



Appeal Decision

Site visit made on 18 January 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 FEBRUARY 2023

Appeal Ref: APP/G5180/D/22/3309276

The Roses, Kemnal Road, Chislehurst BR7 6LT

- 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 Stephen Mothersole against the decision of the London Borough of Bromley.
 - The application Ref DC/21/04873/FULL6, dated 4 October 2021, was refused by notice dated 15 August 2022.
 - The development proposed is Demolition of existing garage. Part one/two storey side/rear extension with elevational alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the appeal form. Although different to that on the planning application form, the evidence before me indicates a change was agreed.
3. The appellant has submitted a document to the appeal (Arboricultural Impact Assessment and Method Statement, dated 14 October 2022). This document is a revised arboricultural report to that submitted with the planning application. No other party has had an opportunity to comment upon this document.
4. In considering whether to accept this revised report, I have had regard to the 'Wheatcroft Principles'. That is to say, if I were to accept the report, would my doing so deprive those who should have been consulted over the changed development the opportunity of such consultation. In this case, I consider that others would be so deprived, including neighbours to the proposed development, as well as the Council. I have therefore proceeded to determine the appeal on the basis of the application as originally submitted.

Main Issue

5. The main issue is whether the proposed development would preserve or enhance the character or appearance of the Chislehurst Conservation Area (CA), including taking account of any effect upon the area's trees.

Reasons

6. The CA is extensive and is characterised as a cluster of developed areas either on the perimeter of the central Chislehurst common, or slightly beyond it. A key factor in its significance is its wooded, semi-rural character with extensive coverage by mature trees, woodland and open grassed areas. The appeal site

is a detached property on the corner to Dickens Drive, located within the western side of 'Sub-unit 10. Kemnal Road' of the CA. The character in this sub-unit is characterised as a rural lane through dense woodland, with large spacious plots scattered sparingly throughout the trees. However, the character of the western side has more in common with denser residential estates further to the east, and the appeal site is typical in this regard.

7. The rear garden of the appeal site includes two mature oak trees, and its neighbour (Middlemarch) also has a mature oak tree in its rear garden. These three trees are subject to a tree preservation order, which covers a large area. At my visit, I was able to see the trees from Kemnal Road and Dickens Drive at some distance, due to their substantial size. They are attractive specimens and make a significant and positive contribution to the visual amenity of the area, and to the character and appearance of the CA.
8. Section 6 of the arboricultural report (AR) as submitted with the planning application details impact only in relation to the tree within neighbouring Middlemarch (T1). However, the accuracy of the AR is clearly disputed by the Council. Therefore, there is a lack of certainty over the extent of the impact to the trees. Thus, I cannot be sure that the trees would not be harmed by the proposal.
9. The AR details that the installation of foundations would be "*close to the root protection area of T1*" and that hand excavation is proposed. However, the tree protection plan within the AR shows the proposed development to be well within the root protection area of T1. Thus, I cannot be sure that the proposed foundation method and protection measures would adequately protect this tree. No justification has been provided for this encroachment.
10. The AR notes that no facilitation pruning works are required to any of the trees, with a caveat that, if necessary, light pruning would be undertaken, with an example given in regard to the erection of scaffolding. From the evidence, I cannot be sure that no pruning works would be required. Nor can I be certain that pruning works would be restricted to those of a 'light' nature, or whether more extensive tree works would be required.
11. In summary, the AR is not robust, and as such, it has not been shown that the health and life expectancy of the trees would be sufficiently protected.
12. Due to the close proximity of the rear extension element of the proposed development to the canopy of T1, there would be pressure for future works to T1, on account of a fear of potential harm from branch fall or other tree failure; the nuisance from leaf and fruit litter; and the perception of risk to the appeal property.
13. The AR classifies the three trees as Category B (moderate quality) 'early mature' trees, within the second third of their life expectancy. I have no evidence before me to find otherwise. They have a considerable remaining period of life expectancy during which they are likely to continue to contribute to the character and appearance of the area.
14. Consequently, the proposed development would result in an unacceptable risk of harm to the protected trees. This risk, if realised, could result in loss or premature decline, or damage to at least one of the three protected trees. Due to their size and value, this would be to the detriment of the significant and

- positive contribution they make, both individually and as part of a group, to the wider wooded character and appearance of the CA.
15. Due to its design and subservient appearance, the proposed built form of the development would preserve the character and appearance of the CA.
 16. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 199 of the National Planning Policy Framework (the Framework) makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be.
 17. In accordance with paragraph 202 of the Framework, the harm I have identified is less than substantial, and therefore the harm must be weighed against any public benefits of the proposed development. While the proposed development could yield benefits in terms of thermal efficiency, such benefits would be personal to the occupiers. Even if I were to consider that an improvement to the quality and extent of accommodation, and traditional and sustainable construction were to the wider public benefit, given the scale of the proposal, this would be limited. As such, the public benefit does not outweigh the harm that I have found.
 18. I therefore conclude that the proposed development would unacceptably harm the character or appearance of the Chislehurst Conservation Area.
 19. The proposed development therefore conflicts with Policies 43 and 73 of the London Borough of Bromley Local Plan 2019. These policies seek to resist development that would damage or lead to the loss of one or more significant and/or important trees within a CA; and to ensure that development proposals take particular account of existing trees on the site and on neighbouring land. The proposed development would also conflict with the heritage aims of the Framework, which seek to ensure that heritage assets are conserved in a manner appropriate to their significance.

Other Matters

20. The appellant draws my attention to an unimplemented planning permission for a larger rear extension at the appeal site, granted in 2001, put forward as a precedent; and to a planning permission granted in 2018 for development including a single storey rear extension at Middlemarch, which included consent for clearance pruning of T1 where the Council considered that the proposed development would have a minimal impact upon the root protection area of T1. However, I cannot be sure that these permissions are directly comparable to the scheme and evidence before me. I have considered the appeal proposal on the basis of the evidence before me and my own observations.
21. The appellant advises that the purpose of the proposal is to accommodate very elderly relatives. Under the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, I have had due regard to the impact of the proposal in relation to this matter. I am therefore required to balance the harm I find against the purpose of the proposal.

22. The purpose of the proposal would be a positive consideration, in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. However, it has not been shown that the scheme before me is the only way of achieving the accommodation sought. Therefore, from the details before me, the harm I have identified does not outweigh those benefits. I conclude that it is proportionate and necessary to dismiss the appeal.

Conclusion

23. For the reasons given, I conclude that the development conflicts with the development plan, read as a whole. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR