



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: 10/01/2022

Appeal Ref: APP/G5180/W/21/3273617

28 Bruce Grove, Orpington BR6 0HF

- 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 C Pasterfield - Dryden Way Building Co. Ltd. against the decision of London Borough of Bromley.
 - The application Ref DC/20/01212/FULL1, dated 26 March 2020, was refused by notice dated 2 February 2021.
 - The development proposed is 9 flats and new courtyard and communal garden spaces, and 4 off street parking spaces.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr C Pasterfield - Dryden Way Building Co. Ltd. against the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. In the period since the appeal was submitted the Government has published the revised National Planning Policy Framework July 2021 (the Framework) which is being brought into immediate effect for the purposes of decision-making. The London Plan (LP 2021) has also been published and forms part of the development plan for the area. Consequently, Policy 3.5 of the London Plan (2016), referred to within the Council's decision notice, has been superseded.
4. The main parties have been provided with an opportunity to comment on the relevance of the Framework as amended and the LP 2021 to the appeal. I have taken the paragraphs and policies referred to by the main parties into account as part of my assessment.
5. Following submission of this appeal, the Council's 'Plans Sub Committee' considered a recent appeal decision¹ on the site (the previous appeal) which also related to a scheme for nine flats. Having regard to that appeal, the Council now considers that its earlier concerns have been adequately addressed and has resolved not to contest the appeal before me. I requested further information as to why the Council now considers its reasons for refusal have been overcome, however no detailed explanation has been provided. Even

¹ APP/G5180/W/20/3251273

though there is no longer a dispute between the main parties, third-parties have raised several concerns including that the proposal does not address the grounds for refusal considered under the previous appeal. These are also matters which the appellant has sought to address within their statement of case. I have therefore taken these matters and others raised by third-parties into account in defining the main issues.

Main Issue

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 occupiers of neighbouring residential properties with particular regard to outlook, light and privacy;
- (iii) Whether the proposal would provide suitable living conditions for future occupants of the development with particular regard to private outdoor space;
- (iv) Whether the proposal would provide suitable access and parking;
- (v) The effects of the proposal on biodiversity; and
- (vi) Whether the proposal would include suitable provision of sustainable energy measures.

Reasons

Character and appearance

- 7. As identified by the Inspector that dealt with the previous appeal, whilst the nearest stretch of Bruce Grove is mainly characterised by two-storey semi-detached dwellings, No 28 Bruce Grove has a particularly large garden which also borders Dryden Way. This neighbouring road is markedly different in character with many large commercial and retail buildings, car parks and, diagonally opposite the site, a Day Centre.
- 8. The location of the building to the rear of and set back from the dwellings on Bruce Grove means that public views of the building would primarily be from Dryden Way, the public footpath to the east and in views down Lych Gate Road. The current scheme has been re-orientated so that the principal elevation of the building would face Dryden Way. The building would also be set back and down from the boundary with Dryden Way. Even accounting for the changes to the layout of the building, I find that the conclusions of the previous Inspector are equally applicable. More specifically, I am also satisfied that the scale, massing and palette of materials proposed would add visual interest to the street scene on Dryden Road and would not appear out of place given the large buildings nearby.
- 9. Concerns have been raised in respect of the spacing between the building and side boundaries. In this regard, I have been provided with a copy of Policy 8 (Side Space) of the London Borough of Bromley Local Plan (2019) (BLP) which amongst other things sets out that a minimum 1 metre side space will 'normally' be required between buildings of two or more storeys in height and

side boundaries. Whilst the building would abut the pathway to the east, as was the case with the previous proposal, the building's position set into rising ground with its top floor recessed would ensure that the building would not appear discordant or cramped within the plot. Therefore, a departure from this normal requirement would not be harmful in this particular instance.

10. For these reasons, I am satisfied that the proposal would have an acceptable effect on the character and appearance of the area. In this regard it would comply with the design and local character requirements of Policies 3 (Backland and Garden Land Development), 4 (Housing Design) and 37 (General Design and Development) of the BLP, Policies D1 (London's form, character and capacity for growth), D3 (Optimising site capacity through the design-led approach), D4 (Delivering good design), H2 (Small sites) and GG2 (Making the best use of land) of the LP 2021 and the Framework.

