



Appeal Decision

Site visit made on 21 November 2022

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/G5180/W/22/3303678

172 Pickhurst Lane, Hayes, Bromley BR2 7JB

- 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 M Grieves on behalf of MSM Developers Ltd against the decision of the London Borough of Bromley.
 - The application Ref DC/21/05711/FULL1, dated 9 December 2021, was refused by notice dated 20 June 2022.
 - The development proposed is the construction of three, 3 bedroom detached dwellings, with associated parking, bin storage and cycle storage facilities with new vehicular and pedestrian access way.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of three, 3 bedroom detached dwellings, with associated parking, bin storage and cycle storage facilities with new vehicular and pedestrian access way at 172 Pickhurst Lane, Hayes, Bromley BR2 7JB in accordance with the terms of the application, Ref DC/21/05711/FULL1, dated 12 December 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for an award of costs was made by Mr M Grieves against the London Borough of Bromley Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the proposed development on
 - i) the living conditions of the occupiers of 170 and 172 Pickhurst Lane having particular regard to privacy and disturbance;
 - ii) badgers, as a protected species; and
 - iii) highway safety, having particular regard to visibility at the proposed access and the ability for vehicles to manoeuvre within the site.

Reasons

Living conditions

4. The appeal site is located to the rear of numbers 166 to 172 Pickhurst Lane (No 166 to No 172) and comprises land which previously formed the rear gardens to the properties. Vehicular and pedestrian access to serve the development is

proposed by the repurposing of the shared access between 170 Pickhurst Lane (No 170) and 172 to the electricity sub-station on the site and No 172.

5. The ground levels fall away slightly from Pickhurst Lane into the appeal site. In addition, a further reduction in the ground level of the access drive is proposed, which would effectively increase the height of the boundary fence when viewed from the appeal site. Unlike the previous appeal proposal for a pair of semi-detached and two detached dwellings on land which extended from the rear of 164 Pickhurst Lane (No 164) to No 172 (Ref. APP/G5180/W/20/3265271) (the previous appeal decision) the proposal includes a dedicated footpath which runs along the access drive adjacent to the side boundary fence to No 170. As a result of the ground levels and siting of the footpath, direct views upwards towards the rear windows of No 170 would be restricted as pedestrians would be walking in close proximity to the fence.
6. Given the modest reduction in levels proposed, the works would be unlikely to require significant engineering works to achieve the desired ground levels. In any case, details of such could be secured through a planning condition. Subject to an appropriate gradient and construction, there is no evidence to suggest that vehicles using the drive would generate noise through the scraping of exhausts or bumpers.
7. The proposal includes the planting of Pleached Photinia trees to the side boundary of No 170 along a section of the driveway closest to the rear of the property. With a narrow trunk and high foliage that would extend above the height of the boundary fence, they could be accommodated without encroaching onto the proposed footpath. Further planting is proposed within the garden of No 172, whilst this land is not within the appeal site it is within the ownership of the appellant. Alternatively, Pleached Photinia could also be planted along the side boundary of No 172 within the appeal site. Details of suitable planting could be agreed through the imposition of a planning condition.
8. The proposal would inevitably lead to an increase in opportunities for overlooking from the driveway over and above the existing situation given the increased use of the driveway. However, any overlooking would be to a lesser degree compared to the previous appeal scheme due to the reduction in the number of dwellings proposed and less frequent use of the driveway. Moreover, in light of the proposed measures set out above, any views towards the rear windows of Nos 170 and 172 from the access driveway would be somewhat restricted. The proposal would therefore not give rise to a level of overlooking that would cause a significant loss of privacy to the occupiers of No 170 and 172.
9. The Inspector found previously that, given the relationship between the proposed dwellings and the neighbouring properties on Constance Close and in Holmevale Close, the proposal would not result in an overbearing effect that would be detrimental to the outlook from these neighbouring properties, despite the difference in levels, nor would the proposal give rise to an unacceptable degree of overlooking. The dwellings on plots 1 and 2 are set further back from the rear boundary of the site and the neighbouring properties in Constance Close than the previous appeal proposal. The Council has raised no objection to the siting of the dwellings having regard to the living conditions of the occupiers of Homevale Close and I have no reason to disagree.

10. I note concerns regarding the effect of passing vehicles upon the living conditions of the occupiers of No 170 with regards to noise, vibrations, pollution and light. The Inspector in the previous appeal concluded that whilst the proposal would result in some additional noise and activity, this would not be so great that it would cause undue harm to the living conditions of neighbouring residential occupiers. Given that the appeal proposal is for one less dwelling and any uplift in noise and activity would therefore be less than that of the previous appeal proposal, without any substantive evidence before me to the contrary, I have no reason to reach a different conclusion. Furthermore, a planning condition could be imposed to ensure any lighting of the access drive would be appropriate to the site context having regard to living conditions of the occupiers of neighbouring properties.
11. In light of the above considerations, I conclude that the proposal would not harm the living conditions of the occupiers of No 170 and 172 through loss of privacy or disturbance. Accordingly, it would comply with policy 3 of the Bromley Local Plan adopted January 2019 (BLP), in so far as it requires such development not to have an unacceptable impact on the residential amenity of future or existing occupiers through loss of privacy, sunlight, daylight and disturbance from additional traffic. It would also satisfy the design aims of Policy 4 and Policy 8 of the BLP which seek a high standard of design having regard to local character and an appropriate amount of space between the development and the side boundary of a site. Furthermore, the proposal would accord with the high quality design aims of Policy 37 of the BLP, including the expectation that new developments should respect the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and ensuring they are not harmed by noise and disturbance or inadequate privacy.
12. Whilst the first refusal reason also refers to Policies 7.4 and 7.6 of the London Plan (the LP) these were cited in error by the Council who has advised that LP Policy D4 is the relevant policy. However, I do not find conflict with Policy D4, which focuses principally upon processes which assist in ensuring the delivery of design quality. The content of this policy is not directly relevant to the specific harm I have identified.

Protected species

13. As a consequence of the reduction in the site area and the siting of the dwelling on plot 2 the appeal proposal would allow for a greater separation distance between the nearby badger sett and the proposed development than the previous appeal proposal.
14. A Preliminary Ecological Appraisal (PEA) was submitted as part of the planning application and a further site wide badger survey by JWK Wildlife Surveys Ltd has been undertaken and is submitted as part of the appeal. The latter survey concluded that there have been no significant changes in regard to the badger activity on site in the interim and that the proposed mitigation measures set out previously are considered to be appropriate to ensure that badgers are safeguarded during construction works. The survey also stipulates that updated surveys are recommended prior to a licence application being made to Natural England.
15. The PEA sets out that provided that the proposed development is carried out in accordance with the required licence and is supervised by an experienced

ecologist, whilst there will potentially be short term disruption from disturbance during the installation of the underground fence and footings of the nearest dwelling, there will be no long-term impact on the badgers at the sett. It therefore concludes that it is possible to construct the dwellings as proposed, subject to mitigation measures in order to minimise disturbance. Whilst acknowledging the recommended minimum 30m separation distance between development and the nearest entrance to an active sett, to ensure that there is no disturbance, the PEA highlights that subject to appropriate mitigation it is possible for development to take place in closer proximity whilst ensuring that the setts remain active.

16. The previous Inspector found that, as the appeal site is currently, the proposed badger fencing would be likely to enhance the situation of the badger sett and its occupiers. However, due to the proximity of the sett to the development, even with the proposed mitigation measures, the badger population would be subject to more human pressure and interference than currently, which would imply a reduction in the biodiversity value of the site in respect of its current resident badger population.
17. However, as a consequence of the exclusion of the garden of No 164 from the appeal site this area would remain undisturbed. The area of the badger protection zone within the site would also be greater in size than in the previous appeal. I acknowledge the comments made by interested parties, including West Kent Badgers Group, that despite the mitigation measures proposed, the development would nevertheless fail to avoid disturbance to the badgers. However, I have not been presented with a compelling case as to why the mitigation measures proposed, which would minimise disturbance, would not be sufficient to safeguard the badger population longer term.
18. I find therefore, that the proposal would comply with Policy 72 of the BLP which indicates that planning permission will not be granted for development or change of use of land that will have an adverse effect on protected species, unless mitigating measures can be secured to facilitate survival, reduce disturbance or provide alternative habitats. It would also reflect the aims of LP Policy G6 which seeks to support the protection and conservation of priority species and habitats and that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.

Highway safety

19. I note the Council's concerns regarding highway safety, including potential conflict between pedestrians and vehicles entering and leaving the site, as well as the flow of traffic along Pickhurst Lane. There is no substantive evidence before me that vehicles travelling along Pickhurst Lane are doing so at excessive speeds, or that the road has an increased risk of road traffic accidents. It has been brought to my attention that the CrashMap Data, for the most recent five years indicates that no accidents have been recorded within this period. Furthermore, Drawing No 332410670/100/100/003 indicates that the proposal would provide the required visibility splays in order to ensure adequate visibility for drivers leaving the site.
20. The presence of a tree on the footpath close to the access would be likely to mean that pedestrians would walk closer to the back of the footpath in proximity to the proposed access. This would in turn potentially reduce their visibility to vehicles leaving the site. Given the scale of the development the

access drive is likely to be lightly trafficked, with vehicles driving at slower speeds due to the nature of the driveway and its short length. This would in turn reduce the potential for conflict between pedestrians and vehicles leaving the site. The future management and maintenance of the proposed access drive would be a matter for future occupiers of the development.

