



Appeal Decision

Site visit made on 16 May 2022

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 10th June 2022

Appeal Ref: APP/G5180/W/21/3289162
26 The Avenue, Bickley, Bromley BR1 2BT

- 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 Ross McDougall against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/02380/FULL1, dated 12 May 2021, was refused by notice dated 5 November 2021.
 - The development proposed is demolition of existing building. Erection of flatted development, containing 6 flats, with associated access, parking, bicycle and bin storage, amenity space and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the planning application was determined, the Council have served a Building Preservation Notice (BPN) under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (1990 Act). The BPN relates to the area of the appeal site, including the existing building that sits on it. The BPN has the effect of conferring listed status on the building for the period that it is in force. Consequently, the duties relating to Listed Buildings set out in S66(1) of the 1990 Act apply. The building also constitutes a designated heritage asset for the purposes of applying policy in the National Planning Policy Framework (the Framework). I have considered the appeal on this basis.
3. The existence of the BPN is a change in circumstance of relevance to this appeal. As such, I have paid appropriate regard to it in deciding the main issues. However, it is not for this appeal to consider the specific merits of the Council's decision to serve a BPN.
4. I have considered the Appellant's request to hold this appeal in abeyance pending further consideration of whether the building may be listed for the longer term. The outcome of a decision on longer term listing is a matter of speculation at this stage, as is the length of potential further delays to the appeal timetable that could result in a decision one way or the other. The resulting delay and disruption would be inconsistent with the aim of ensuring that appeals can be processed efficiently.

5. Although the serving of the BPN has been a matter mostly beyond the control of the Appellant, it does not represent an exceptional reason for putting the appeal into abeyance. In reaching a view on this issue I have paid regard to guidance contained in the Planning Inspectorate Appeals Procedure Guide¹

Main Issues

6. The main issues are the effect of the proposal on:
- The character and appearance of the area, including heritage assets.
 - The living conditions of occupiers of properties that are close to the site.

Reasons

Character and appearance

7. The site is at the corner of a sharp bend in the road. It is currently occupied by a substantial and prominent dwelling of distinctive appearance that sits towards the front of a generous plot. Its façade addresses the south side of the Avenue, with a setback that creates a front building line roughly according with neighbouring properties along this part of the road. Although there is variation in the vintage and appearance of houses, the arrangement of frontages creates a consistency that contributes to the character of the area by providing space between built forms and a pleasant, open character to the south side of the Avenue.
8. The west side of the Avenue is less obviously dominated by residential frontages. Larger townscape gaps are a feature of this part of the surroundings, providing a sense of openness and allowing longer views down the rear of properties. There is a more expansive appearance of greenery that contributes positively to the character of the area.
9. This side of the Avenue is influenced by the industrial use that is opposite the site. As the buildings associated with this use are setback from the road, the main visual influence comes as a result of the extensive timber fencing that runs the perimeter of the Avenue on the opposite side of the road to the site.
10. As seen from public viewpoints along the west side of the Avenue, the side elevation and rear of the proposed building would be highly visible and a prominent feature in the local street scene. The side elevation, in particular, would present an extensive visible built mass as a result of the rearwards projection into the site.

¹ <https://www.gov.uk/government/publications/planning-appeals-procedural-guide/procedural-guide-planning-appeals-england>

11. The detailed design of the building on this elevation would do little to break the perceived mass of the building. The centrally located three storey gabled projection would introduce a vertical element to the building that would contrast poorly with the horizontal mass of the main structure.
12. The window openings in the side elevation would also appear small in relation to the main structure and, again, do little but reinforce the scale of the main building. They would also provide the side elevation with a blank appearance rather than adding visual interest to what would be a prominent and public facing elevation of the building.
13. The aspects of the proposal discussed above would contrast starkly with the existing situation, where the sense of openness and longer views down the rear of properties from the west side of the Avenue contributes positively to the character of the area.
14. Overall, the proposal would impact significantly on these positive characteristics due to the scale of development and, in particular, it's excessive rearwards projection. The resulting negative effects on the character of the area would be compounded by the unsatisfactory design elements which are discussed above.
15. In relation to the front elevation of the building. As seen from public vantage points along the Avenue, the perceived scale of this elevation would not be dissimilar to that of the existing dwelling. This is because the new building would roughly accord with the front building line of neighbours along the Avenue. Any perception of increased bulk and scale, particularly to the side adjacent to the neighbouring number 24 (No 24), would be masked by intervening buildings.
16. The front of the building would also feature design elements that would give it visual interest. This includes a main bay and windows of proportions that would contrast well with the extent of brickwork proposed. Given the variety in building appearance along this part of the Avenue, the metal railings at first floor level would not be a harmful addition to the area. As such, the overall design approach as it relates to the front of the building would not harm the character and appearance of the area.
17. Turning to issues relating to heritage assets. I have paid regard to evidence from both the Appellant and the Council about the significance of the asset. From this, I conclude that there is sufficient evidence to demonstrate that the existing dwelling is of some historic significance as an example of Arts and Crafts style architecture.
18. The building is also attractive in its own right, with a number of external features of interest including the distinctive front and rear bay windows and tall brick chimney stacks. It also adopts a prominent position within the local street scene that allows it to be widely understood and appreciated within its context from public vantage points.

