



Appeal Decision

Site visit made on 11 April 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30/05/2022

Appeal Ref: APP/G5180/W/21/3277453

Land adjacent to 21 Dalton Close, Orpington BR6 9QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by WBerkton Limited against London Borough of Bromley.
 - The application Ref 20/05107/FULL1, is dated 8 December 2020.
 - The development proposed is erection of a two-storey 4 bedroomed dwelling house.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by WBerkton Limited against London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the appeal was lodged, a revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. This does not change the planning policy context in respect of the main issues.
4. The appeal is against the Council's failure to determine the planning application within the relevant statutory period. The Council's statement of case sets out the grounds on which it has resolved to contest the appeal. I have had regard to these grounds in defining the main issues.
5. A separate appeal¹ which sought a permission in principle for two semi-detached dwellings on the appeal site has been dismissed since the appeal before me was submitted. The appellant has been provided with an opportunity to make further comments in light of that decision and I have taken their response into consideration as part of my assessment.

Main Issues

6. The main issues are:
 - (i) the effect of the proposal on the character and appearance of the area including trees covered by a Tree Preservation Order (TPO); and
 - (ii) Whether or not the proposal would provide suitable living conditions for future occupiers of the proposed dwelling and neighbouring occupiers on Dalton Close with particular regard to privacy.

¹ Appeal Ref APP/G5180/W/21/3277451

Reasons

Character and appearance

7. Dalton Close is a cul-de-sac mainly characterised by similarly designed two-storey terraced dwellings more often set within plots of a similar shape and width. Dwellings on the close are set back from front boundaries and have open frontages. The appeal site is an irregular shaped area of informal open space. It is predominantly grassed and also contains planting including trees, two of which are mature silver birch trees covered by TPOs. Due to its position within the head of the cul-de-sac and its open and soft landscaped appearance, the site provides a verdant focal point for the dwellings on Dalton Close that are arranged around it. As a result of these factors, the site is also integral to the order and spaciousness of the street scene on Dalton Close and positively contributes to the area's pleasant residential character.
8. The proposal before me relates to a single dwelling and seeks detailed approval. In those respects, it differs from the recently determined appeal which sought permission in principle for two semi-detached dwellings. Even so, the dwelling's substantial built form, associated hard landscaped driveway and boundary fencing would combine to significantly erode the important spacious and soft landscaped aspect that the site provides to the cul-de-sac. Together with the irregularly shaped plot, the development would appear incongruous and discordant relative to the planned arrangement of other dwellings on Dalton Close. Therefore, the concerns raised by my fellow Inspector in respect of the recently dismissed appeal that '*due to the site's exposed location within the cul-de-sac, any development there would appear overly prominent when viewed from the roadside and adjoining properties*' are also pertinent to this case.
9. I accept that the maximum height of the dwelling would be comparable to neighbouring dwellings and that materials to match other properties in the area could be used. I also acknowledge that there are some limited examples of solar panels close to the site. However, seen in combination with the flat roofed side dormer, the form and cluttered appearance of the roofscape would significantly contrast with the general uniformity and simple pitched roof forms of the terraced dwellings on Dalton Close. This would further detract from the cohesiveness of the street scene on Dalton Close, adding to the harm already identified.
10. Policy G7 (Trees and woodlands) of the London Plan 2021 (LP 2021) requires amongst other things that, wherever possible, existing trees of value are retained. The appellant contends that the TPOs were only recently made and that there are many other trees in the area visible within the public realm. I have also seen the appellant's tree assessments which suggests amongst other things that the TPOs are of low quality. This is disputed by the Council's Tree Officer. Whether or not the trees merit their TPO status, this does not diminish the very positive contribution that the informal open space and the soft planting on it make together to the visual amenity of the area.
11. I acknowledge that the proposals would include new tree planting on the site and the provision of a planted wall as well as sedum roofs to the dormer and cycle and bin stores. The appellant indicates that they would also be agreeable to the provision of some tree planting elsewhere within the public realm within the immediate area. However, the proposal would reduce Dalton Close's green

infrastructure rather than resulting in the urban greening effect suggested by the appellant. Even if such matters could be secured by condition, they would not sufficiently assimilate the development into its immediate surroundings.

12. The appellant contends that there was historically a detached dwelling on the site before the formation of the current cul-de-sac. However, I have assessed the effect of the proposal in relation to the current site context on Dalton Close. I have also been referred to other dwelling types and developments in the wider area. However, from the evidence before me, none of the examples provided are identical to the appeal proposal or its site-specific surroundings. Therefore, the examples provided do not persuade me that the proposal would positively respond to its immediate context.
13. My attention has been drawn to an appeal decision at Mulberries, Mavelstone Road² which included replacement trees being accepted. However, that appeal related to a replacement dwelling and is not comparable to the loss of open space and soft planting which is relevant in this particular case.
14. The site at 11 Windsor Drive, Orpington³ related to a gap in built development which was enclosed by a high fence. Therefore, I do not find this comparable to the appeal site.
15. I conclude, the proposal would have a significantly harmful effect on the character and appearance of the area. In that regard, it would conflict with the design, layout and local context requirements in Policies 4 (Housing Design), 37 (General Design of Development), 73 (Development and Trees) and 74 (Conservation and Management of Trees and Woodlands) of the Bromley Local Plan (2019) (the LP) and Policy D3 (Optimising site capacity through the design-led approach) of the LP 2021.

