



Appeal Decision

Site visit made on 4 May 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2022

Appeal Ref: APP/G5180/W/21/3275379

**41 (Land Adjacent to 47) Sunningvale Avenue, Biggin Hill, Westerham
TN16 3BX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr J Godwin against the Council of the London Borough of Bromley.
 - The application Ref DC/20/05108/FULL1, is dated 12 December 2020.
 - The development proposed is the construction of eight x 4 bedroom semi-detached dwellings, together with associated parking and bin storage facilities.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters and Background

2. The appeal site address is described as 41 Sunningvale Avenue on the application form, and I saw the entrance to the appeal site was numbered accordingly. However, the appeal site forms part of the former 49 Sunningvale Avenue and is located adjacent to 47 Sunningvale Avenue. I have therefore used the site address provided in the council's decision notice for the banner heading above, which has been relied upon by the appellant in their appeal form, in the interests of clarity.
3. The appeal follows the council's failure to issue a decision within the relevant timescale. The council's appeal submissions confirm that it contests the appeal for three reasons, all of which relate to the effect of the proposal on the character and appearance of the area. The appellant has commented on those submissions.
4. Historically, the appeal site formed part of a larger site which was occupied by a detached dwelling and outbuildings, set amongst trees. That former plot is the subject of a Tree Preservation Order¹ (TPO). Trees have since been removed from the eastern extent of the plot as part of various planning permissions authorising a number of houses to form Sunningvale Close, to the rear of the appeal site.
5. I have been provided with a copy of an extant Tree Replacement Notice² (TRN) relating to the appeal site. The proposed development would necessitate the removal of all remaining trees from the appeal site and leave the TRN

¹ Tree Preservation Order No. 1517, 49 Sunningvale Avenue, Biggin Hill, Kent dated 9 September 1998 and confirmed as an opposed Order on 4 March 1999

² Dated 3 September 2020

incapable of being complied with. The appellant has claimed trees which have been removed from the appeal site did not require consent from the council, but there is no information before me, including the approval of service runs across the appeal site and the legal opinion³ presented as part of the appellant's final comments, which suggests the requirements of the TRN are not in effect.

6. I have been referred to Tree Work Applications in respect of the proposed removal of some trees within the appeal site, submitted to the council after the lodging of this appeal. The council has confirmed that as T23 is dead, it is exempt from requiring formal consent to be felled, and consent to fell T24 has been refused. Based on the information before me it appears the council is yet to issue any decisions in respect of the proposed felling of T1 and T10.
7. The main parties agree that the council is unable to demonstrate a five year housing land supply. Therefore, as set out at paragraph 11(d) of the National Planning Policy Framework (the Framework), the presumption in favour of sustainable development applies.

Main Issue

8. Taking the above into account, the main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to trees, design and scale.

Reasons

Trees

9. The appeal site is a corner plot sloping down from rear to front (east to west). It is located within a housing estate developed along part of the Biggin Hill valley, which is characterised by a mix of styles of semi-detached, detached and terraced houses interspersed with planting. Street trees line Sunningvale Avenue and many driveways and front gardens in the surrounding area are accompanied by planting, with more substantial trees seen in rear gardens. Trees and planting in the surrounding area are an important feature of the sylvan character of the housing estate within this part of the valley.
10. As a relatively large undeveloped parcel of land, the appeal site is an uncommon feature in the housing estate. It is occupied by 25 trees, as documented within the Arboricultural Survey⁴. Although there are no similarly sized clusters of trees fronting onto the highway elsewhere within the housing estate, the trees within the appeal site provide a pleasant transition from the dense woodland higher up the valley to the east, down into the housing estate. The appeal site is therefore experienced as an attractive green break between development along Sunningvale Avenue and within Sunningvale Close.
11. Of the 25 trees within the appeal site, 2 have been categorised as grade U, 21 as grade C and 2 as grade B within the Arboricultural Survey. The Arboricultural Survey explains that the grade U trees would need to be removed from the appeal site irrespective of the proposal, which includes T23. The appellant's final comments⁵ explain that T18 (Beech) and T24 (Corsican

