Policy Framework (the Framework) (July 2021) following submission of this appeal and this document is being brought into immediate effect for the purposes of decision-making. The main parties have referred to these documents within their appeal submissions and these documents have been material to my assessment.
5. The proposal is in outline form but seeks approval of details of access, appearance, layout and scale. Therefore, these matters would be fixed by the proposal with landscaping the only reserved matter.

Main Issues

6. The main issues are:

- (i) the effect of the proposal on the character and appearance of the area;
- (ii) the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to privacy;
- (iii) whether the proposal would provide suitable living conditions for future occupiers of the development with particular regard to the provision of private outdoor space; and
- (iv) whether the proposal would deliver a sustainable form of development in the context that the Council is unable to demonstrate a five-year supply of deliverable housing sites.

Reasons

Character and appearance

7. Lancing Way is characterised by mainly detached dwellings with long rear gardens providing a spacious suburban character to these properties. No 21 Lancing Road is one of several dwellings which back on to Gravel Pit Way. Their rear gardens are predominantly screened from Gravel Pit Way by a high boundary wall which sits along most of the eastern side of this adjoining road. The rear garden at No 21 has been subdivided and the rear portion comprises the appeal site. It has a wide splay towards the boundary with Gravel Pit Way and the boundary wall with this road has been demolished.
8. The western side of Gravel Pit Way is primarily characterised by servicing areas and car parks associated with the rear of the commercial buildings within Orpington Town Centre. The northern corner of the appeal site abuts the boundary with a site on Homefield Rise which is allocated for development of approximately 100 residential units (the allocated site). Planning permission¹ has recently been granted on the allocated site for 'Phases 1 and 2' for 68 apartments in buildings up to four storeys in height. The approved development on the allocated site includes a block sited towards the corner of Gravel Pit Way and Homefield Rise.
9. In dismissing the previous appeal² at No 21 Lancing Road, the Inspector in that instance was specific that their concerns in respect of the effect on the character and appearance of the area primarily related to the siting and massing of the rear part of the proposed building in that instance. In particular, they attached significant weight to the harm that would have arisen from a two-storey rear element in terms of its protrusion into the distinctly different character of suburban gardens when perceived from the Lancing Road houses.
10. It remains the case that the development would introduce an independent residential building between the long undeveloped gardens serving neighbouring dwellings on Lancing Road. However, the design before me has substantively removed the previous rear two-storey projection. The distance between the nearest dwellings on Lancing Road would be approximately 33

¹ LPA Ref 20/02697/FULL

² APP/G5180/W/19/3223615

metres (m) compared with 27m under the previous proposal. As with the previous appeal, the three-storey element of the building would be sited further still from these neighbouring dwellings. As a result, when viewed from the windows and patio areas to the rear of dwellings on Lancing Way, the development would now be perceived as occupying a more peripheral position towards the far end of these long rear gardens and would be seen amongst the backdrop of the higher buildings beyond in Orpington Town Centre. The contemporary design of the proposal would also sit comfortably within this vista. Consequently, an acceptable degree of spaciousness would be provided to ensure that the character and appearance of properties on Lancing Road would not be unduly harmed.

11. As identified by the previous Inspector, the eastern side of Gravel Pit Way is the process of change at its northern end. Indeed, works have now commenced on the allocated site and the buildings on that site would have greater maximum heights, massing and width than the appeal proposal and would sit closer to the Gravel Pit Way frontage. I also noted the works being undertaken roughly opposite the site on Gravel Pit Way to bring the four-storey building at 251 – 259 High Street into residential use. Having particular regard to the position of the site amongst this expanding residential nature, I am also satisfied that the development would assimilate into the street scene on Gravel Pit Way both in northern and southern views along this road.
12. The Council contends that the proposal would establish an undesirable pattern for similar infilling in the area. However, each proposal must be considered on its own merits. The greater width of the site compared with the other gardens on Lancing Road that share boundaries with Gravel Pit Way, the position of the development towards the outer fringes of the large rear garden setting and the close proximity of neighbouring large residential buildings, both in terms of those in situ and those being developed, have all been persuasive in this particular instance.
13. I conclude, the development would have an acceptable relationship with the character and appearance of the area. In that regard, the proposal would comply with the design-led approach and local character requirements in Policies 3 (Backland and garden land development), 4 (Housing Design) and 37 (General Design of Development) of the London Borough of Bromley Local Plan (2019) (BLP), Policies D1 (London's form, character and capacity for growth), D3 (Optimising site capacity through the design-led approach), D6 (Housing quality and standards) and H2 (Small sites) of the LP 2021 and the Framework.
14. The Council has also referred to Policy 8 of the BLP within the grounds that it is contesting the appeal. I have not been provided with a copy of this policy. In any case, the Policy is quoted within the Council's statement of case and I share the view of the previous Inspector that the proposal would meet the minimum spacing requirement and would therefore also be acceptable in this regard.

