



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: 28th June 2023

Appeal Ref: APP/G5180/W/22/3300174

Woodhayes, 76A The Avenue, Beckenham BR3 5ES

- 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 Devonshire Developments Ltd against the decision of the London Borough of Bromley.
 - The application Ref 20/05047/FULL1, dated 22 December 2020, was refused by notice dated 8 April 2022.
 - The development proposed is described as the 'Demolition of the existing dwellings (No.76A and 76B The Avenue), erection of a five storey building to provide 18 flats (comprising 10 - one bed and 8 - two bed), provision of 18 parking spaces with cycle and bin storage and hard and soft landscaping'.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwellings (No.76A and 76B The Avenue), erection of a five storey building to provide 18 flats (comprising 10 - one bed and 8 - two bed), provision of 18 parking spaces with cycle and bin storage and hard and soft landscaping at Woodhayes, 76A The Avenue, Beckenham BR3 5ES in accordance with the terms of the application, Ref 20/05047/FULL1, dated 22 December 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of the development is taken from the appeal form as it more accurately describes the proposed development as amended and excludes development which is no longer part of the appeal proposal.
3. Whilst the address in the banner heading and on the planning application form is Woodhayes, 76A The Avenue, the appeal site includes both 76A and 76B The Avenue.

Main Issues

4. The main issues are;
 - the effect of the proposed development on the living conditions of occupiers of 76C The Avenue (No 76C), having particular regard to light and outlook; and
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Living conditions

5. The proposed building would be positioned a short distance from the side boundary of the appeal site which is shared with No 76C. Despite the lower ground level of the appeal site, the building would be considerably greater in scale and height than the adjoining dwelling at No 76C and would project beyond its rear elevation.
6. The Daylight, Sunlight and Overshadowing Assessment by XCO2 for Devonshire Developments dated December 2020 submitted as part of the planning application indicates that there would not be a significant impact on surrounding properties arising from the proposed development and that the proposal would accord with relevant guidance. I note the Council's concerns that, despite these findings, given that the proposal would compromise the 45 degree line in relation to the nearest rear windows at No 76C, it would nevertheless result in a reduction of daylight and sunlight and overshadowing to the neighbouring dwelling.
7. Due to the siting and scale of the proposed building there will be parts of the day when the development would overshadow the neighbouring property at No 76C and would restrict sunlight reaching the windows, in particular those closest to the boundary, as well as the areas of outdoor space immediately to the rear of the property. However, given the orientation of the dwelling together with the extent of the garden space, any overshadowing would be time limited, with large areas of the rear garden being unaffected. Therefore, whilst there would be a reduction in sunlight to both the rear windows and areas of the garden compared to the existing, the proposal would not lead to an unacceptable loss of sunlight or overshadowing which would significantly harm the living conditions of the occupiers of the property.
8. No 76C benefits from a generous rear garden which slopes down towards the rear boundary of the property. Given that the proposed building would extend along only a short section of the side boundary of the appeal site and the remainder of the shared boundary, along with the rear and the other side boundary to the garden at No 76C would remain open, the proposal would not lead to a sense of enclosure to the rear of the property.
9. The flank wall of the proposed building would be visible from the internal space at No 76C and the rear patio area and due to its bulk and proximity to the shared boundary, would appear as a somewhat imposing feature. Nonetheless, this is tempered by the open outlook that would remain available due to the amount of rear garden space together with its topography and lack of sense of enclosure. In light of these considerations, the proposal would not substantially diminish the outlook from the neighbouring property and would therefore maintain acceptable living conditions overall.
10. For the foregoing reasons I conclude that whilst the proposed development would give rise to limited adverse effects on the living conditions of the occupiers of No 76C through loss of sunlight and overshadowing, as well as outlook, the proposal would not ultimately result in a substandard or harmful living environment for this neighbour. Consequently, it would result in a degree of conflict with Policies 4 and 37 of the Bromley Local Plan (the BLP), which among other things seek to ensure development is of a high standard and

respects the amenity of occupiers of neighbouring buildings and Policy D3 of the London Plan (the LP) in so far as it requires new development to deliver appropriate outlook.

