
Appeal Decision

Site visit made on 15 March 2022

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th April 2022

Appeal Ref: APP/G5180/W/21/3283266
23 Ethelbert Close, Bromley, BR1 1JB

- 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 Matthew Pearson against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/02855/FULL1, dated 8 June 2021, was refused by notice dated 3 September 2021.
 - The development proposed is excavation to form basement level along with side rear and front lightwells to serve proposed basement studio flat, with steps at the front from the ground level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have amended the description of proposed development in the banner heading from that which was included on the application form as it more accurately reflects what is proposed.

Main Issue

3. The effect of the proposal on the living conditions of future occupiers with regards to sunlight, daylight and outlook.

Reasons

4. The appeal site is a semi detached 2 storey residential property with roof extensions built as 2 maisonettes and is located at the end of a short close of similar buildings. The site has a small rear yard area and front garden.
5. The appeal scheme is for the excavation of a new basement area to create a studio flat with lightwells. Whilst the floorspace and floor to ceiling height of the studio complies with the standards included in the London Plan the critical issue is whether the design of the 4 lightwells would afford an appropriate standard of living conditions for future occupants.
6. The rear lightwell would occupy the limited space between the rear addition to the property and its boundary with the adjoining property and would have an area of 1.4square metres and a depth of 2.5m with a low guard rail above. The side wells would be of limited area and would be capped by pavement lights. The front lightwell would have an area of around 11.8sqm which includes the landing of the entrance stairs with a depth of 2.5 topped with a guard rail. The

- proposed flat would be served by a half glazed door and folding full height glazed doors.
7. These lightwells would serve an open plan living space and the appellants have submitted evidence that the average daylight factor included in BS8206-2 and BRE 'Site Layout for Planning for Daylight and Sunlight' would be met.
 8. The rear and side lightwells, due to their depth, limited area and location of lights would allow restricted light into the rear parts of the proposed flat. The appellant's evidence points to the average daylight factor (ADF) of around 1.5; this would meet the appropriate standard for the proposed flat based on the internal space being assessed as a 'living room'. However, it is unclear how the configuration of the front well has been fully taken into account, given its depth and limited width, the projecting bay serving the front room of the ground floor and the stepped entrance to this floor. I am not convinced that a sufficient level of daylight would penetrate to the whole of the flat. Without an electric light, its interior would be dim.
 9. The sun path analysis submitted with the appeal does not address in sufficient detail this matter given the constraints which affect the lightwell. For this reason and due to the depth of the flat, it is unlikely that direct sunlight would enter for a sufficient period to make living conditions acceptable.
 10. The retaining wall at the front of the property would be located around 2.5m from the front window. Views from the flat directly onto to this wall and the access stair would be oppressive for occupants of the proposed dwelling given its proximity and that it would be the only feature in view. There would be no opportunity to glimpse medium or long distance features.
 11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
 12. However, both parties accept that the Council cannot demonstrate a 5 year supply of deliverable housing. In these circumstances, paragraph 11d)ii and footnote 8 of the National Planning Policy Framework (the Framework) state that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
 13. However, the fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219 which amongst other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.
 14. Although the appellant has cited other policies included in the Local Plan which support the most efficient use of land supported by specific references to the policies of the Framework, I deem that the most important policies are D4 and D37 of the Local Plan and Policy D6 of the London Plan, which is supported by Supplementary Planning Guidance on Housing Standards.

15. A common thread running through each of these policies is the importance of qualitative aspects of living conditions in residential properties including the adequacy of both daylight and sunlight and opportunities to allow for visual interest through a combination of long views.
16. I regard each of these policies as entirely consistent with Paragraph 130 of the Framework in seeking the highest standards of housing. Therefore, I give substantial weight to the conflict between the appeal scheme and the adopted plan. The appellant has cited an appeal decision¹ of an Inspector colleague of mine made several years but this was made against a different set of policies and I do not have the full details of that case before me.
17. I recognise the importance of addressing the deficiency in housing supply and ensuring the most efficient use of land but the appeal scheme would make only a marginal impact on this situation and has to be balanced against the adverse impacts on the living conditions for future occupiers of the flat. In reaching my decision, I have taken account of the neighbour comments which express support for the proposed scheme.
18. For the above reasons, the appeal scheme conflicts with Policies D4 and D37 of the Local Plan and D6 of the London Plan and Paragraph 130 of the Framework due to the unacceptable living conditions which would arise for occupiers of the proposed flat.
19. Accordingly, I dismiss this appeal.

Stephen Wilkinson

INSPECTOR

¹ APP/G1580/W/18/3205524