



Appeal Decision

Site visit made on 13 September 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 OCTOBER 2022

Appeal Ref: APP/G5180/W/22/3291114

23 Station Road, Penge, London SE20 7BE

- 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 Frank Hughes, on behalf of Treaty Developments, against the decision of the Council for the London Borough of Bromley.
 - The application Ref DC/21/00734/FULL1, dated 12 February 2021, was refused by notice dated 21 July 2021.
 - The development proposed is demolition of the existing commercial units (Class B1) and redevelopment of the site for a 2-3 storey residential scheme comprising of 8 (Class 3) residential units with associated landscaping and car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission has been granted on the appeal site for a development of 7 residential units (Council ref DC/19/03523/FULL1), including demolition of the existing buildings. I observed on site that demolition of existing buildings had already begun and the site was largely cleared.
3. The Council's appeal statement refers to several paragraphs in the National Planning Policy Framework (the Framework) from 2019. However, a revised version of the Framework was published in 2021 and a number of paragraph numbers have changed. As a result, I have utilised the latest Framework in reaching my decision.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of the occupiers of neighbouring properties with particular regard to outlook and privacy.

Reasons

5. The appeal site sits adjacent to an area of public open space on its western boundary, enclosed by two storey dwellings arranged in short terraces. Properties along the terrace immediately to the west of the three-storey element of the proposal have very small open front garden spaces, and so the private amenity space to the rear is particularly valuable. The dwelling closest to the appeal site, within this terrace, is 30 Bredhurst Close. The rear garden space of No 30 is slightly larger than that of neighbouring properties, owing to its end-of-terrace position, however it remains modestly sized due to its short length. The garden abuts the public open space to the rear and wraps around

the side of the dwelling. Along its entire side boundary, it borders the appeal site. No 30 features living accommodation windows and doors at ground and first floor within its rear elevation. There are no windows in the side elevation directly facing the appeal site.

6. At its closest point, the proposed building would be set back from the shared boundary by around 2 to 3 metres. It would project only a short distance beyond the front elevation of No 30. However, at second floor level, it would extend along the full length of the shared boundary, beyond No 30's rear elevation up to the point at which it is in line with the rear garden boundary. Beyond this it would step further into the appeal site, away from this neighbouring property. It would also splay away from the dwelling at No 30, albeit at a shallow angle.
7. I saw on site that views from rear ground and first floor windows at No 30 towards and across the appeal site can be achieved. However, the outlook from these windows is predominantly of the rear garden space, public open space beyond and the dwellings opposite. Given the oblique nature of views towards the appeal site, and the extent to which the appeal proposal splays away and is set back from the dwelling itself, I am satisfied the proposal would not unacceptably harm the outlook from windows within No 30's rear elevation.
8. The section of the proposal closest to No 30 would be visually dominant from within this neighbour's rear garden due to its proximity and considerable height. Given that the three-storey element of the proposal stretches the full length of this modest garden space, its presence would feel oppressive and there would be no respite from it for users of this space. The proposal would have a considerable enclosing effect on the outlook from the garden, exacerbated by the overall length of the development. Overall, I find that the proposal would unacceptably harm the outlook from this rear garden.
9. There is an extant planning permission for 7 units on this site, which I consider reasonably likely to be implemented as site clearance work appeared to have been undertaken, and this represents a legitimate fallback position for the appellant. However, owing to the additional height of the appeal proposal adjacent to No 30's garden, I consider that its oppressive sense of enclosure and visual dominance would be appreciably greater than that resulting from the extant permission.
10. I recognise the site was previously developed, including a two-storey building adjoining the southern corner of No 30's garden. I also acknowledged this would have had a negative effect on openness. However, the size of this two-storey element was limited and did not run the length of the shared boundary. Overall, a more open outlook from No 30's garden would have been maintained by the lower height of other buildings on the site. This is reflected in the appellant's evidence, which demonstrates that the arc of sky visible from the centre of the garden of No 30 in the east-west direction under 'existing conditions' is greater than that provided by either the 7 or 8-unit schemes.
11. While the arc of sky visible from the garden in the east-west direction would potentially still be greater than that of the north-south direction even after the proposed development, the north-south openness is primarily curtailed by the presence of the host dwelling itself. This is typical of a rear garden setting. However, the small size of the garden of No 30 exacerbates the extent to which the host dwelling dominates the north facing outlook. Due to the limited size of

the rear garden of No 30, the proposed development would therefore adversely affect its outlook and openness.