Living conditions of occupiers of neighbouring properties

11. The L-shaped layout of the building would ensure that its mass would be set away from the rear elevations and garden areas serving the dwellings at Nos 26 and 28 Bruce Grove. The spacing would be sufficient to ensure these neighbouring dwellings would be provided with acceptable levels of outlook and light. The distances and angles between windows on the L-shaped rear elevation would also ensure that suitable levels of privacy would be retained for occupiers of the dwellings at Nos 26 and 28.
12. The plans indicate that other than a terrace to the southern part of the building, the remainder of the roof would be for maintenance access only. Planting and privacy screens measuring 1.7m in height are indicated to the edge of the terrace which would screen roof level views towards neighbouring gardens on Lodge Crescent and at Nos 26 and 28 Bruce Grove and would assist in preventing access to other parts of the building's roof for recreational purposes. Precise details of means to prevent access to the maintenance only areas of roof could also be conditioned to ensure that roof level views close to neighbouring boundaries would not be provided.
13. As was the case with the previous appeal proposal, the revised scheme before me would be set down into rising ground with its top floor recess set behind a wall. Glazed areas to the top floor eastern elevation are shown to be 'opaque' and a condition could be attached requiring obscure glazing to be provided and retained to any windows to this elevation. I am of the same view as the previous Inspector that these factors in combination with the landscaping in place and distances involved would further ensure that the living conditions of occupiers of dwellings on Lodge Crescent would not be harmed.
14. Due to the orientation of the property at No 30 Bruce Grove backing on to high boundary treatments with the footpath to the east, any existing overlooking impacts on its garden are restricted to oblique views from windows serving the adjoining semi-detached dwelling at No 29 Bruce Grove. This relationship is established and the occupiers of No 30 are accustomed to overall high standards of privacy to substantial parts of their garden.
15. The Inspector that dealt with the previous appeal considered that due to the relative position and orientation of the dwelling at No 30, and that large parts of its garden are a significant distance from the boundary, that the scheme in

that instance would not have impacted on the living conditions of occupants of this neighbouring dwelling to a harmful degree.

16. The appellant has referred to the previous Inspector's comments relating to the relationship with No 30 within their statement of case. However, the current scheme would bring first floor-built form closer to the southern corner of this neighbouring garden. The windows shown to the first-floor northeast facing elevation serving Flat 8 would be a secondary living room window and a bedroom window. Given their very close proximity to the boundary, these windows, and hence occupants of the flat, would be likely to have a conspicuous presence when appreciated from within the rear garden of No 30 and the drawings indicate that both of these windows would be clear glazed.
17. On my site visit, I saw the fencing to the shared boundary with No 30. I also noted that the southern corner of No 30 is at a higher level to other parts of its garden and that a shed and mature planting occupy an area within this garden close to the boundary. It is possible that these features could help to screen or filter views into the garden of No 30. However, the sections provided are inconclusive in terms of the position of the first-floor windows to the north-east facing elevation relative to the height of the fence to the shared boundary. Section B:B indicates these windows would at the very least sit partially above the fence line. Furthermore, there is the potential that the planting within the garden of No 30 may not always be in place.
18. The plans indicate that trees would be planted on the appeal site side of the boundary. However, such planting would take time to establish and trees in close proximity to the proposed windows would have the potential to unduly impact on the living conditions of future occupiers of the development. Furthermore, whilst one of the windows is a secondary window and could be obscure glazed, obscure glazing to the bedroom window would provide a poor means of outlook for occupiers of Flat 8.
19. Taking all the above factors into account, I cannot be certain from the plans before me that the first-floor windows to the northeast facing elevation would not result in either a perceived or actual overlooking impact in very close proximity to the garden of No 30.
20. I therefore conclude that, the development has the potential to result in significant harm to the living conditions of occupiers of No 30 Bruce Grove with particular regard to privacy. In this particular regard the proposal would conflict with the amenity requirements of Policy 37 of the BLP and Paragraph 130 of the Framework.

Living conditions of future occupiers of the development

21. The previous Inspector was concerned that the communal outdoor space to serve the first-floor flats in that instance would not provide an appropriately private place for future occupants to sit outside and relax. This was primarily due to the garden in that instance being overlooked by the ground floor flats and that large parts of the garden would be located close to pathways leading to the building's entrances and cycle store.
22. The layout of the building in the current appeal scheme would allow for a communal garden with a larger splay with greater distances provided between some parts of the garden and the building's windows. The primary entrance

would be to the front of the building and the cycle store would occupy a position adjacent to the side boundary allowing for main access paths to be located away from the garden and for appropriate landscaping to screen the cycle store. These factors would provide users of the garden with opportunities to sit away from windows and the more functional areas of the site.

