



Appeal Decision

Site visit made on 11 October 2022

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th January 2023

Appeal Ref: APP/G5180/W/21/3285526

67 Star Lane, Orpington BR5 3LL

- 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 Elimelech Brecher against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/02381/FULL1, dated 11 May 2021, was refused by notice dated 16 August 2021.
 - The development proposed is demolition of existing garage and erection of new two storey dwelling together with off-street parking and provision of cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I saw on my visit to the site that the appearance of the property did not match the existing drawings in respect of its roof. For the avoidance of doubt, I have determined the appeal based on the proposed drawings.
3. The Council states that Policy 6 of the London Borough of Bromley Local Development Framework Local Plan (2019), was cited in error in both reasons for refusal. I have been provided with a copy of Policy 6 and I will address its relevance to the appeal later in this decision letter.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of the occupiers of No 65A Star Lane, having particular regard to outlook, and;
 - the character and appearance of the area.

Reasons

5. The appeal property (No 67) is a two storey semi detached dwelling, set well back from the road on land elevated significantly above the surrounding properties. The appeal proposal is to subdivide the garden and erect a two storey dwelling, projecting from the side wall of the existing property and extending to the boundary with No 65A.

Living conditions of the occupiers of No 65A

6. The garden level of No 65A, is significantly lower than the appeal site and an earth embankment rises steeply up to the boundary with the appeal site. I saw that the side wall of No 67, and that of its garage are visible from the garden of No 65A, above and through the planting that is growing on the embankment, and which varies in density and height.
7. The proposed dwelling would be sited behind the rear wall of No 65A, and its flank wall would be set on the boundary, facing the part of its rear garden and patio area closest to the rear wall of the house. In this position, the height and massing of the dwelling would be clearly visible from the garden of No 65A, at the top of the embankment, where it would loom high above the boundary, dominating the occupiers of No 65A's outlook from their garden. Although the hipped roof of the proposed dwelling would slope away from the boundary, this would not mitigate the effect of its physical presence.
8. I note that the attached property (No 69) appears to have been extended to the side boundary and across two storeys, in a position beyond the rear wall of the adjacent property. The appellant suggests this was permitted in 1986, and therefore under a different policy context. I have determined this appeal on the basis of current planning policies and guidance. Furthermore, I have nothing to indicate that the differential in land levels between those properties is directly comparable to the conditions at the appeal site and the proposal before me.
9. For these reasons, I conclude that the proposal would have a significantly harmful overbearing effect on the outlook of the occupiers of No 65A. As a consequence, harm would be caused to their living conditions, contrary to Policy 4 and Policy 37 of the London Borough of Bromley Local Development Framework Local Plan (2019) ("BLP"), which require high quality development that respects the amenities of neighbouring occupiers and the physical context of its surroundings, amongst other objectives. There would also be conflict with Paragraph 130 of the National Planning Policy Framework (2021) ("Framework"), which requires development to provide a high standard of amenity for existing occupiers, amongst other objectives.
10. I concur with the Council that Policy 6 of the BLP is not relevant to this issue.

Character and appearance of the area

11. The character and appearance of this part of Star Lane is generally defined by a row of two storey dwellings, set on a discernible building line and separated by relatively narrow spaces. The roof lines of the buildings are generally consistent and there is a sense of enclosure and rhythm to the built form fronting the Lane.
12. The appeal property is set a considerable distance back from the road on elevated land and behind a relatively deep frontage with trees and planting growing within it. It stands to the rear of the adjacent house (No 65A), and projects well above the roof levels of the surrounding buildings. In this position it is visibly at odds with the prevailing character and appearance of the area.
13. Due to the relative positions of the appeal property and No 65A, with one set behind the other on different building lines and at markedly different heights, the space between them does not read as a characteristic gap in the built

frontage and it does not contribute positively to the rhythm of buildings fronting the Lane. Furthermore, at the time of my visit, dense planting within the frontage of the appeal property was providing a good level of screening of the property, obscuring views of the space between the two buildings.

14. In this context, I find that siting the proposed dwelling on the boundary with No 65A, would not erode a characteristic gap between buildings and it would not appear as a visibly cramped development. Although the proposal conflicts with the quantitative 'side space' standards in Policy 8 of the BLP, I find that for the reasons given above, the proposal would be consistent with the policy's broader aims. The slightly angled façade and roofline of the proposed dwelling would not be visually jarring given its position set well back from the road and behind No 65A. The hipped roof and matching materials would complement the simple form of the existing building.
15. For these reasons, I find that the appeal proposal would respect the character and appearance of the area, even though the 'side space' standards set out in Policy 8 of the BLP would not be complied with. The proposal is therefore consistent with Policies 4 and 37 of the BLP, which require new development to compliment the qualities of the surrounding area, and the purposes of Policy 8 of the BLP, which seeks to avoid cramped development and safeguard characteristic spaces between buildings. These policies are consistent with Paragraph 130 of the Framework, which requires development to be visually attractive and sympathetic to local character, amongst other matters.
16. Policy 6 of the BLP appears to apply to residential extensions rather than new dwellings. However, the appeal proposal would extend from the existing dwelling. Even if this policy was relevant to it, I find the proposal to be consistent with its objectives of being compatible with the design of existing development in the locality. Given my conclusions on the main issues, the appeal does not turn on the weight to be attributed to Policy 6.
17. My attention is drawn to two dismissed appeal decisions for developments elsewhere in the Borough, that were found to conflict with the 'side space' standards. However, I have not been provided with drawings showing those proposals and having read the respective Inspectors decision letters, I cannot be sure that the circumstances of those appeals are comparable to the one before me. I have determined the appeal on the basis of the submitted drawings and what I saw on my site visit.

Other Matters

18. There is no dispute between the parties that the appeal proposal would contribute to housing delivery within the Borough. The Council acknowledges that it cannot demonstrate a five year supply of deliverable housing sites and the shortfall is described as "significant". Consequently, paragraph 11 d) ii. of the Framework should be applied.
19. The Framework expects development to provide a high standard of amenity for neighbouring occupiers and therefore the conflict with Policy 4 and Policy 37 of the BLP, should be given significant weight.
20. Set against the harm identified would be the contribution the new dwelling would make to the supply of housing. However, the quantum of development would make little difference to the overall supply of it in the Borough.

Furthermore, I find that the social and economic benefits arising from one extra household would be insignificant. Consequently the adverse impact on the living conditions of the neighbouring occupiers would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. As a result the presumption in favour of sustainable development does not apply.

21. I note that the appeal property is not a listed building, and the site is not in a conservation area. I also note that the proposal would exceed minimum interior space standards and parking standards, and that it would not have any harmful effects on highway safety. However, these considerations are neutral and are firmly outweighed by the harm that I have found to the living conditions of neighbouring occupiers.

Conclusion

22. For the reasons given above, I conclude that the proposed development conflicts with the development plan as a whole and there are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding. Therefore the decision should be made in accordance with the development plan and the appeal should be dismissed.

G Sylvester

INSPECTOR