Living conditions

16. The appellant suggests that the proposed dwelling would have an approximate separation distance between other dwellings on Dalton Close of between 20 and 30 metres (m). The Council suggests that the distances would range between 18.6m and 21.5m.
17. Even if I accept the Council's more conservative measurements, the highway on Dalton Close substantively separates the site from other neighbouring properties on Dalton Close. Neighbouring dwellings on the cul-de-sac are also set back within their plots, as would be the appeal dwelling. Consequently, the intervening relationship and distances between neighbouring windows serving these dwellings would be similar to those commonly seen within residential areas.
18. Due to its irregular shape, parts of the rear garden serving the proposal would be visible from neighbouring properties. However, the relative distances and proximity of boundary fencing to the garden area to the immediate rear of the proposed dwelling, would ensure that a sufficient part of the garden would be suitably private.
19. First-floor bathrooms windows and a secondary bedroom window would be located on the side elevation of the proposed dwelling facing Nos 19 and 21.

² Appeal Ref APP/G5180/W/19/3240716

³ Appeal Ref APP/G5180/W/19/3228658

Given the nature of these windows, the provision of obscure glazing and limitations on the height of any opening parts would be appropriate and could be controlled by condition. Therefore, there would be no material overlooking impacts from these windows.

20. Taking all the above factors into consideration, I conclude that the proposal would provide for suitable living conditions for occupiers of the proposed dwelling and occupiers of neighbouring dwellings on Dalton Close with particular regard to privacy. In that regard, the proposal would accord with the requirements for developments to respect the amenity of occupiers of neighbouring buildings and those of future occupants, including in terms of privacy, in Policy 37 (General Design of Development) of the LP.
21. The Council's statements also refers to Policy 4 of the LP in respect of this matter. However, that particular policy does not refer to issues relating to living conditions. Therefore, it has not been material in me finding that the proposal would be acceptable in this regard.

Other Matters

22. Even if the proposal would generally be in accordance with other development plan policy requirements relating to matters including densities, side space, acceptable levels of light for neighbouring occupiers, minimum internal space standards and minimum parking standards, these matters do not justify the harm identified under the first main issue. Any potential for biodiversity net gain has not been quantified and given the size of the site and the scale of the development would be unlikely to be of any significant magnitude.
23. I recognise there is support in the development plan for optimising land and for the intensification and greater provision of housing including through the development of small sites. However, this does not negate the requirements for new homes to be well-designed and to enhance local context.
24. In addition to those already mentioned, several other appeal decisions have been appended to the appellant's case⁴. However, my attention has not been drawn to any specific text or direct comparisons with those cases. From the evidence before me, those particular cases did not relate to an area of informal open space which was as integral to the layout and character and appearance of their respective streets. Therefore, I do not find these examples comparable to the appeal proposal.
25. The appellant's Energy Statement assesses amongst other things the fabric of the building, including the proposed solar panels, and indicates that the building would reduce emissions over the building regulations requirement by 49.69%. Even so, given the proposal relates to a single dwelling, the overall sustainability benefits would be limited.
26. Any land ownership issues, and whether or not a stopping up order could be applied for in respect of the footpath which passes through the site, are not a matter for me to determine as part of an appeal made under Section 78 of the Act.

⁴ Appeal Refs APP/N1160/W/20/3253648, APP/W1145/W/21/3269210, APP/G5180/W/20/3250961, APP/G5180/W/20/3264018, APP/G5180/W/20/3261176 and APP/G5180/W/21/3269176

Conclusion

27. The Council suggests that its housing land supply position has improved from 3.31 years supply in November 2020 to 3.99 years supply as of November 2021. It nevertheless remains the case that the Council cannot demonstrate a five-year housing land supply and the updated figure provided still represents a significant shortfall. In the circumstances, paragraph 11d of the National Planning Policy Framework (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.
28. In the context of the Government objective to significantly boost the delivery of housing, a single four-bedroomed dwelling would make a modest but important contribution towards the provision and mix of housing in the area. I also attach positive weight to the site's accessible location within close range of services and facilities as well as the potential for some modest economic benefits through the construction works and the potential expenditure in the area associated with future occupants of the proposal. Limited weight is attached to the sustainability credentials of the proposal.
29. However, the proposal would result in significant harm to the character and appearance of the area. 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.
30. For the above reasons the appeal is dismissed.

M Russell

INSPECTOR