



Appeal Decision

Site visit made on 22 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2022

Appeal Ref: APP/G5180/W/21/3279652

Land at 1 Ryecroft Road, Petts Wood, Orpington BR5 1DR

- 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 outline planning permission.
 - The appeal is made by Mr Jengiz Ali of Oakley (SE) Ltd against the Council of the London Borough of Bromley.
 - The application Ref 20/05182/OUT, is dated 20 December 2020.
 - The development proposed is described as: 1 x new dwelling house together with roof/elevational alterations to the existing Dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought for the access, appearance, layout and scale of the development, with only landscaping reserved for later approval. I have determined the appeal on this basis.

Main Issues

3. The appeal relates to the failure of the Council to give notice of its decision on an application for outline permission. The Council has, however, indicated that they would have refused the application, had the appeal not been made. The reasons given by the Council for this have been used to identify the main issues in this appeal. These are as follows:
 - The effect of the development on the character and appearance of the site and surrounding area;
 - The effect of the development on the living conditions of the neighbouring occupiers, with regard to privacy and outlook;
 - Whether the development would provide acceptable living conditions for future occupants, with regard to noise and disturbance; and
 - Whether the location of the development would be acceptable, with regard to flooding and the safety of its occupiers.

Policy and Guidance

4. The requirements of Policy 37 (General Design of Development) of the London Borough of Bromley Local Plan January 2019 (LBBLP) include that development should complement the scale, proportion and form of adjacent buildings and

areas, and positively contribute to the existing street scene. It also requires development to respect the amenity of neighbouring and future occupiers, and provide healthy environments that are not harmed by such matters as noise, disturbance and privacy. Similar design and amenity requirements are also found in Policy 3 (Backland and Garden Land Development) of the LBBLP. To comply with this Policy site layout, buildings and space around buildings should be designed to a high quality, recognising as well as complimenting the qualities of the surrounding areas.

5. The requirements of Policy D3 (Optimising site capacity through the design-led approach) of the London Plan dated March 2021 (LP) include to make the best use of land by following a design-led approach that optimises the capacity of sites. To comply, development should, amongst other matters, respond to the existing character of a place and be of a high quality, with architecture that pays attention to detail. Although good design is supported by Policy D4 (Delivering Good Design) of the LP, this Policy relates more to the process for delivering good design, rather than specifying the elements of a development that contribute to it, as the above-mentioned Policies do.
6. The above Policies are supported by the design principles in the Council's Adopted Supplementary Planning Guidance No. 2 Residential Design Guidance (SPG), the MHCLG National Design Guide (NDG) and the National Planning Policy Framework (the Framework). These guidance documents identify such matters as amenity and privacy as important elements of good design.
7. I note the targets for new homes in Bromley, set by Policy H1 (Increasing housing supply) of the LP. Also, the support in the LP for well-designed new homes on small sites, provided by Policy H2 (Small sites). The Policy informs that boroughs should recognise in their Development Plans that local character evolves over time and will need to change in appropriate locations to accommodate additional housing on small sites.
8. Policy 115 (Reducing Flood Risk) of the LBBLP and Policy SI 12 (Flood risk management) of the LP are relevant to the matter of flooding. Policy SI 12 informs that development proposals should, amongst other matters, ensure that flood risk is minimised and mitigated, and that residual risk is addressed. Policy 115 provides a list of criteria which the Council will comply with in order to address existing flood risk and to reduce the impact of new development. These criteria include applying the sequential and exception tests to avoid inappropriate development in relation to flood risk.
9. Guidance on flooding is also contained within the Framework and the Planning Practice Guidance on flood risk and coastal change (PPG).
10. I note reference to Policy 6 (Residential Extensions) of the LBBLP. This is, however, of limited relevance to this case as it relates to extensions to existing dwellings, rather than to development for new dwellings. Similarly, as the matter of parking and highway safety is not identified as a main issue in this case, I have not considered the policies referred to by the appellant that are relevant to these matters.