Character and appearance

11. The appeal site is located on The Avenue, a wide unadopted road which slopes downwards, decreasing in ground level from its junction with Downes Hill. The surrounding area is made up of a variety of residential properties including detached two storey properties, such as those currently occupying the appeal site and the adjoining two storey dwellings, as well as flatted developments in buildings of a much greater scale. The buildings are set a similar distance from the highway to the front of the plots allowing for mature landscaping, with parking either to the front or rear of the buildings, which creates a pleasant sense of uniformity and contributes to the open spacious character of the area.
12. Given the varied design and appearance of the residential development along The Avenue, the design of the proposed building would not be at odds with the prevailing character of the area. The height of the proposed building would exceed that of the 4 storey element of the adjoining building at Nightingale Court, which has a shallow pitched roof. It would also be significantly greater in height than the adjoining property at 74B The Avenue, although not dissimilar in height to the flatted development beyond which occupies a more elevated position. Nevertheless, relative to its immediate downhill neighbour, it would still appear to follow the general topography of the street.
13. The height of the 4 storey part of the proposed building is comparable to the ridge of Nightingale Court, with the fifth floor set in from the front and side elevations of the building. This arrangement would reduce the dominance of the higher part of the building, when viewed both in the context of the adjoining properties, and the street scene. It would also serve to reduce the overall scale and massing of the proposed development. Moreover, the height of the building would reflect the staggered building heights along the street and is sympathetic to the topography of the site.
14. Whilst there are examples of access driveways between the buildings along The Avenue, the siting and size of the building is such that the gaps between it and the side boundaries would not be dissimilar to other developments in this part of The Avenue. Moreover, the proposed building would be set back a similar distance from the highway as the nearby residential development, allowing for landscaping to the frontage, along with parking and cycle and bin storage, which subject to sensitive design would not be to the detriment of the appearance of the site. In addition, the layout is such that a generous rear garden space would be retained to serve the development.
15. For the foregoing reasons, I conclude that the proposal would be consistent with the established pattern of the surrounding development and as such would not harm the character and appearance of the area. Accordingly, the proposal reflects the collective aims of Policies 4 and 37 of the BLP which seek high quality design, having regard to the character of the area.

Planning obligation

16. A completed and signed S106 unilateral undertaking is submitted as part of the appeal. The terms set out in the agreement secure a financial contribution

towards offsetting the residual carbon dioxide emissions of the development and early and late stage viability review mechanisms with regards to the provision of affordable housing. I am satisfied that the obligation is necessary to make the development acceptable, is directly related to the development and is fairly and reasonably related in scale and kind to the development. Therefore, it would accord with the three tests set out in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Regulations 2010. I have taken it into account.

Other Matters

17. My attention is drawn to a previous appeal on part of the site in 1990 which was dismissed and a subsequent planning application which was refused by the Council in 2018. However, these schemes differ from the appeal proposal in terms of scale and design and moreover, were determined in a different policy context. Therefore, from the evidence before me, they do not appear to be directly comparable, as such the weight to be attached to these is limited.
18. I acknowledge concerns regarding increased traffic, parking provision and accessibility of the site for emergency vehicles. However, given the level of on-site parking spaces and the proposed access arrangements, I am satisfied that the proposal would be acceptable in that regard. Furthermore, the Highway Authority has raised no objection to the proposal on highway safety grounds.
19. Whilst a small number of trees would be removed as part of the development the appeal submissions indicate that these would be of low quality. I note that the Council's Tree Officer has not objected to the proposal subject to replacement planting to be secured as part of a landscaping scheme and a Tree Protection Plan and Arboricultural Method Statement, in order to ensure that the remaining trees would be adequately protected during construction works.
20. There is no substantive evidence that the proposal would lead to an increase in surface water flooding, details of an appropriate surface drainage strategy can be secured through a planning condition. Furthermore, Thames Water has raised no objection in relation to the capacity of the waste water and sewerage treatment infrastructure.
21. From the evidence before me I have no reason to conclude that the size or design of the residential units would not provide adequate living conditions for future occupiers. Whilst I note concern expressed by interested parties regarding the lack of provision of affordable units as part of the scheme, the Council is satisfied that the updated Affordable Housing Viability Statement demonstrates that the development would not be able to provide affordable housing. I have no reason to disagree with these findings and review mechanisms are included in the planning obligation should the situation change.
22. Whilst the construction process is likely to be disruptive it would be relatively short-term and any noise and other nuisance can be mitigated to some degree through a condition to secure a Construction Management Plan. As such, the inconvenience caused is of limited weight in my decision.
23. I note comments that some interested parties were not invited to participate in the pre-application consultation process, however, I have determined this