³ Appendix 7 to the appellant's final comments: Opinion of Matthew Henderson, Landmark Chambers, dated 11 August 2019

⁴ Arboricultural Survey and Planning Integration Report dated 21 April 2020 by Quaife Woodlands, ref: AR/3936/jq

⁵ Appendix 3 to the appellant's final comments: Letter dated 11 January 2021 by Quaife Woodlands,

Pine) were categorised as grade B trees due to their proximity to the highway, but the Arboriculturalist has clarified that they are of sufficient prominence to justify an A grading. The Arboricultural Survey describes grade B trees as being of moderate quality and value with a life expectancy of 20+ years, and grade A trees and being of high quality and value with a life expectancy of 40+ years.

12. I saw T18 and T24 to be attractive, mature trees which are prominent in the street scene and distinctive in long views from across the valley. They make a substantial positive contribution to the character and appearance of the area. The other trees within the appeal site, seen as a group, also make a positive contribution to the sylvan character and appearance of the area, but their contribution is of less importance than that made by T18 and T24.
13. The TRN formally requires 39 specified trees to be planted within the appeal site, following the unauthorised removal of 15 trees subject to the TPO. Compliance with the TRN would line parts of the northern, southern and eastern boundaries of the appeal site with mixes of Maple and Hawthorn, with Beech to be planted in more central gaps. In time, these additional trees would further enhance the contribution of the appeal site to the verdant character and appearance of the area by infilling unplanted parts of the appeal site.
14. The proposal would necessitate the removal of all 25 trees within the appeal site in addition to an off-site Sycamore street tree and would effectively remove any need for full compliance with the TRN. The harmful effect on the character and appearance of the area caused by the loss of all of these trees, but especially T18 and T24, would be experienced over a wide area due to the long views of the appeal site from the west. In the context of the sylvan surroundings, the level of harm would be significant.
15. The Arboricultural Survey advises that the removal of all trees from within the appeal site is necessary because they compromise the efficient development of the site. That is a matter of planning judgement I shall address in the planning balance below, but I have not been presented with information which demonstrates the removal of any trees is necessary due to their condition or defects, other than in respect of the grade U trees.
16. It has been suggested that the retention of T18 and T24 would be a source of inconvenience and anxiety to residents, but those comments appear to relate to future residents of an unspecified alternative potential form of development at the appeal site, which is not before me. I have not seen evidence of any justified pressure to fell T18 or T24.
17. The proposed planting scheme⁶ would include a mix of Joseph Rock's rowan, Wild crab apple, Spindle and Red maple in the terraced rear gardens of the proposed dwellings, with hedging along the rear boundary. There would be no opportunities for soft landscaping along the appeal site frontage on Sunningvale Avenue, which would be entirely hard-surfaced to provide off-street parking.
18. The proposed development would cause significant harm to the character and appearance of the area on account of the loss of all trees within the site and a street tree. That harm would not be mitigated in any meaningful manner by

ref: AR3936 L1/jq

⁶ Plan no. 4585-PD02 dated March 2020

the proposed planting scheme, which proposes to confine a comparatively small amount of trees and hedging to the rear of the proposed dwellings.

19. The proposed development would therefore fail to accord with Policies 37, 73 and 74 of the Bromley Local Plan (2019) (LP) and Policy G7 of the London Plan (2021). These require, amongst other things, new development to comprise high quality design which makes a positive contribution to the street scene and landscape, taking particular account of existing trees which are desirable to be retained in the interests of visual amenity. Policy 74 sets out that the council will encourage appropriate beneficial management of trees to improve their amenity value.

