



Appeal Decision

Site visit made on 17 February 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th March 2022

Appeal Ref: APP/G5180/W/21/3273718

Foxhollow, Merlewood Drive, Chislehurst BR7 5LQ

- 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 R Stone against the decision of the London Borough of Bromley.
 - The application Ref 20/04614/FULL1, dated 12 November 2020, was refused by notice dated 15 April 2021.
 - The development proposed is the erection of a two storey, 5 bedroom detached property on land rear of Foxhollow with associated car parking and amenity space
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development has been taken from the application form. The scheme was revised following an earlier appeal for erection of a two storey, 5 bedroom detached property on land rear of Foxhollow with associated car parking and amenity space (Ref APP/G5180/W/20/3252491).
3. On visiting the site, there appeared to be some discrepancies between the existing site topography and that shown on the plans. The appeal has not been submitted with any form of topographical survey, although it is noted in the application planning statement that levels are taken from a site survey. I have therefore made my decision considering the annotated levels on the proposed plans.
4. Since the Council took its decision and the appeal was made, the National Planning Policy Framework (the Framework) was revised in July 2021. The sections pertinent to this appeal have not materially altered and I will therefore reference the revised version in my decision.

Main Issue

5. The main issue in this appeal is the effect of the proposed development on the living conditions of occupants of 9, 10 and 11 Oakhurst Close in relation to outlook, light and privacy.

Reasons

6. The appeal site constitutes an area of undulating land which has 2 outbuildings on its lowest section and is accessible from the gated Merlewood Drive. On three sides, the site is surrounded by large, detached, and individually designed residential dwellings all of which are on Merlewood Drive and follow

the steeply undulating topography. Merlewood Lodge, to the south, and Foxhollow, to the north, are situated at lower levels to the site. Along the rear boundary of the site, the land falls away very steeply and forms the rear gardens of properties on Oakhurst Close. The properties along Oakhurst Close are detached, two-storey and are, in general, on more modest plots than those properties on Merlewood Drive.

7. The properties at 9, 10 and 11 Oakhurst Close are adjacent to the rear boundary of the site and are separated from it by a wooden fence with an immature Leylandii hedge planted along it. The steep bank leading up to the site takes up approximately half of the rear gardens of Nos 9, 10 and 11, with the top of the bank broadly in line with their roofs. The bank continues a little way into the site, resulting in clear views from ground level over the fence into the rear gardens and upper floor windows of Nos 9, 10 and 11, notwithstanding the Leylandii.
8. The proposed development would lower the ground levels of the site, commensurate to ground levels at Merlewood Lodge and Foxhollow, to build a large, modern, two-storey, 5 bedroom dwelling. The proposed dwelling would be situated centrally on the site and parallel to the rear boundary, with the upper floor set back.
9. The rear gardens of Nos 9, 10 and 11 are dominated by the steeply sloping topography. Although their landscaping incorporates small sitting areas and pathways designed into the slope, the compact, shaded, and enclosed nature of the rear gardens is inescapable, as is the outlook from the rear facing windows of these properties. The proposed dwelling would create an additional linear form visible above much of the rear boundary of Nos 9 and 11 and the entirety of No 10's boundary.
10. In and of itself the suburban nature of an area does mean it is not unusual for other dwellings to be visible from rear gardens and windows, and the proposed development seeks to reduce the impact already identified in the previously refused scheme. However, Merlewood Lodge and Foxhollow, which are at the top of the slope are not obviously visible from Nos 9, 10 and 11. Therefore the existing outlook for Nos 9, 10 and 11 is not overly suburban. Notwithstanding this, it is considered that the proposed scheme, including the continued retention of the trees protected by Tree Preservation Order would lessen the previously identified impact on the living conditions of the occupants of No 9 in relation to outlook, light and privacy. However, the overbearing and domineering impact on the outlook of Nos 10 and 11 would remain. Whilst the proposed setting back of the upper floor would lessen the impact of the previous iteration, the overall bulk would still be positioned above the existing fence line at the top of the slope, visually dominating the boundary.
11. The Daylight and Sunlight Assessment undertaken by Herrington Consulting Limited (November 2020 revision 2) concludes that the impact on light for Nos 10 and 11 would be less than the previous scheme and would be within the Building Research Establishment's Guidelines. It is appreciated that taken in isolation this would be considered acceptable. However due to the unique characteristics of the topography and the identified harm to outlook, even a small reduction in light would negatively impact the living conditions of the occupants of Nos 10 and 11.

12. In relation to privacy, it is accepted that the proposed upper floor would be a similar height to the current site at the top of the bank. However, the use of louvres, obscure glazing and the setback position of the proposed upper floor windows would reduce overlooking, or any perception of overlooking, to acceptable levels for a suburban environment. This would be comparable to the existing overlooking from adjacent properties along Oakhurst Close or the incidental use of the site in its existing state.
13. It is noted that the appellant relies on the support of the planning officer prior to the committee decision, and their committee report has formed part of my considerations. However, this does not alter my findings. The appellant has also referred to several policies from the Local Plan along with various paragraphs from the Framework, London Plan 2021, the National Design Guide, and supplementary planning guidance. The acceptability of a residential use on the site, the proposed contemporary design and lack of impact on highways, drainage and protected trees is noted. I have had regard to all these matters, but they do not mediate the harm identified.
14. Interested parties have raised concerns relating to the potential effect of construction works, and the structural integrity of the proposed design, amongst other things. However, as I am dismissing the appeal, I have not pursued these matters further.
15. It is concluded that the proposed scheme would cause an unacceptable level of harm to the living conditions of the occupants of 10 and 11 Oakhurst Close in relation to outlook and to a lesser extent light. However, it is accepted that it would mitigate the harm to the living conditions of No. 9 in respect of light, outlook, and privacy and in relation to the privacy of the occupants of Nos 10 and 11. Nevertheless as harm is still caused, the proposal does not comply with Policy 37 of the Bromley Local Plan (2019) insofar as it relates to living conditions.

Planning Balance and Conclusion

16. As set out in the Council's committee report, the Council cannot demonstrate a 5-year housing supply. The main parties' estimates of a supply range between the appellant's 3.27 years and the Council's 3.31 years. Both confirm that this is a significant undersupply. As such, it is necessary for me to apply paragraph 11 of the Framework.
17. I appreciate that the provision of a single dwelling would contribute to reducing the current housing shortfall of the Borough, and that within appeal decision APP/G5180/W/20/3257010 the provision of new housing to elevate the Borough's shortfall was given substantial weight. However, that decision was regarding a development of 254 residential units including affordable housing so is not directly comparable to the proposed development. I therefore maintain that the proposed development would attract significant weight on this matter, as considered in appeal APP/G5180/W/20/3252491. No other benefits of the proposed development have been identified.
18. I have, however, found significant harm in relation to the living conditions of the occupants of 10 and 11 Oakhurst Close and this matter significantly and demonstrably outweighs the benefits of the scheme.

19. The planning balance is therefore not in favour of the appeal scheme. It does not comply with the development plan as a whole nor the approach in the Framework, and there are no other material considerations that would indicate a contrary decision. The appeal is therefore dismissed.

RJ Redford

INSPECTOR