appeal on its individual planning merits and none of the other matters outweigh or overcome my conclusion on the main issues.

Housing land supply and planning balance

24. The parties agree that the Council is not able to demonstrate a 5 year supply of deliverable housing sites. In this scenario, paragraph 11 of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. In terms of housing supply, a net gain of 16 residential units would contribute towards the supply of housing in the area on a previously developed site in an existing built-up area. Specifically, the proposal would address the need for smaller 1 and 2 bedroom units identified in the SHMA. The proposal would reflect the aims of Policies H2 and D3 of the LP which support well-designed new homes on small sites and require new development to make the best use of land by following a design-led approach that optimises the capacity of sites. It would also generate economic benefits during the construction phase. These are all factors which carry significant weight in the schemes favour.
26. When considering all of the relevant factors together, whilst I have found that the proposal would give rise to limited harm to the living conditions of the occupiers of No 76C, compared to the existing situation, overall harmful living conditions would not result. Therefore, the adverse impacts of granting permission in this instance would not be so great as to significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development outlined at Framework paragraph 11.
27. I have found some minor conflict with the development plan in respect of living conditions. However, for the above reasons, the harm resulting from this would be very limited. Conversely, the Framework, as Government policy is a very weighty material consideration, and in this case indicates that a decision should be taken otherwise than in accordance with the development plan.

Conditions

28. 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. In addition to the standard condition relating to the commencement of development, it is necessary to specify the approved plans to provide certainty.
29. The Council has suggested a condition to require any necessary repair works to be carried out to the highway (The Avenue) upon the completion of the construction works. Whilst I acknowledge the appellant has no objection in principle to the condition, as the road is unadopted the appellant's ability for construction access and any conditions which may be imposed would be a private matter between the interested parties. Therefore, as it may not be possible for the appellant to carry out any remedial works, the condition would be unreasonable and for these reasons it is not imposed.

30. A condition is required to secure the provision of a Construction and Environmental Management Plan, both in the interests of living conditions of nearby residential properties and highway safety. The suggested part f) implying that various other, unknown, matters could be requested is omitted as it not precise and therefore fails the tests. In the interest of amenity and human health a condition is also necessary to ensure the construction of the development is carried out in accordance with the measures set out in the submitted Air Quality Assessment Report Ref:AQ1872 dated October 2020.
31. A condition is imposed to ensure surface water generated from the proposal is disposed of appropriately. The finished AOD levels are shown on the submitted plans, as such a separate condition requiring these details is not necessary. To ensure the proposal protects the natural and visual qualities of the site, a condition is imposed that requires tree protection measures. A condition is required to ensure any piling to be carried out on the site is done so in accordance with a piling impact method statement in order to avoid damage to subsurface sewerage infrastructure.
32. Whilst the siting of the cycle parking and refuse storage areas are shown on the submitted drawings, a condition is necessary to secure detailed design of these facilities. Conditions are also required to secure details of soft landscaping, the public square, play equipment, lighting and external materials, to ensure a satisfactory appearance to the development. The Council has suggested a condition to secure details of the green roof for reasons of visual amenity. However, given the height of the building and likely visibility of the roof, it has not been shown why the condition is necessary to achieve these aims.
33. In order to ensure the development is accessible, a condition is required to secure compliance with Building Regulations standards. Given that the development comprises solely residential use it has not been demonstrated that a details of sound insulation within the building is necessary.
34. To ensure there are suitable arrangements for car parking a condition is necessary to require a car park management plan. To minimise air pollution, I attach conditions to secure the provision of electric vehicle charging points and machinery to be used during construction. Conditions are necessary to agree appropriate measures to minimise the risk of crime, in accordance with Policies 4 and 37 of the BLP and the provision of biodiversity enhancement measures in accordance with BLP Policy 79.
35. A condition is necessary to secure details of privacy screens to be installed on the proposed balconies in the interest of the character and appearance of the area and to prevent any overlooking of the neighbouring residential properties. While the Council did not raise any objection to the side windows, their proximity to the side boundaries and potential for views to neighbouring properties could lead to a loss of privacy. Therefore, a condition is required to ensure that they are obscure glazed.
36. The Council's suggested condition requiring the submission of parking and turning arrangements is not necessary as these are shown on the submitted Proposed Site Plan dwg no. 100.03 R4, however I have imposed a condition to secure the provision of these facilities prior to the first occupation of the development in the interests of highway safety. As the general arrangement plan dwg no. 301A, hard landscape plan dwg no. 501A and soft landscape plan