23. In addition, the top floor flat would be served by a private terrace, three of the four first floor flats would have balconies, and privacy screens would be utilised to provide rear private amenity spaces for two of the four ground floor flats. All the flats would have access to the communal garden either through doors opening onto it, in the case of Flats 3 and 4, or via the communal corridors. A condition could be attached requiring the communal garden to be kept available for the use of all occupiers of the building at all times.
24. Given flats 3, 4 and 8 would not be provided with their own private amenity space, some conflict remains in terms of the minimum requirements of Policy D6 (Housing quality and standards) of the LP 2021. Even so, I am satisfied that the size and configuration of the communal garden would be accessible and practical and would provide an overall high standard of amenity for future occupants.
25. The Council's Committee Report sets out that the internal floor space for each unit would comply with the Nationally Described Housing Standards and from the evidence before me I find no reason to disagree.
26. Overall, the development would substantively accord with the requirements of Policy 4 of the BLP, Policy D6 (Housing quality and standards) of the LP 2021 and Paragraph 130 of the Framework.
27. Third-parties have also raised a concern that the proposal would not meet the requirement in Policy 4 of the BLP for 10% of units within developments to be 'wheelchair user dwellings'. This is a matter that may have been capable of being addressed by condition but I have not pursued this matter any further with the main parties as it would not alter or overcome my concern about the effect of the development on the living conditions of occupiers of No 30 Bruce Grove.

Access and parking

28. The Council's Committee report refers to parking requirements in the Local Plan requiring a range of 0.7 – 1 parking space per unit. This would equate to between 7 and 9 parking spaces to serve the development. However, it is not clear whether these are minimum or maximum standards and no specific policies have been referred to or provided in the evidence before me. Furthermore, the Highway consultation response provided during the planning application process stated a preference for at least 0.5 spaces per unit as has been permitted on other developments close by. This indicates that there has been some flexibility in the parking requirements for developments in the locality.
29. The proposal would provide four resident parking spaces accessed from Dryden Way which is marginally lower than the preference given in the Highway consultation response. Even so, the spaces would be well integrated within the overall design of the development and would include a space suitable for a wheelchair user. The Council's Highways Officer has raised no concerns with

regards to the accessibility of the spaces. The scheme also incorporates a cycle store thereby offering a facility for a more sustainable mode of transport as endorsed by the Framework. Pay and display parking is available on Lych Gate Road for visitors to the development during the day or for free overnight parking between 6.30pm and 8.30am. The site also provides good accessibility to the services and facilities that Orpington has to offer which would assist in reducing reliance on the private motor vehicle.

30. Taking all the above matters into account, I find no reason no reason to reach a different conclusion to the Council in this particular regard. I find that the parking and access provision would accord with the requirements in Policy 4 of the BLP for off-street parking to be well integrated within the overall design and the sustainable transport objectives of the Framework.

Biodiversity

31. Third-parties have raised concerns that mature trees have been removed from the appeal site. However, there is no reasonable evidence before me to suggest that these trees were protected, nor that their removal has had a significant impact on habitats. If there was evidence that harm was caused to protected species when vegetation was removed, this would be a matter to be separately investigated by the Council. Replacement planting could be incorporated into the finished scheme. There are also opportunities to enhance biodiversity within the scheme both through the soft landscaping provided and through the installation of integral swift nest bricks which could also be made a condition of planning permission in line with the RSPB's request.
32. Overall, I am not persuaded that there has been any significant harm to habitats. There are also opportunities in and around the development to enhance biodiversity which would accord with Policy 37 of the BLP and Paragraph 180 of the Framework.

Sustainability measures

33. The policies provided do not set out minimum requirements for sustainable energy measures to be incorporated into the building. Policy 37 of the BLP requires that development should include where appropriate on-site energy generation. A condition could be attached requiring an assessment as to whether such measures would be appropriate and could be incorporated in this instance.

Planning Balance and Conclusion

34. The Council's Officer report acknowledges that the Council cannot demonstrate a five-year housing land supply and no evidence has been presented to suggest this situation has changed since the Council made its decision. As a result, paragraph 11d of the Framework and the presumption in favour of sustainable development is engaged. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
35. In the context of the Government's objective to significantly boost the delivery of housing, nine flats would make a modest but important contribution towards the provision and mix of housing in the area. I also attach positive weight to the efficient use of under-utilised land, in an accessible location, within close range to services and facilities as well as the potential for some modest

economic benefits through the construction works and the expenditure in the area by future occupants.

36. However, the proposal has the potential to result in significant harm to the living conditions of neighbouring occupiers. In this respect the development would conflict with the development plan and national policy. This is a matter which significantly and demonstrably outweighs the modest benefits of the proposal when assessed against the policies of the Framework as a whole.

37. For the above reasons, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR