



Appeal Decision

Site visit made on 7 December 2022

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal Ref: APP/G5180/W/22/3294993

Greenwood, Bickley Park Road, Bickley, Bromley BR1 2AT

- 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 planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Dean Hancock against the Council of the London Borough of Bromley.
- The application Ref: 19/04657/RECON is dated 08 December 2021.
- The application sought planning permission for demolition of existing dwelling and erection of 6no. apartments and associated works including central vehicular access. Removal of condition 5 and variation of condition 6 of planning permission DC/19/04657/FULL1.
- The conditions in dispute are Nos 5 and 6 which state that:
 - 5. No new construction shall take place until the existing outbuilding to the rear of the property, granted planning permission in June 2014 under appeal decision APP/G5180/D/14/2217390 and subject to recent appeal decision APP/G5180/X/19/3225438, has been demolished and its site cleared and added to the communal grounds associated with this proposal.
 - 6. Notwithstanding the details of four private garden areas to the rear of the building shown on drawing 2767-19-PL305 revision P2, prior to commencement of above ground works details of trees to be retained and of landscaping or hard surfacing of all parts on the site not covered by buildings 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. The approved landscaping shall be carried out in the first planting season after completion or first occupation of the development, whichever is the sooner. There shall be no excavation or raising or lowering of levels within the prescribed root protection area of trees indicated to be retained unless agreed in writing by the local planning authority. 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.
- The reasons given for the conditions are: With the removal of the present large outbuilding in the rear garden the communal grounds would not be over-intensively shared by six flats. The subdivisions for private spaces shown on the submitted plans would be small, oddly shaped, overlooked and present a barrier to an appreciation of the communal grounds from the ground floor flats but a different arrangement can be required by condition 6.

Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing dwelling, erection of 6no. apartments and associated works including

central vehicular access at Greenwood, Bickley Park Road, Bromley BR1 2AT in accordance with the terms of the application, Ref 19/04657/RECON, dated 08 December 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. Further to the description of development in the banner heading, which is taken from the application form and accompanying documents, the application sought planning permission for the development without complying with condition 5 (removal of outbuilding) and with variation of condition 6 (landscaping) of planning permission 19/04657/FULL1, granted at appeal (reference APP/G5180/W/20/3247836), in order to retain the existing outbuilding for use as a gym and for storage of garden/maintenance equipment, and to incorporate it within the landscaping scheme.
3. At the time of my site visit some works had been carried out at the rear of the existing dwelling. The appellant confirms that those works relate to another planning permission, and that the development subject to this appeal has not commenced. I have determined the appeal on that basis.

Background and Main Issues

4. Planning permission was granted at appeal (ref: APP/G5180/W/20/3247836) ("the previous appeal") for demolition of the existing dwelling and erection of 6 apartments with associated works. The planning permission required the removal of an existing outbuilding from the rear of the plot, and sought to vary the garden layout to remove four proposed private garden areas associated with individual apartments. Those requirements were imposed through planning conditions, and the current appeal relates to proposed changes to allow retention of the outbuilding.
5. The main issues are the effect of the development on: (i) the character and appearance of the area; and (ii) the living conditions of neighbouring occupiers, with particular regard to the acoustic environment; and (iii) in light of the above, whether condition 5 is necessary.

Reasons

Character and appearance

6. The appeal site is a residential dwelling located within the Bickley Area of Special Residential Character ("ASRC"). Within areas designated as ASRCs London Borough of Bromley Local Plan (2019) ("BLP") Policy 44 requires development to respect, enhance and strengthen their special and distinctive qualities. The character of the area is essentially that of spacious inter-war residential development, with large houses in substantial plots adjacent to the Conservation Areas of Chislehurst and Bickley.
7. The principle of six flats was established at the previous appeal. In relation to the current appeal the issue is therefore whether the retention of the detached outbuilding would result in over-intensive development or use of the rear garden, such that it would harm the character of the ASRC.
8. In relation to physical character, the appeal site is one of the larger plots in the immediate area, and is wider or longer than most of its adjoining neighbours.

The outbuilding is a reasonably large size, but is only a small part of the garden as a whole and is located at its rear. The space between the proposed apartment building and the existing outbuilding is also a large area, which exceeds the size of the rear gardens of some properties in the vicinity. In my view, sufficient undeveloped garden area would remain to retain the physical character of the ASRC.

9. In relation to use, although the previous Inspector required removal of the outbuilding, he considered that even though the principle of flats would modify the character of the immediate vicinity, its intensity would cause minimal harm to the character of the ASRC (even considering other matters including parking and vehicle movements). I agree with that view and note that, despite the existing proposal seeking to retain the outbuilding, a substantial part of it would be retained for use by residents on a communal basis. It would therefore result in only a slightly reduced communal open area than if the outbuilding was removed, due to the provision of the garden maintenance store area. Therefore, the intensity of use of the garden area would not be materially altered by the retention of the outbuilding, as long as the part of the building shown as 'Gymnasium' is retained as communal area for use by occupants of the proposed flats. This matter could be addressed by the imposition of a planning condition.
10. In conclusion, the development would not harm the character and appearance of the area, and would accord with the relevant provisions of BLP Policies 4, 37 and 44, which require development to respect, enhance and strengthen their character and distinctive qualities, and provide sufficient external private amenity space.