dwg no. 701A show a parking layout that deviates from that shown on the Proposed Site Plan, and further details pertaining to these matters are required as part of separate conditions, these are not included in condition 2 which lists the approved drawings.

37. In the interest of fire safety, a condition is required to ensure compliance with the submitted Fire Strategy.
38. A Preliminary Ecological Appraisal dated September 2020 (PEA), together with a number of subsequent bat emergence surveys conclude that the proposal would not have an adverse effect on biodiversity or protected species including bats, subject to appropriate mitigation measures. A condition to secure the development is carried out in accordance with the PEA and Update Bat Survey Results (Report Number: 13507_R01b_ZD_MM) is therefore necessary.

Conclusion

39. For the reasons set out above, the appeal is allowed.

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:
 - 100.00 – Site Location Plan
 - 100.01 – Block Plan
 - 200.03 – Roof Plan
 - 100.03 R4 – Proposed Site Plan
 - 200.00 R1 – Proposed Ground Floor Plan
 - 200.01 R1 – Typical Floor Plan
 - 200.02 R1 – Fourth Floor Plan
 - 210.00 R1 – North and South Elevation
 - 210.01 R1 – East and West Elevation (insofar as they relate to the apartment block only)
 - 220.00 R1 – Street Elevation
 - 220.01 R2 – Site Section A-A (insofar as they relate to the apartment block only)
 - 220.02 – Site Section B-B
- 3) No development shall commence on site (including demolition) until such time as a Construction and Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction of the development. The plan shall include:
 - a) Dust mitigation and management measures.
 - b) The location and operation of plant and wheel washing facilities
 - c) Measure to reduce demolition and construction noise
 - d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:-
 - (i) Rationalise travel and traffic routes to and from the site as well as within the site.
 - (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity.
 - (iii) Measures to deal with safe pedestrian movement.
 - (iv) Full contact details of the site and project manager responsible for day-to-day management of the works.
 - (v) Parking for operatives during construction period.
 - (vi) A swept path drawings for any tight manoeuvres on vehicle routes to and from the site including proposed access and egress arrangements at the site boundary.
 - e) Hours of operation.

- 4) Prior to commencement of the development hereby approved a scheme for the provision of surface water drainage, including future maintenance and management of the scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall contain detailed design measures in line with the submitted Flood Risk Assessment Report (Ref No.3760-201102-SS carried out by LUSTRE Consulting dated November 2020). The development shall be carried out, and the drainage maintained and managed, in accordance with the approved details.
- 5) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority.

Specific issues to be dealt with in the TPP and AMS:

- a) Location and installation of services/ utilities/ drainage.
- b) Methods of demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.
- c) Details of construction within the RPA or that may impact on the retained trees.
- d) A full specification for the installation of boundary treatment works.
- e) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using a no-dig specification. Details shall include relevant sections through them.
- f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
- g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- h) A specification for scaffolding and ground protection within tree protection zones.
- i) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area.
- j) Details of site access, temporary parking, on site welfare facilities, loading, unloading and storage of equipment, materials, fuels and waste as well concrete mixing and use of fires.
- k) Boundary treatments within the RPA
- l) Methodology and detailed assessment of root pruning
- m) Arboricultural supervision and inspection by a suitably qualified tree specialist
- n) Reporting of inspection and supervision

o) Methods to improve the rooting environment for retained and proposed trees and landscaping

p) Veteran and ancient tree protection and management

The development thereafter shall be implemented in strict accordance with the approved details.