Reasons

Character and Appearance

11. The appeal site is occupied by a dwelling that is one of a pair of semi-detached properties. The adjoining property has a design and roof form that almost mirrors that of the appeal dwelling. Both properties appear relatively unaltered and currently demonstrate a strong sense of symmetry in terms of their design, features and their form. The main ridge of the appeal dwelling is shared with the adjoining property, and the largest element of the roof slopes from the shared ridge to the eaves on the side elevation of the building at ground floor level. This is known as a catslide roof. This is a striking feature that dominates the form of both buildings and adds to their architectural quality. This can be appreciated particularly when travelling along Kenilworth Road towards the appeal site, as well as from Ryecroft Road.
12. Ryecroft Road and Kenilworth Road are characterised by pairs of semi-detached residential properties or blocks of maisonette flats that have the balanced appearance of semi-detached pairs. These pairs are by far the dominant built form in the close vicinity of the appeal site and result in a repetitive pattern of development within these two streets. The adjoining property at the junction of Ryecroft Road and Towncourt Lane has the character of a pair of semi-detached properties, albeit a pair that has been converted to accommodate a medical surgery.
13. None of the nearby properties share the form and design of the appeal property and the adjoining 3 Ryecroft Road, particularly the catslide roof feature. Nevertheless, No 1 and No 3 are in keeping with the prevailing form of development in the area. There are examples of semi-detached properties in the wider area that share a similar roof form to that of the appeal property. In all, the general form and pattern of development in the wider area is typical of that found in the immediate vicinity of the appeal site.
14. The application subject of this appeal proposes the sub-division of the appeal site and the provision of a new two storey dwelling to the side of the existing dwelling. To achieve this, the existing dwelling would be extended with a two storey side extension, together with an addition to its roof. The proposed development would see the loss of the catslide roof in its entirety. It would also result in an increase in the ridge height of the property, such that the slope of the catslide roof of the adjoining property would continue to a new ridge across the existing appeal property and the proposed dwelling.
15. I acknowledge that the appearance of the new dwelling would be comparable to some of the other properties in the immediate vicinity of the appeal site. However, both the new and existing dwelling would be within a new terrace row of three. Their design and appearance would be entirely at odds with that of the adjoining property at No 3. In particular, the new roof form, with its additional height, would dominate the property at No 3.
16. The catslide roof is a striking feature of both No 1 and No 2, which would be lost in its entirety from the appeal property. The proposed alterations and extension to the appeal property would pay little regard to the scale, proportion and form of No 3. Instead, it would be a jarring addition that would retain little of the symmetry and architectural quality of the existing pair.

17. I could not see any nearby rows of terrace properties and none have been drawn to my attention. Accordingly, the proposed development, forming a terrace row of three, would be out of keeping with the prevailing pattern and form of development in the area. Indeed, having regard to the unsympathetic design of the proposed additions to the side and the roof of the appeal property, the excessive height of the roof, and its dominance over the property at No 3, the proposed development would be incongruous within the street scene and would cause harm to the character of the surrounding area.
18. Having regard to all of the above, I conclude that the development proposed would have a harmful effect on the character and appearance of the site and the surrounding area. It would have a poor design that fails to achieve the high quality required by development plan policies. The proposal would be incompatible with development in the surrounding area. It would also fail to positively contribute to the existing street scene. For these reasons the development would not comply with Policy 3, Policy 4 and Policy 37 of the LBBLP, as well as Policy D3 and Policy D4 of the LP. It would also fail to comply with guidance provided in the SPG, the NDG and the design principles of the Framework.

Living Conditions – Neighbouring Occupiers

19. The new dwelling would bring development closer to the adjoining properties, particularly those at 119 to 123 Towncourt Lane. The property closest to the new dwelling would be No 123, which is a medical surgery. As such, the sensitivity of its occupiers to new development at the appeal site would be less than that of the occupiers of the other adjoining properties, which are residential use.
20. The new dwelling would be clearly visible from the windows and the gardens of the adjoining residential properties. However, the position of the dwelling would be such that it would have a limited effect on the outlook from these properties.
21. As for the matter of privacy, I note that there would be no windows on the side elevation of the new dwelling facing No 123. There would, however, be windows in the rear elevation of the new dwelling, including those at first floor level. The rear elevation of the new dwelling would not directly face Nos 119 and 121. Nevertheless, there would be a degree of intervisibility, particularly between the rear elevation windows of the adjoining properties and those in the rear elevation of the new dwelling. Although these views would be at an obtuse angle, they would be at close range, particularly those between the new dwelling and No 121. These views would be materially closer than the existing situation (i.e. views from windows in the existing appeal dwelling and those in the adjoining properties).
22. In addition to the above, the proposed layout of the appeal site is such that the new first floor windows would be orientated towards the rear gardens of Nos 119 and 121, and would be particularly close to the boundary of the appeal site shared with No 121. The development would, therefore, allow a substantial degree of overlooking into the gardens of the adjoining properties from the principal windows serving the first floor of the new dwelling.
23. I acknowledge that no standards have been brought to my attention that might be of use when considering the relationship between new development and

existing residential properties. Nevertheless, having regard to the orientation of the new dwelling and its close relationship to the site boundary and adjoining properties, in my judgement the development would cause detriment to the privacy currently enjoyed by the neighbouring occupiers. For this reason I conclude that the development would have an unacceptable effect on their living conditions. Accordingly, the development would not comply with Policy 3 and Policy 37 of the LBBLP, as well as the guidance in the SPG, the NDG and the Framework.

24. Representations have been made with regard to the effect of the development on the daylight and sunlight currently enjoyed by the adjoining properties. The development would be broadly to the west of the adjoining properties along Towncourt Lane and so would cast a shadow towards these properties later in the day. However, I have little information on the extent of the effect of this. As such, I am unable to conclude that the development would be unacceptable for this reason. This does not, however, alter my conclusions above.

Living conditions – Future Occupiers

25. The Council refer to the neighbouring medical surgery and suggest that the noise and disturbance from comings and goings to this adjoining site, the adjoining car park in particular, would have a negative effect on the occupiers of the new dwelling.
26. I acknowledge that the new dwelling would have a close relationship to the car park of the surgery. This would, however, be closest to the blank side wall and front parking area of the proposed development, and not adjacent to the rear garden of the site. I also note that the surgery operates only during the working week and during daytime hours. There is, therefore, unlikely to be any activity on the adjoining site during the weekends, evenings, at night or early in the morning.
27. The surgery may be busy during its opening hours, and the activity during these times is likely to cause some noise and disturbance. However, I do not have sufficient evidence of the frequency, or type of noise that activity at the surgery car park creates. In view of this, and having regard to the duration and times of activity on the adjoining site, I am unable to conclude that this would cause an unacceptable degree of detriment to the occupiers of the new dwelling.
28. All things considered, I conclude that the proposed development would provide acceptable living conditions for its future occupants with regard to noise and disturbance. I do not, therefore, find conflict with the development plan, Policy 3 and Policy 37 of the LBBLP in particular. There would also be no conflict with the SPG, the NDG and the Framework.

Flooding

29. The Kyd Brook culvert runs along the centre of Ryecroft Road, passed the appeal site. The Environment Agency (EA) flood maps indicate that the application site is located in an area that has a high probability of fluvial flooding (Flood Zone 3). The appellant's Flood Risk Assessment dated September 2021 (FRA), indicates that the appeal site is 'within high probability Flood Zone 3 associated with Kyd Brook', which falls into Flood Zone 3a¹.

¹ See Table 1 of the PPG.

However, the EA suggests the appeal site is within Flood Zone 3b (the functional floodplain). Either way, it is necessary to consider the Sequential Test (ST), as set out in the PPG, as both parties agree that the development would be classified as 'More Vulnerable'².

30. Both the PPG and paragraph 162 of the Framework advise that the aim of the ST is to steer new development to areas with the lowest risk of flooding from any source. The Framework goes on to inform that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
31. Paragraph 027 of the PPG provides advice on how the ST should be applied to planning applications. Whilst it informs that the ST should be applied to both 'Major' and 'Non-major' development, it identifies some circumstances where it will not be required. Further advice on this is provided in paragraph 168 and footnote 56 of the Framework.
32. The appellant's FRA suggests that the ST is not required in this case. Having considered the exceptions set out in the PPG, I cannot conclude the same. With regard to the first exception, although likely to be within a settlement boundary, I am not advised that the site has been allocated for development in the development plan, such that it would have been subject to an ST at the plan making stage. As for the second exception, there is no dispute that the site is within an area with a high probability of flooding.
33. Turning to the last of the exceptions, the proposal is for the provision of a new single dwelling. The development would not, therefore, comprise householder development referred to in Footnote 56 of the Framework. Indeed, for the purposes of the PPG, paragraph 051 excludes any proposal that would create a separate dwelling within the curtilage of an existing dwelling from the meaning of householder development and, therefore, 'minor development'. Furthermore, the development would not be any of the other types of development specified in footnote 56.
34. In view of the above, it is appropriate to apply the ST in this case. There is, however, little evidence before me that the appellant has considered any sites as an alternative to that subject of this appeal. Neither has he demonstrated that there is a particular need for the development in this particular area of Bromley in order to sustain the existing community, or that sites with a low probability of flooding are unlikely to provide reasonable alternatives. Of note is paragraph 028 of the PPG, which informs that the absence of a 5-year housing land supply is not a relevant consideration for the ST for individual applications.
35. Having regard to all of the above, I cannot be satisfied that due consideration has been given to the availability of an alternative suitable site that is at little or no risk of flooding. I conclude, therefore, that the ST set out in the Framework and in the PPG has not been satisfied in this case.
36. With regard to the Exception Test (ET), also set out in the PPG and the Framework, the EA identifies the site as being within Flood Zone 3b, where Table 2 of the PPG advises that the ET is not required. Despite this, I note the appellant's evidence in the FRA with regard to the ET. Paragraph 032 of the

² Defined in Annexe 3 of the Framework.

PPG informs that the ET should only be applied as set out in Table 2 and only if the ST has shown that there are no reasonably available, lower-risk sites, suitable for the proposed development, to which the development could be steered. Indeed, the PPG informs that the ET is not a tool to justify development in flood risk areas when the ST has already shown that there are reasonably available, lower risk sites, appropriate for the proposed development. As I have concluded that the ST would not be satisfied in this case, I have not moved on to consider whether the proposed development would satisfy the ET.

37. All things considered, I conclude that the location of the proposed development would not be acceptable with regard to flooding and the safety of its occupiers. The development would fail to comply with Policy 115 of the LBBLP and Policy SI 12 of the LP, as well as the guidance on flooding set out in the PPG and the Framework.

Other Matters

38. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
39. It is agreed that the Council are unable to demonstrate that it currently has a five-year supply of housing land, as required by paragraph 74 of the Framework. In these circumstances, paragraph 11d)ii of the Framework is relevant.
40. The benefits of the scheme that have been drawn to my attention are limited. The provision of a single home would be a small benefit, along with the likely economic benefits during the construction of the development. These are balanced against the harm that would result from the development to the living conditions of adjoining occupiers, to the character and appearance of the area, and to the risk of flooding and safety of the occupiers of the development. This balance leads to only one conclusion, that the adverse effects of the development would significantly and demonstrably outweigh the benefits. For this reason, the proposal would not benefit from the presumption in favour of sustainable development.
41. I note the support of Policy H2 of the LBBLP for well-designed new homes on small sites. I do not, however, consider the development in this case to be well-designed. As such, it does not have the support of this Policy.
42. I also note the on-site parking provision and the location of the development in an area with a PTAL of 3. These matters have a neutral effect in the planning balance.

Planning Balance

43. I have identified conflict with the development plan in this case. I have had regard to all material considerations, but find these of insufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan when read as a whole. Neither can I be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. Accordingly, I conclude that planning permission ought not to be granted.

Conclusion

44. Having regard to my findings above and all matters raised, I conclude that the appeal should be dismissed.

J Moss

INSPECTOR