Living conditions

11. The narrow private gardens for four flats considered by the previous Inspector are no longer proposed. Larger private garden areas outside the ground floor units, roughly aligned with the rear of the adjacent dwelling Jalna, are proposed. The remaining area between the private garden areas and the retained outbuilding would be a relatively large area, even in the context of the ASRC. Much of the garden area is therefore likely to be accessible to any of the occupiers of the proposed flats and, subject to the part of the building shown as 'Gymnasium' being accessible to all occupants of the proposed flats, it appears to me that the communal areas overall would be generously sized for the occupiers of six 2-bed flats.
12. With the principle of use of the appeal site for six 2-bed flats having already been established, it seems unlikely that enlarging it slightly by removing the existing building would reduce external noise or disturbance experienced by neighbouring occupiers. With communal access to much of the outbuilding as an on-site gym there may also be a degree of reduction in the intensity of use of the external areas.
13. Interested parties are concerned at noise and disturbance from a gym and swimming pool on site for use by residents of the flats, or that the building would be used for noisy social activities by residents. Although I note an existing swimming pool, the proposed plans show it would be removed in order to provide private garden areas for occupiers of the ground floor flats. The building is of relatively solid construction, and although residents would have

access to the part of the outbuilding to be used as a gymnasium, I have not seen compelling evidence that its use by residents would be inherently noisy.

14. In conclusion on this issue, the development would not harm the living conditions of neighbouring occupiers, with particular regard to the acoustic environment, subject to a condition securing access to the gymnasium by residents of the development. The development would therefore accord with BLP Policies 4 and 37, which require the provision of sufficient external private amenity space that is accessible and practical and respects the amenity of occupiers of neighbouring buildings ensuring they are not harmed by noise and disturbance.

Necessity of condition 5

15. Paragraph 56 of the National Planning Policy Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
16. I found above that retention of the outbuilding as a garden store and gymnasium for use by residents would not harm the character and appearance of the area or the living conditions of neighbouring occupiers. In coming to those views, I considered the rear garden the communal grounds would not be over-intensively shared by six flats, subject to a planning condition ensuring the gymnasium was accessible to all residents.
17. Existing condition 5 is therefore not necessary, and should not be imposed, subject to an alternative condition ensuring the gymnasium is accessible to all residents.

Other matters

18. The revised plans showing the retained outbuilding also remove the four private garden areas the previous Inspector found unsuitable. In revising condition 6, in order to facilitate retention of the outbuilding, it is therefore neither necessary nor appropriate to refer to these areas shown on the now superseded plan. It is also not necessary to refer specifically to the outbuilding to be retained, as that condition, as amended, would simply refer to landscaping or hard surfacing of the site not covered by buildings.
19. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I have clarified with the parties which conditions remain valid and have imposed them accordingly.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

Peter White

INSPECTOR

SCHEDULE OF CONDITIONS:

- 1) The development hereby permitted shall begin not later than 3 July 2023.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2767-21-PL001 revision P1, 2767-19-PL301 revision P2, 2767-19-PL302 revision P2, 2767-19-PL303 revision P2, 2767-19-PL305 A revision P3 (excluding the 'approved Block/roof plan'), 2767-19-PL306 revision P2 (excluding the 'approved front, side and rear elevations').
- 3) Prior to the commencement of the development hereby approved (including demolition and all preparatory work) a scheme for operatives' and construction vehicles off-loading, parking and turning within the site shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme, and such provision shall remain available for such uses for the duration of the construction period.
- 4) While the development hereby permitted is being carried out, a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles, and any accidental accumulation of mud of the highway caused by such vehicles shall be removed without delay, and in no circumstances be left behind at the end of the working day.
- 5) The area of the existing outbuilding at the rear of the property marked 'Gymnasium' as shown on drawing number 2767-21-PL001 revision P1 shall be available as a communal space to all residents of the development at all times.
- 6) Prior to commencement of above ground works details of trees to be retained and of landscaping or hard surfacing of all parts on the site not covered by buildings 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. The approved landscaping shall be carried out in the first planting season after completion or first occupation of the development, whichever is the sooner. There shall be no excavation or raising or lowering of levels within the prescribed root protection area of trees indicated to be retained unless agreed in writing by the local planning authority. 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.
- 7) The building hereby permitted shall not be occupied until surface water and foul water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 8) The building hereby permitted shall not be occupied until the vehicular access, parking spaces, cycle parking spaces, refuse storage facilities and balcony privacy screens have been completed in accordance with the details shown on the approved drawings and thereafter shall be kept available for their intended uses.
- 9) Before the development hereby permitted is first occupied, the proposed windows in both first floor flank elevations shall be obscure glazed in accordance

with details to be submitted to and approved in writing by the local planning authority and shall subsequently be permanently retained as such.