19. There is no compelling evidence to suggest that, but for the wish to demolish it to allow for redevelopment, the building could not exist in situ for a good many years to come. The Appellant's view that it has an inefficient layout, including an excessive number of bedrooms, is noted. However, I am not persuaded that these issues render it incapable of being used for its authorised purpose. This does not in itself provide justification for wholesale demolition of the entire building.
20. The demolition of the building naturally results in the total loss of what is, by virtue of the BPN, a designated heritage asset for the purposes of applying policy in the Framework. Removal of the significance of the asset flows from the total loss of it. Consequently, great weight should be given to the asset's conservation (increasing with the importance of the asset) (paragraph 199, Framework).
21. Although I am satisfied that it is of historic significance, the importance of the asset is not fully demonstrated by the evidence is a matter of ongoing debate linked to the BPN. In the absence of more detail, for the purposes of this appeal, I have adopted the position that the asset is at the lower end of importance in listed building terms.
22. In light of the total loss, paragraph 201 of the Framework points towards refusal unless it can be demonstrated that the total loss is necessary to achieve substantial public benefits that outweigh that loss.
23. In this case, the main benefits result from additional housing supply, particularly smaller units. I have paid regard to these benefits and the related points made by the Appellant. I have also paid regard to the Government's objective of significantly boosting the supply of homes and the important role that small and medium sized sites can play. This is particularly relevant in a London context.
24. Overall, even adopting a position that the building sits at the lower end of importance in listed building terms, the evidence does not demonstrate that the public benefits would be substantial.
25. I am also not persuaded that at least some of these benefits could not occur through reuse of the existing building. As such, whether total loss of the building is necessary to bring them about is questionable. Overall, the total loss of the building is not outweighed by the public benefits.
26. I have paid regard to the prior approval given by the Council in 2016 for demolition of the building. However, this approval has expired and is incapable of implementation. Events of material significance have also occurred since that relating to the BPN and the resulting status of the building. As such, no reasonably implementable fallback position exists. The appeal decision that the Appellant refers to² is focused mainly on the loss of a locally listed building and does not raise similar issues as the present appeal.

² APP/G5180W/17/3184605

27. I acknowledge that the BPN has effect for only a temporary period. This does not impact on my assessment of the appeal, which is based on the status of the building at this present time. What happens following the expiry of the BPN would become a matter between the Council and the Appellant in the first instance, and is not something that can be usefully speculated on in reaching a conclusion on this appeal.
28. In conclusion on this issue, the proposal would have a harmful effect on the character and appearance of the area, including heritage assets. Consequently, there is conflict with policies in the development plan for the area, in particular Policies 4 and 37 of the Bromley Local Plan (Local Plan), which require the achievement of a high standard of design and enhancement of the quality of local places, that is respectful of local character.
29. In relation to heritage assets, the Council's decision notice references Policy 39 of the Local Plan on Locally Listed Buildings. Given the changed status of the building, the proposal instead falls to be considered under paragraph 201 of the Framework, where I find conflict. This is directed by Policy 38 of the Local Plan but, regardless, would be the case in any event as the Framework constitutes a material consideration in its own right.

Living conditions

30. The Council's decision notice makes reference to concerns about effects on existing living conditions resulting from overshadowing and overbearing effects. Their concerns particularly relate to the relationship between the proposal and the neighbouring No.24.
31. I understand the attempts the Appellant has made to reduce the mass of the proposed building as it becomes closer to the boundary to No.24. Nevertheless, the proposal would represent a considerable new built presence to the south of No.24, resulting principally from the combination of the location closer to the shared boundary, the height and the rearwards projection.
32. I am not persuaded that harmful effects would occur in relation to the side windows of No.24. This is because, on the basis of the evidence available, these windows would not appear to serve as a principle light source to habitable rooms and are already restricted to some degree due to the existing building.
33. I have greater concerns in relation to the rear windows and spaces of No.24, including the ground floor conservatory. These spaces currently enjoy a relatively open outlook to the south. Beyond the comments and drawing indicating that no 45 degree rule would be breached, there is limited technical evidence assessing the effects on these spaces to confirm the extent of any overshadowing and consequent loss of light. As such, I cannot judge with sufficient certainty that the proposal would

not result in an unreasonable deterioration in the living conditions of No.24.

34. For similar reasons, the potential for overbearing effects also warrants more detailed evidence that is currently lacking. In any event, this issue is best judged in combination with knowledge about any loss of light. This would allow a rounded view to be taken about the effects on the living conditions of No.24.
35. In conclusion on this issue, on the basis of the evidence available it has not been demonstrated that the proposal would have acceptable effects on the living conditions of occupiers of properties that are close to the site. Consequently, there is conflict with policies in the development plan for the area, in particular Policy 37 of the Local Plan which requires development to respect the amenity of occupiers of neighbouring buildings.

Conclusion

36. The proposal would have a harmful effect on the character and appearance of the area, including heritage assets, and the living conditions of occupiers of properties that are close to the site. Conflict with the development plan for the area flows from this harm.
37. I have considered the Appellant's suggested benefits, including those relating to the contribution to housing supply. However, given the scale of the harm and effects on the local area, there are no material considerations to indicate that a decision should not be taken other than in accordance with the development plan, which in this case points towards refusal.
38. The Council is currently unable to demonstrate a 5 year supply of housing at present. This triggers consideration of the presumption at paragraph 11 of the Framework. For the reasons discussed above, the policies in the Framework relating to designated heritage assets (particularly paragraphs 199 and 201) provide a clear reason for refusing the development. As such, by virtue of the exception at 11(d)(i) the presumption does not apply in this case.
39. For the above reasons, and paying regard to all the points raised, the appeal is dismissed.

D.R. McCreery

INSPECTOR