21. The access road is straight, which would allow visibility both in and out of the site and includes a passing bay at either end. This would reduce the likelihood of vehicles being unable to enter the site and being stationary on Pickhurst Lane. Moreover, a swept path analysis has been carried out which demonstrates that a refuse vehicle could turn within the site and would therefore be able to enter and leave in a forward gear. I have no reason to disagree with these findings. Details of the construction of the access drive and internal road, including suitability for a refuse vehicle and drainage of these areas, could be agreed through a suitable planning condition.
22. In light of the above considerations, I conclude that, the proposal would not have an adverse effect on highway safety. It would therefore accord with Policy 32 of the BLP which seeks to ensure that road safety is not significantly adversely affected by new development. The refusal reason in relation to highway safety refers to Policies T2 and T3 of the London Plan, however the Council indicates in its statement that these were cited in error.

Other Matters

23. Whilst I note interested parties comments regarding the amount and scale of development, the Inspector in the previous appeal concluded that the proposal for 4 dwellings would not appear as anomalous within the local context, given that it would reflect the adjoining development at Homevale Close and as such it would not harm the character and appearance of the local area. I concur with this finding, which would apply more so to the appeal proposal as it is for one less dwelling. Furthermore, there is no evidence to suggest that the proposed residential use would result in levels or noise or light nuisance that would be at odds with the residential context, or that the proposal would pose a security risk to the occupiers of properties adjoining the access driveway.
24. Structural issues are dealt with separately and there is no reason to suppose that excavation work to construct the proposed access drive of an appropriate gradient in the position shown would necessarily cause damage to the adjoining properties through subsidence. Whether the proposal would conflict with planning conditions on a previous planning permission is not determinative to this appeal.

Conditions

25. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
26. In addition to the standard condition relating to the commencement of development, it is necessary to specify the approved plans to provide certainty. A condition is necessary to agree details of site levels and slab levels of the proposed dwellings. To protect the living conditions of the occupants of the

surrounding dwellings during the construction phase, it is reasonable and necessary to impose conditions to ensure the development is carried out in accordance with an appropriate Construction Method Statement and to limit the hours when work can take place as well as deliveries associated with the construction of the development. A condition relating to details of construction traffic movements including travel and traffic routes to and from the site would not be enforceable, as such I have not imposed this element of the Council's suggested condition.

27. Given the importance of the implementation of appropriate mitigation measures for both badgers and wider biodiversity, as well as biodiversity enhancement measures, a condition is necessary to secure an appropriate strategy is submitted which reflects the recommendations set out in the Preliminary Ecological Appraisal and Badger Survey.
28. A condition to secure appropriate lighting of the proposed access drive is necessary to safeguard the living conditions of the neighbouring properties and in the interest of highway safety. It is also necessary to secure details of the construction of the internal driveway, as well as the parking and turning spaces, as shown on the submitted plans, for the same highway safety reason. A condition to require the submission and approval of the detailed design of the drainage measures set out in the submitted drainage strategy is necessary in order to avoid flooding to or from the site.
29. A condition to secure methods of tree protection for all trees proposed for retention is necessary, in accordance with the requirements of Policies 37, 73 and 74 of the BLP, as is a condition to secure appropriate landscaping of the site in accordance with Policies 37 and 74 of the BLP. Conditions relating to the emission rate of any gas boilers to be installed and also to secure the provision of electric car charging points are necessary in order to minimise the effect of the development on air quality. A condition to secure appropriate cycle parking provision is also necessary in order to reduce reliance on private car transport, as well as a condition to secure details of appropriate refuse storage to ensure it is acceptable.
30. A condition has been put to me which would restrict Permitted Development rights for the dwelling under Parts 1 and 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order, 2015. The PPG states that "Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity." I have not been presented with compelling reasons why permitted development rights should be withdrawn in this case. However, a condition to prevent the installation of new openings at first floor level in the flank elevations of the dwellings is necessary to prevent any overlooking of the adjoining residential properties from the proposed development.
31. A condition requiring the development to be carried out in accordance with the Building Regulations M4(2) 'accessible and adaptable dwellings' is necessary in accordance with Policy D7 of the LP, which requires new residential development to meet the relevant Building Regulations.