- 6) No impact piling shall take place until a piling impact method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling statement.
- 7) Details of arrangements for bicycle parking (including covered storage facilities where appropriate) shall be submitted to and approved in writing by the local planning authority prior to construction of any above ground works. The approved details shall be fully completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 8) Details of arrangements for 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 prior to construction of any above ground works. Approved details shall be fully completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 9) 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 and retained as such thereafter.
- 10) 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:
 - a) 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.
 - b) A schedule detailing sizes and numbers of all proposed trees/plants.
 - c) Sufficient specification to endure successful establishment and survival of new planting.
 - d) Proposed hard surfacing and boundary treatment.
 - e) Proposed external lighting.

f) Proposed children's play equipment.

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.

The hard surfacing, boundary treatments, play equipment and lighting shall thereafter be retained as such. Any new tree(s) or other planting that die(s), are/is removed or become(s) 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.

- 11) 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.
- 12) Prior to the first occupation of the development hereby permitted, a car park management plan shall be submitted to the local planning authority for approval in writing. The plan should describe how all parking will be distributed and managed for the residential units. The approved details shall be implemented during the lifetime of the development.
- 13) Prior to the first occupation of the development hereby permitted, details of active electric vehicle charging points shall be submitted and approved by the local planning authority. The approved details shall be implemented and maintained prior to the first occupation of the development and shall be retained and operational for the lifetime of the development.
- 14) Prior to the commencement of any above ground work details of measures to be incorporated into the development to minimise the risk of crime shall be submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented before the development is first occupied and shall be retained in perpetuity thereafter.
- 15) Prior to the commencement of any above ground work details of swift brick, bird and bat boxes shall be submitted and approved by the local planning authority. The approved details shall be installed prior to the first occupation of the development and shall be maintained and replaced when required during the lifetime of the development.
- 16) All Non Road Mobile Machinery (NRMM) of net power of 37kW and up to and including 560kW used during the course of the demolition, site preparation and construction phases of the development shall comply with the emission standards set out in chapter 7 of the GLA's supplementary planning guidance 'Control of Dust and Emissions During Construction and Demolition' dated July 2014 (SPG) or any subsequent guidance. An inventory shall be kept on site and on the online register at: <https://nrmm.london/> of all NRMM between 37kW and 560kW. All NRMM shall meet Stage IIIA of EU Directive 97/68/EC (as amended) as a minimum (Stage IIIB from 1st September 2020). Constant speed engines such as those found in generators shall meet Stage V standards either by technology or by retrofit for both NOx and PM reduction.
- 17) Details of the means of privacy screening for all balconies shall be submitted to and approved in writing by the local planning authority before any above ground construction is commenced. The development shall be carried out in

accordance with the approved details prior to the balcony being brought into use and be permanently retained as such thereafter.

- 18) Prior to the first occupation of the development hereby permitted the proposed windows within the flank elevations 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. The windows shall subsequently be permanently retained as such in perpetuity.
- 19) The parking spaces and turning space shown on drawing number 100.03 R4 – Proposed Site Plan shall be completed before the first occupation of the development hereby permitted and shall be kept available for such use in perpetuity thereafter.
- 20) The development shall be carried out in compliance with the Outline Fire Strategy (Ref. OF-000364-OFS-01) by Orion Fire dated 30 June 2021 (in so far as it relates to the apartment block). The relevant measures shall be fully implemented prior to the first occupation of the development and permanently retained thereafter.
- 21) The measures set out in the Air Quality Assessment Report Ref:AQ1872 dated October 2020 shall be fully adhered to during the construction phase.
- 22) The development shall be carried out in strict accordance with the mitigation measures set out in the Preliminary Ecological Appraisal by Elite Ecology dated September 2020 and Update Bat Survey Results Report Number: 13507_R01b_ZD_MM.