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## Appeal Decision

Site visit made on 12 January 2022

**by Rory MacLeod BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 February 2022**

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**Appeal Ref: APP/G5180/W/21/3279528**

**43 Copers Cope Road, Beckenham, BR3 1NJ**

- 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 Heard Estates against the decision of the London Borough of Bromley.
  - The application Ref 20/04515/FULL1, dated 5 November 2020, was refused by notice dated 1 June 2021.
  - The development proposed is demolition of existing garages and construction of new brick carport with 2 residential units above.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are (a) the effect of the development on the character and appearance of the area and (b) the impacts arising from the building's size, siting and design on the living conditions of the occupiers of neighbouring dwellings in relation to visual intrusion, privacy and disturbance.

### Reasons

#### *Character and appearance*

3. The appeal relates to land at the rear of April Court, a four storey block of flats originally constructed in the 1990s, comprising 14 flats. There is a row of 8 attached garages on the western boundary facing open parking spaces to the rear of April Court. The appellant claims that the garages are too narrow for modern cars and that they are now mainly used for storage. The proposal is to replace the garages with a building containing 6 covered parking spaces and 2 dwellings above under a hipped pitched roof.
4. This part of Copers Cope Road is characterised by detached buildings of flats, generally of 3 to 4 storeys, of varying width and design and set back from the road resulting in a spacious and verdant street scene. To the north is Darwin House, a 4 storey building of greater depth than April Court, whilst to the south is Knewleave House, a smaller building to the rear of which is Mendip Cottage, a 2 storey dwelling with a pitched roof.
5. The provision of 2 new dwellings in a 2 storey building in a backland position close to Mendip Cottage would not therefore be out of keeping with the pattern of development in the area. The proposed building would not have an isolated siting. Its elongated design would be unusual, but design varies considerably in the vicinity. Its principal elevation would not be unattractive. The building

would not be readily visible from Copers Cope Road, glimpsed through the access under April Court's northern wing, much as are the present garages.

6. The proposal would be compatible with the character of the surrounding area. There would not be conflict with clauses within Policies 4 and 37 of the Bromley Local Plan (2019) requiring proposals to be of a high standard of design, scale and layout, to complement the form and layout of adjacent buildings and areas. Neither would there be conflict with those parts of Policies D4 and D6 of the London Plan (2021) on delivering good design on housing schemes.

#### *Living conditions*

7. Policies 4 and 37 also require proposals to respect the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and ensuring they are not harmed by noise and disturbance, inadequate daylight, sunlight, privacy or by overshadowing. Similarly, Policy D6 requires the design of development to cater for the amenity of new and surrounding housing.
8. The parties comment that there would be a separation of 15m between the rear of the flats at April Court and the proposed building. The 2 flats would have rooflights, but the only windows would be in the front wall facing April Court. Standard 28 in the Mayor of London's Housing Supplementary Planning Guidance (2016) (SPG) states that *"proposals should demonstrate how habitable rooms within each dwelling are provided with an adequate level of privacy in relation to neighbouring property"*. Supporting text refers to a minimum distance of 18-21m between facing homes. The proposal would not meet this standard, but the SPG comments on these measures as, *"useful yardsticks for visual privacy, but adhering rigidly to these measures can limit the variety of urban spaces and housing types in the city, and can sometimes unnecessarily restrict density"*.
9. The National Model Design Code: Part 2 Guidance Notes (2021) (NMDC) states *"Privacy distances are important but can have an impact on the density of development"*. A diagram shows a minimum separation range of 15-20m between facing 2-storey houses. The proposal would be on the lowest part of this range but would look on to a 4-storey building with many facing windows. There would be less than 15m between the front balcony at the southern end of the proposed building and the directly facing balconies at April Court. At the northern end of the building there would be less than 15m from the front balcony and the projecting 3-storey bay windows over the access under the building. There would also be a close overlooking relationship from this balcony to rear windows and balconies at the back of Darwin House.
10. In my judgement, given the proximity and number of facing windows and balconies at existing dwellings, the degree of inter-visibility resulting would be significantly higher than can reasonably be expected in a suburban residential environment. The extent of overlooking and resultant loss of privacy would be contrary to Policies 4, 37 and D6.
11. The rear wall to the existing garage block abuts the eastern side boundary to the back garden at Mendip Cottage. There would be a considerable increase in the height of the boundary wall as a result of the development. Mendip Cottage is sited off the boundary and has a wide back garden. The proposal would not unduly restrict outlook from its rear facing windows. The height of the ridged

roof would also afford some degree of screening privacy from rear facing windows and balconies at April Court and Darwin House. Nonetheless, the unrelieved height and length of the proposed building's rear elevation would present an uncharacteristically large and oppressive feature that would be overbearing and result in shadowing. The impact on living conditions of adjoining occupiers would thereby also be contrary to Policies 4, 37 and D6.

12. Future occupiers' use of the two front balconies as amenity space may result in some noise and disturbance, but this is unlikely to be any greater than that which currently arises from the use of the rear balconies at April Court and Darwin House. Internal lighting within the main living areas would be visible from existing dwellings during hours of darkness, but given the separation distances, this would not be intrusive. The proposal would not result in noise or disturbance to a material extent to be contrary to development plan policies.

#### *Other considerations and planning balance*

13. The Council cannot currently demonstrate a five year housing land supply. The position in September 2020 was just 3.31 years. The Council acknowledge this to be a significant undersupply. The Housing Delivery Test results for 2021 show 89% delivery against target, a result confirming need for an 'Action Plan'. The presumption in favour of sustainable development at Paragraph 11(d) of the National Planning Policy Framework (the Framework) is therefore engaged.
14. The appellant has drawn to my attention an appeal decision<sup>1</sup> in which the Inspector concluded that *"very substantial weight should be given to the contribution that the 254 dwellings proposed in the appeal scheme would make to meeting housing need in Bromley"*. The 2 new dwellings in the current proposal would make a modest but nonetheless important contribution towards housing need.
15. The overall number of parking spaces on site would reduce but in view of the difficulty of use of the existing garages the 6 covered spaces proposed would result in the benefit of more useable spaces. There would also be short-term economic benefits during the construction phase of the development.
16. Paragraph 130(a) of the Framework states that planning decisions should ensure that developments *"will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development"*. I have noted the cautions in the SPG and NMDC on not unduly restricting density in relation to amenity considerations but in this instance the adverse effects on the living conditions of adjoining occupiers would be long term. In my judgement, the proposal's adverse impacts in relation to privacy at April Court and Darwin House and its overbearing and intrusive nature at Mendip Cottage would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.

#### **Conclusion**

17. For the reasons given above I conclude that the appeal should be dismissed.

*Rory MacLeod*

INSPECTOR

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<sup>1</sup> Appeal Ref: APP/G5180/W/20/3257010 - Footzie Social Club, Station Approach, Lower Sydenham SE26 5BQ