Living conditions of neighbouring occupiers

In his assessment of neighbouring living conditions, the Inspector that dealt with the previous appeal on the site specifically concluded that it was first-floor balconies and windows to the two-storey element in that instance which would result in a significant degree of overlooking to the rear part of the gardens adjacent to neighbouring dwellings. This element of the proposal has been

substantively removed and no side facing windows are now proposed. As was the case with the previous appeal, the windows to the three-storey part of the proposal are a substantial distance from the rear elevations and more private parts of gardens close to the rear of neighbouring dwellings. As such the three-storey part of the building would provide suitable levels of privacy for neighbouring occupiers.

15. The smaller two-storey rear projection on the current appeal proposal includes two first-floor windows to its rear elevation. One of these would be a bathroom window and a condition could be attached requiring bathroom windows to be obscure glazed. The other of these windows would sit in close proximity to the side boundary with No 19 Lancing Road. However, the distances retained would still be sufficient to maintain an adequate level of privacy to the more private part of the garden towards the rear elevation of this neighbouring dwelling. The relative levels and intervening boundary planting would further reduce any perception of being overlooked. Any views to the mid to rearmost parts of neighbouring gardens to Nos 19 and 23 would be more oblique and would relate to areas which are already overlooked from the upper floor windows on neighbouring properties on Lancing Road.
16. I conclude, the development would provide acceptable living conditions for neighbouring occupiers with particular regard to privacy. In that regard, the development would comply with the requirements for development to not have an unacceptable impact on the residential amenity of future or existing occupiers, including with regards to privacy, in Policies 3, 4 and 37 of the BLP, Policy D3 of the LP 2021 and the Framework.
17. The Council's statement of case refers to Policy D6 of the LP 2021 in respect of this matter. This policy does not specifically refer to matters of privacy for neighbouring occupiers. In any case, this does not alter my conclusions that the proposal would meet the privacy requirements of other policies in the development plan.

Living conditions for future occupiers

18. The upper floor flats would be provided with a balcony to the front of the building. The two ground floor units are not shown to benefit from any direct access to an outdoor amenity space. The drawings provided indicate that the communal garden space would only be accessible via the main entrance to the front of the building.
19. However, it is clear from the drawings that the ground floor rear wall of the communal corridor is of sufficient width to provide a door leading to the rear outdoor space. The Council has not raised any concerns about the quantum of outdoor space. Based on the evidence before me, and subject to a condition to secure a rear access door in the communal corridor, I am satisfied that the rear garden would provide sufficient external, private amenity space that is accessible and practical for future occupiers of the building.
20. I conclude that, subject to the aforementioned condition, the proposal would provide suitable living conditions for future occupiers of the development with particular regard to provision of private outdoor space. In that regard it would comply with the amenity and external space requirements in Policies 4 and 37 of the BLP and Policies D3 and D6 of the LP 2021.

Other Matters

21. I have carefully considered the third-party concerns including those not covered by the main issues.
22. The proposal would be unlikely to result in a material increase in traffic on the local highway network. No specific concerns in respect of driver or pedestrian safety were raised by the Local Highway Authority (LHA) and from my own observations I find no reason to find otherwise. The LHA also confirmed that parking provision for the development would meet Local Plan requirements. Any costs or requirements to move street furniture such as a parking meter would be a matter for the developer to address in consultation with the LHA.
23. Boundary treatments could be secured as part of the reserved matter of landscaping and therefore any potential security risk in terms of access to the rear of neighbouring properties on Lancing Road could be effectively managed.
24. There is nothing before me to suggest that there is a policy requirement for development of this scale to make developer contributions towards local health and education provision. No reasonable evidence is before me to indicate that there are protected species on the site. Connection to the public sewer is a building regulations matter and there is no substantive evidence to suggest that a connection could not be made nor that there is insufficient capacity to accommodate the developments foul drainage requirements.
25. As with the previous appeal third-parties have referred to proposals for flats elsewhere in Orpington with the suggestion that there is a sufficient supply of such housing. However, it remains the case that the Council cannot demonstrate a five-year housing land supply and this is a material consideration which adds weight to the need for additional housing.

Conditions

26. I have had regard to the conditions suggested by the Council and assessed these against the relevant tests in paragraph 56 of the Framework.
27. I have attached the standard reserved matter and timescale conditions and a condition confirming the approved plans in the interests of certainty.
28. In order to ensure surface water on the site is effectively managed I have attached a comprehensive drainage condition covering both assessment of the potential for the provision of a sustainable urban drainage system (SuDS) as well as a requirement to prevent surface water discharging to the highway. I have removed the Council's reference to a superseded policy from the old London Plan as well as its reference to national guidance. The Council can assess the drainage schemes compliance with local and national guidance before discharging any details. This condition is a pre-commencement requirement given the drainage scheme is likely to require below ground works.
29. A condition requiring a Construction Management Plan (CMP) is attached in the interests of highway safety and to protect neighbouring living conditions. I have included the Council's separate requests for a wheel wash facility, for any mud associated with the construction works to be cleared from the highway and for details to show how construction vehicles can access, egress and off load within the site within the requirements for the CMP. The suggested

separate condition relating to accommodating site operatives and construction vehicles has also been incorporated into this condition. These details are required pre-commencement to ensure the development is adequately managed from the outset. In the interests of clarity, the suggested element of the CMP condition confirming that piling or any other foundation designs using penetrative methods shall not be permitted is attached as a separate condition.

30. A condition requiring approval of proposed slab levels is attached in the interests of protecting the character and appearance of the area and neighbouring living conditions. This is also a pre-commencement requirement to ensure the building is erected at approved levels.
31. Precise details of external facing materials are also required by condition in the interests of protecting the visual amenity of the area. Providing these details before the commencement of above ground works is reasonable and would allow them to be incorporated into the finished scheme.
32. A pre-occupation condition is reasonable to ensure that the parking and turning space shown on the approved drawings is provided before the flats are first occupied and that they are kept available for the parking and turning of vehicles thereafter. I have removed the element of the Council's suggested condition which removed permitted development rights given the flats would not benefit from permitted rights to erect ancillary buildings and therefore that element of the Council's suggested condition is superfluous. For the same reasons a condition preventing additional window openings is also not required.
33. I have not attached the condition setting out dimensions for the parking bays as condition 10 already approves the parking spaces as per the submitted drawings to which the Local Highway Authority raised no objections. However, I have included the requested conditions relating to the provision of visibility splays at the site entrance in the interests of highway safety.
34. There is no substantive evidence before me to suggest the noise environment on Gravel Pit Way or the wider area would be likely to be harmful to the internal living environment for future occupiers of the development. I am also mindful that, other than the second-floor flat which would be elevated away from activity on the road, the majority of bedroom windows are to the rear elevation. The shared space to the rear would also provide a tranquil outdoor space behind the building and away from the road. Taking these factors into account I am not persuaded that the Council's suggested noise condition would be reasonable or necessary and I have therefore not attached it to my decision.

Planning Balance and Conclusion

35. The proposal would accord with the policies in the Framework when considered as a whole. Furthermore, I have found that the proposal would accord with the policies of the development plan. Therefore, the proposal would deliver a sustainable form of development and hence the appeal should be allowed.

M Russell

INSPECTOR

Schedule of Conditions

- (1) Details of the landscaping, hereinafter called "the reserved matter" shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- (2) Application for approval of the reserved matter shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- (3) The development hereby permitted shall take place not later than 2 years from the date of approval of the reserved matter.
- (4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. ED-01 (Location Plan dated 2018), 4111-PD-101 (Proposed Site Location Plan dated 2021), 4111-PD-102 (Proposed Ground Floor Site Plan dated 2021), 4111-PD-103 (Proposed Plans and Street Elevation dated 2021), 4111-PD-110 (Proposed Front Elevation 1 dated 2021), 4111-PD-111 (Proposed Rear Elevation 2 dated 2021), 4111-PD-112 (Proposed Side Elevation 3 dated 2021) and 4111-PD-113 (Proposed Side Elevation 4 dated 2021).
- (5) 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. The scheme shall include an assessment of the potential for disposing of surface water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer. The scheme shall also demonstrate how surface water will not discharge to the highway. 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 (21/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water. Once approved in writing, the development shall be implemented in full accordance with the approved scheme prior to first occupation of the development hereby approved.
- (6) Prior to the commencement of the development hereby permitted a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall include measures of how construction traffic can access and egress the site and off-load materials safely, how potential traffic conflicts can be minimised, the route construction traffic shall follow for arriving at and leaving the site, the hours of operation for construction works and details of a suitable hardstanding with wash-down facilities for cleaning the wheels of vehicles. The CMP shall also set out how any accidental accumulation of mud of the highway caused by vehicles during construction works on the site shall be removed without delay and in no circumstances be left behind at the end of the working day. Once approved the development shall be carried out in full accordance with the approved CMP.

- (7) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- (8) Prior to commencement of development (excluding demolition) details of the proposed slab levels of the building 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) Prior to commencement of above ground works, details (including samples) of the materials to be used for all external surfaces of the building shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in accordance with the approved details.
- (10) Before the development hereby approved is first occupied, the parking and turning space shown on the approved drawings shall be provided and thereafter shall be kept available for such use.
- (11) Before any part of the development hereby permitted is first occupied that part of a sight line of 45m x 2.4 x 45m which can be accommodated within the site shall be provided in both directions and with the exception of trees selected by or the Local Planning Authority no obstruction to visibility shall exceed 1 metre in height in advance of this sight line. These sightlines shall then be retained as such thereafter.
- (12) Prior to construction of any above ground works, full details of provision for bicycle parking (including covered storage facilities where appropriate) shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the bicycle parking provision shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- (13) All bathroom windows on the development shall be fitted with obscured glazing, and no parts of those windows that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
- (14) Prior to commencement of above ground works, details of a door to the ground floor rear wall of the communal corridor which shall provide communal access for occupiers of the building to the rear outdoor space shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the door shall be provided prior to first occupation of the building and shall be retained for the communal use of occupiers of the building thereafter.

- (15) The double garage and workshop on the site shall be demolished prior to first occupation of the apartment block hereby approved.