



Appeal Decision

Site visit made on 25 April 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/G5180/W/22/3310111

39 Fox Lane, Bromley, Keston BR2 6AL

- 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 the planning agent Mr John Escott of Robinson Escott Planning against the decision of the Council for the London Borough of Bromley.
 - The application Ref DC/22/02174/FULL6, dated 27 May 2022, was refused by notice dated 5 August 2022.
 - The development proposed is a joint planning application for the proposed extension comprising No37 & No39 first floor rear extension to be of same depth and proposed roof extensions and new canopy to main entrances.
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Decision

1. The appeal is allowed, and planning permission is granted for the joint planning application for the proposed extension comprising No37 & No39 first floor rear extension to be of same depth and proposed roof extensions and new canopy to main entrances at 39 Fox Lane, Bromley, Keston, BR2 6AL in accordance with the terms of the application, Ref DC/22/02174/FULL6, dated 27 May 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant has confirmed that the original applicant Mr Philip Brouard of Brouard Architects has authorised an alternative agent Mr John Escott of Robinson Escott Planning to act on behalf of 39 Fox Lane in making this planning appeal. The Council has raised no objection to this, and as no parties' interests would be prejudiced, in the interests of clarity the appellant for the purposes of the appeal is Mr John Escott of Robinson Escott Planning as detailed in the heading above.
3. The application is a joint scheme comprising of similar first-floor extensions to both No 37 and 39 Fox Lane. The joint application was made following Councils advice to the owner of No 39 Fox Lane that a previous householder application¹ was withdrawn. Whilst there are separate plans prepared by different architects, the joint scheme provides the broadly symmetrical extensions are considered in tandem. On this basis, and that the schemes are brought forward as one single operation, the Council did not raise any concerns in respect to the design of the proposals, subject to the provision of a suitably negatively worded condition to ensure that the works are undertaken simultaneously.
4. Conditions which require works on land that are not controlled by the appellant or works to be authorised by another person or body, are often unreasonable

¹ London Borough of Bromley Planning Ref: 22/01988

and unenforceable. However, it may be possible to achieve the same result by imposing a negatively worded condition. I have had regard to the advice in the Planning Practice Guidance on this². It confirms that ensuring a planning obligation, or other agreement, is entered into prior to granting planning permission, is the best way to deliver sufficient certainty for all parties about what is being agreed. However, in exceptional circumstances, a negatively worded condition may be appropriate before certain development can commence, where there is clear evidence that the delivery of the proposal would otherwise be at serious risk.

5. Both parties agree that the use of a negatively worded condition in this case would be enforceable. By imposing such a condition with respect to the land outside of the appellants control, it would not create unacceptable uncertainty in ensuring that the schemes are constructed together. Given the relatively modest nature of the development proposed, I would concur with this approach.

Main Issues

6. The main issues are the effect of the proposed development on the living conditions of the adjoining properties with specific regard to daylight and sunlight, visual impact and outlook.

Reasons

7. The appeal site consists of a pair of semi-detached dwellinghouses located on the east side of Fox Lane which is a narrow road sloping down and away from the junction with Heathfield Road in Keston. The area surrounding the appeal site has a rural feel with a large green open space located opposite the site, which is designated Green Belt. The appeal site is located amongst other residential properties which provide a ribbon of built development bounding the open space.
8. The joint proposal is for broadly symmetrical first-floor extensions to both properties to provide an enlarged second bedroom together with an additional bedroom and bathroom. The extensions would have a hipped roof sloping away from both neighbouring properties to a central ridge line. The Council have found that the proposed development would not have a significant impact on the residential amenities of No 35 Fox Lane, given the existence of a first-floor extension and its uphill position in relation to the appeal site. I have no reason to disagree with this assessment.
9. As part of the appeal the appellants submitted an updated Daylight and Sunlight Assessment³ for the proposed scheme in accordance with the relevant Building Research Establishment (BRE) guidance⁴. The assessment sought to demonstrate there would be no adverse material impact from the development on the occupiers at No 41 Fox Lane. The relevant BRE tests included an assessment of Vertical Sky Component (VSC), whereby the amount of visible sky available from individual window openings was calculated; an assessment of No Sky Line, whereby the availability of direct views of the sky was considered; an assessment of Annual Probable Sunlight Hours (APSH), whereby statistically probable percentages of sunlight hours received by relevant

² PPG Paragraph 009 Reference ID: 21a-010-20140306 and Paragraph: 010 Reference ID: 21a-010-20190723

³ Prepared by Herrington Consulting Ltd dated October 2022

⁴ Site Layout Planning for Daylight and Sunlight - a guide to good practice (Third Edition, 2022)

openings were calculated; and an assessment of sun on the ground, whereby a calculation of the percentage of the external amenity area able to receive at least two hours of sunlight was undertaken.

10. The appellants' assessment is comprehensive and in relation to daylight, highlights that all the windows identified on the neighbouring property at No 41 meet the BRE requirement of being less than 0.8 times of their former VSC value. In respect to sunlight, the APSH figure showed that all the windows assessed met at least two of the three BRE requirements indicating that the new development would have no adverse impact on sunlight. The assessment also indicated that all the amenity areas tested would meet the BRE guidelines in respect to overshadowing, as at least 50% of the garden space would receive 2 hours or more direct sunlight on 21 March.
11. I accept that BRE guidelines, whilst material to my considerations, are not mandatory and are designed to be interpreted flexibly and that individual site circumstances can vary. However, the Council has not submitted any evidence to counter the findings of this assessment. Based on the evidence before me, the assessment confirms that the combined impact on loss of light from the proposal on the neighbouring property at No 41 would be negligible. As such, I am satisfied that any loss of light or overshadowing caused by the proposal would not be significant.
12. In regard to the impacts of the proposal on outlook, the appeal site is located in an elevated position in relation to No 41, and given the close proximity of the dwellings, the proposal would be noticeably taller than the existing property at the rear. It is acknowledged that the flank windows serving No 41 would provide views predominantly of the first-floor extension and hipped roof of the proposal. From my site observations there is a prevalence of reasonably tight relationships between buildings in the vicinity. The appeal proposal has been sympathetically designed with a low-pitched roof to minimise its impact and would appear similar to others in the area.
13. As a result, the appeal proposal would not seem jarring, appearing as a consistent and coherent built form in the vicinity. Furthermore, the modest height and scale of the proposal, set away from the boundary would further reduce the visual impact of the proposal, where it would not be considered significantly dominant or represent an overbearing outlook. It is acknowledged that the degree of change would be noticeable, nevertheless it would be contextual, and therefore it would not represent an unacceptable visual impact either.
14. For the above reasons, having particular regard to access to daylight and sunlight, visual impact and outlook the proposal would have an acceptable effect upon the living conditions of the neighbouring occupiers at No 41. The scheme satisfactorily accords with Policy 37 of the Bromley Local Plan, adopted January 2019 and Paragraph 130 f) of the National Planning Policy Framework (the Framework) which, amongst other things, seeks a good standard of amenity for all existing and future occupants of buildings.

Other Matters

15. I have taken into account all the other matters and concerns raised in the submissions by interested parties, which include the need for development;

access, parking and traffic safety; and inadequate living conditions for future occupiers.

16. Whilst I note comments from interested parties that question the need for the development, there is no policy requirement to demonstrate a need for an extension to an existing residential property. Therefore, as each scheme needs to be considered on its own merits and circumstances, I would apportion this little weight.
17. In regard to access, parking and traffic safety, it is acknowledged that Fox Lane is a narrow road, and on-street parking is limited. However, the scheme is for an extension to an existing residential property which provides a suitable level of off-street parking in this section of Fox Lane. Furthermore, there are no parking restrictions, and as such there is little substantive evidence to suggest that the effects of the development would make the existing parking levels materially worse or that the development would have a materially harmful effect on highway safety.
18. In respect to issues raised on the inadequate living conditions of potential occupiers, bedroom 3 at No 39 is annotated as a study/nursery, and the drawings indicate it would be fitted with obscured glazing despite being single aspect. Whilst the window would provide a degree of natural light, in my opinion it would represent a poor outlook for its occupiers. However, overall, the degree of harm is not significant when set against the development as a whole.

Conditions

19. I have considered the Councils suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary for the sake of consistency, brevity, clarity and to ensure that they meet the tests in the Framework.
20. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. I have imposed a condition in respect to the material specifications in order to ensure an acceptable visual effect. I have also imposed a condition securing obscured glazing on the first-floor flank windows of No 39 to protect the living conditions of the neighbouring property at No 41, from the proposed development, in terms of privacy.
21. For the reasons set out in the Preliminary Matters above I have included the suggested Grampian condition to ensure that the first-floor rear extensions are constructed at the same time, to ensure that there is no harm to the character and appearance of the area as a result of the proposal.

Conclusion

22. For the reasons given I conclude that the appeal should succeed.

Robert Naylor

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: PB853 001-A; PB853 005-A; PB853 006-A; BL/DRG/161221/03; BL/DRG/161221/04 and BL/DRG/161221/13.
- 3) Prior to commencement of above ground works, details (including samples) of the materials to be used for the external surfaces of the building which shall include roof cladding, wall facing materials and cladding, window glass, 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.
- 4) Before the development hereby permitted is first occupied the proposed south west facing first floor flank bathroom, en-suite bathroom and bedroom windows shown on drawings ref. PB853 005-A (Floor Plan) and PB853 006-A (Elevation) of No 39 Fox Lane shall be obscure glazed to a minimum of Pilkington privacy Level 3 and shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed and the windows shall subsequently be permanently retained as such.
- 5) Neither of the proposed first floor rear extensions shall be constructed unless the corresponding adjoining extension at either Nos 37 or 39 Fox Lane, as the case may be, is also constructed at the same time.

END