12. It is acknowledged that varying degrees of enclosure or restricted outlook are evident locally and can be expected to some extent in an urban setting. The appellant has provided an assessment of several examples in the immediate area where they consider the outlook from rear garden spaces is comparable to the proposed relationship in this case. While this assessment is noted, its scope is limited, and the findings can be interpreted in different ways.
13. The examples given do not appear to be particularly representative of general living conditions in this area, and the context of each is unique and not directly comparable to the appeal case. The relationships between existing dwellings within the courtyard is a feature of its original design and is between similar two storey dwellings of comparatively modest height and depth. I consider the relationship between the existing dwellings and the three-storey building at 23 Station Road to be suboptimal. Ultimately, they do not provide compelling justification for the identified harm in this instance.
14. In terms of privacy, planning conditions could be used to ensure windows in west facing elevations are obscure glazed and non-opening where required. This would mitigate any impact on the privacy of neighbours through overlooking. In terms of a perception of overlooking, it would be clear to neighbouring occupiers that windows are obscurely glazed and, over time, non-opening. Any perception of overlooking would therefore be limited and would not unacceptably harm the privacy of the occupiers of No 30.
15. In terms of other neighbouring dwellings in Bredhurst Close, given they are all located further from the three-storey element of the proposed building than No 30, the effect on the outlook and privacy of occupiers of these properties, and in turn their living conditions, would be proportionally lower.
16. In respect of the main issue, I conclude that the proposal would result in unacceptable harm to the living conditions of the occupiers of neighbouring properties with particular regard to outlook and privacy. As such, it would fail to accord with Policy 37 of the adopted Bromley Local Plan (2019) (the BLP), which, amongst other things, seeks to ensure development proposals respect the amenity of occupiers of neighbouring buildings.
17. The proposal would also fail to accord with paragraph 130 of the Framework which seeks to ensure that developments establish or maintain, amongst other things, attractive, welcoming and distinctive places to live and create places with a high standard of amenity for existing and future users.

Other Matters

18. The Framework seeks to significantly boost housing supply and indicates that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. It also encourages the optimal use of underutilised land. The proposal would contribute to the housing supply and use previously developed land in an existing urban area with access to public transport and services.
19. My attention has been drawn to an extant planning permission on this site for 7 dwellings of a similar form, which is reasonably likely to be implemented. The contribution to the housing supply of the 8 dwelling appeal proposal is

therefore limited due to there only being a net gain of a single dwelling above the fallback position. Additional residents may contribute to the local economy and vitality of the community, though again the effect of this would be minor. The proposal would also provide a boost in employment during construction, albeit only temporarily.

20. The Framework also highlights that good design is a key aspect of sustainable development and seeks to ensure development provides a high standard of amenity for existing and future occupiers. As with the consented 7-unit scheme, the proposal may result in a slightly improved outlook from habitable room windows and marginally less overshadowing of the rear garden of No 30 through the removal of the previous buildings, however this would not outweigh the considerable harm to the living conditions of existing occupiers, with regard to outlook from the rear garden, described in detail above.
21. I acknowledge that residential development in this location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan. I have also found no harm in relation to any matters other than the effect on the living conditions of neighbouring occupiers. However, the absence of harm or development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.

Conclusion and Planning Balance

22. The Council acknowledge they cannot currently demonstrate a five-year housing land supply. Paragraph 11(d) of the Framework is therefore applicable, and as a result the key policy is considered out of date and its weight subsequently reduced. However, whilst the weight afforded to adopted policy would be reduced, this does not mean that it is afforded no weight. Paragraph 11(d) indicates that 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.
23. The appeal proposal would result in a number of benefits as set out above. However, these would be modest given the scale and context of the proposed development. It is my view that the adverse impacts identified above would significantly and demonstrably outweigh the modest benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore does not benefit from the presumption in favour of sustainable development, and this therefore does not outweigh the identified harm and development plan conflict.
24. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Ryan Cowley

INSPECTOR