Design and Scale

20. The proposed development would comprise four pairs of two storey semi-detached houses with hard surfacing to the front to provide 2 off-street parking spaces per dwelling. Accommodation in the roof space would be served by roof lights on the front elevation and small pitched roof dormers on the rear. They would be similar in terms of design and scale to the houses recently erected to the rear of the appeal site, within Sunningvale Close.
21. The proposed pairs of semi-detached houses would appear taller and narrower than most nearby buildings on Sunningvale Avenue and the hard surfaced frontage and small separation gaps between each pair of houses would create a cramped form of development. There is a broad range in the design, scale and layout of houses in the surrounding area, with examples of three storey terraced houses, and extensive off-street parking areas forming the frontages of many properties.
22. Although there is a verdant feel to the area created by street trees and properties with thick boundary planting, not all properties are accompanied by soft landscaping to their frontages. The design and scale of the proposed development would not be completely at odds with its surroundings, but it would not comprise high quality design either, and it would not enhance the quality of the built environment or complement the sylvan qualities of the local area.
23. Therefore, aside from the harm which would be caused to the character and appearance of the area by the loss of trees, the design and scale of the proposed development would cause low level harm to the character and appearance of the area and conflict with Policies 4 and 37 of the LP. These require, amongst other things, new development to achieve a high standard of design which respects local character and physical context and provides spaces around dwellings to allow opportunities to create attractive settings.
24. The council has referred to Policy 8 of the LP which requires new proposals of 2 or more storeys in height to provide minimum 1 metre separation gaps between buildings, or more generous space if higher standards already exist. In this case, the council has referred to the 1.3 metre separation gaps between the proposed pairs of semi-detached houses as inadequate, but I saw similar separation gaps between buildings in the local area, such as within Sunningvale Close. Although I consider the design and scale of the proposal would create a cramped form of development, there would be no clear conflict with Policy 8.

Planning Balance

25. Paragraph 11(d) of the Framework advises that where a five year housing land supply cannot be demonstrated, the policies which are most important for determining the application should be considered out-of-date and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.
26. I concur with the view expressed by the Inspector in an appeal decision⁷ concerning 2 dwellings at a neighbouring site with regard to the important contribution small developments can make to meeting the housing needs of the Borough. In that case the Inspector considered substantial weight should be given to making the most of opportunities as and when they arise, subject to other material considerations not being determinative against a grant of permission. It does not follow that substantial weight must be given to the benefits associated with the housing proposed in this case.
27. I have identified harm which would be caused by the proposed development to the character and appearance of the area on account of the loss of trees and its design and scale. Overall, the level of that harm would be significant and long lasting. Although I may attribute less weight to the most important policies of the development plan and any conflict therewith by virtue of them being considered out-of-date, other planning harms arising from the proposal would not be as affected. As such, I assign substantial weight to the significant harm the proposal would cause to the character and appearance of the area.
28. The proposal would contribute 8 dwellings in an accessible location, within walking distance of local services and bus stops. This benefit needs to be considered alongside the magnitude of the council's shortfall in housing land supply, and in this regard the appellant has referred to the council's five year housing land supply update⁸ which identifies a 3.99 years supply covering the period 2021/22 to 2025/26. This is a significant shortfall, and the proposal would make a modest contribution towards the Borough's housing land supply. I therefore assign moderate weight to this benefit.
29. The Framework refers to the Government's objective of significantly boosting the supply of homes and the important contribution small sites can make to meeting housing requirements, where great weight should be given to the benefits of using suitable sites within existing settlements for homes. Although the appeal site is located within an existing settlement, I have found it would not be a suitable site for the proposed development as it would necessitate the loss of all trees within the site, which make an important contribution to the character and appearance of the area.
30. The Framework also advises that planning decisions should promote an effective and efficient use of land in meeting the need for homes, while safeguarding and improving the environment, with good design being a key aspect of sustainable development. I have found the proposal would not secure a well-designed, attractive place and would lack appropriate or effective landscaping sympathetic to local character.

⁷ APP/G5180/W/20/3253377

⁸ Appendix 1 of the appellant's final comments

31. Taking all of the above into account it is sufficiently clear that the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole. The proposal would not therefore constitute sustainable development for which the presumption in favour applies.

Conclusion

32. For the reasons given above I conclude that the proposal would fail to accord with the development plan and there are no material considerations, including the Framework, which indicate planning permission should otherwise be granted. The appeal should therefore be dismissed.

L Douglas

INSPECTOR