Conclusion

32. For the reasons set out above the appeal succeeds.

Emma Worley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1419/10, 1419/ 11, 1419/ 12, 1419-13, 1419-14, 1419-15, 1419-16, 1419-17 and 1419-18.
- 3) Prior to the commencement of above ground works, details of the finished site levels across the site including the access driveway from Pickhurst Lane and finished floor levels of the proposed dwellings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall be retained as such in perpetuity.
- 4) Prior to the commencement of above ground works, details (including samples) of the materials to be used for the external surfaces of the buildings which shall include roof and wall facing materials and cladding, door and window frames, decorative features, rainwater goods and paving where appropriate shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials, including times of construction vehicles trips to the site;
 - measures to deal with safe pedestrian movement.
 - storage of plant and materials used in constructing the development;
 - wheel washing facilities, including location and operation;
 - measures to minimise the noise (including vibration) generated by the construction process;
 - measures to control the emission of dust and dirt during construction;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) Clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall take place only between 0800 and 1800 hours on Monday to Friday and between 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or Bank or Public Holidays.
- 7) Prior to the commencement of the development hereby approved, an appropriate ecological mitigation and enhancement strategy based on the recommendations made in the Preliminary Ecological Appraisal by Martin

Newcombe Wildlife Management Consultancy dated 25 November 2021 (ref D150. Bromley (TQ396665) R2) and the Badger Survey by JWK Wildlife Surveys dated 12 June 2022 shall be submitted to and approved in writing by the local planning authority. The strategy shall also include an implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable.

- 8) Details of a scheme to light the access drive and car parking areas hereby permitted shall be submitted to and approved in writing by the local planning authority prior to the commencement of above ground works. The approved lighting scheme shall be implemented in full accordance with before the development is first occupied and shall be permanently retained thereafter.
- 9) Prior to the first occupation of the development hereby permitted details of the means of construction of the access, parking and turning space shall be submitted to and approved in writing by the local planning authority. These areas shall be completed in accordance with the approved details prior to the first occupation of the dwellings hereby permitted. The access, turning, parking and garages shall thereafter be kept available for such uses and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.
- 10) Prior to the commencement of above ground works details of the design of the measures set out in the submitted "Surface Water Drainage Strategy & Maintenance Requirements" Report carried out by HOLDING Consulting Engineers with Project No. 19-183 Rev. C dated 26/11/2021 shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No windows or doors (other than those shown on the plans hereby approved) shall at any time be inserted in the first floor flank elevations of the dwellings hereby permitted.
- 12) All trees proposed for retention in the plans hereby approved shall be protected during construction and retained for minimum period of 5 years following the completion of development. Any tree that is damaged, felled or becomes non-viable during construction or within a 5 year period following the completion of development shall be immediately replaced with a tree or trees of a size and species approved by the Local Planning Authority. Prior to the commencement of the development hereby approved (including demolition and all preparatory work), tree protection measures shall be installed in accordance with the approved tree protection plan. Such measures shall not be moved or removed, but shall be retained in situ until completion of the development and all materials and machinery have been removed from the site, unless otherwise agreed in writing by the LPA. Development shall only proceed in accordance with the approved Arboricultural Method Statement.
- 13) In order to minimise the impact of the development on local air quality any gas boilers must meet a dry NO_x emission rate of <40mg/kWh.

- 14) Prior to the commencement of any above ground works details of bicycle parking (including covered storage facilities where appropriate) shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be completed and available for use prior to the first occupation of the development and shall be permanently retained thereafter.
- 15) Prior to the commencement of any above ground works details of the storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be completed and available for use prior to the first occupation of the development and shall be permanently retained thereafter.
- 16) i) Prior to commencement of above ground works details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:
 1. A scaled plan showing all existing vegetation to be retained and trees and plants to be planted which shall include use of a minimum of 30% native plant species of home grown stock (where possible) and no invasive species
 2. Proposed hardstanding and boundary treatment
 3. A schedule detailing sizes and numbers of all proposed trees/plants, to include native species
 4. Sufficient specification to endure successful establishment and survival of new planting.

(ii) There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority.

(iii) Any new tree(s) that die(s), are/is removed or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details.
- 17) The development hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' and shall be retained permanently thereafter.
- 18) Prior to the first occupation, details of active electric charging points shall be submitted and approved by the local planning authority. The approved details shall be implemented and maintained during the lifetime of the development.

*******end of conditions*******