



Appeal Decision

Site visit made on 13 June 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JUNE 2023

Appeal Ref: APP/G5180/W/22/3312484

Land north of 46 Silverdale Road, Orpington BR5 1PA

- 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.
 - The appeal is made by Mrs R Kukusheva against the Council of the London Borough of Bromley.
 - The application Ref 22/02360/FULL1, is dated 10 June 2022.
 - The development proposed is the demolition of existing garage and the erection of a single dwelling.
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Decision

1. The appeal is dismissed, and planning permission is refused for the demolition of existing garage and the erection of a single dwelling at land north of 46 Silverdale Road, Orpington BR5 1PA.

Preliminary Matters

2. There were some slight inconsistencies in the site address between the application form, appeal form and appellant's statements. Although the appellant's agent corrected the error in the appeal form, I have nonetheless taken the site address from the application form as in my opinion it more clearly identifies the land in question. However, to avoid repetition and as it is not an act of development, I have omitted the address from the description of development.
3. In undertaking the site visit, I was unable to access the site. I was, however, able to see the relevant parts of the site sufficiently to judge the proposal from public land. I have based my decision on the totality of the evidence from the appellant and the Council, along with what I observed from the site visit.

Main Issues

4. Although there is no formal decision from the Council, they have offered putative reasons for refusal. Based on these, the main issues are the effect of the proposed development on a) the character and appearance of the area and in particular on the setting of a heritage asset, The Thrifts Conservation Area (TTCA); and b) the living conditions of neighbours and future occupiers of the proposed dwelling.

Reasons

Character and Appearance

5. The appeal site forms a piece of land situated between the rear garden of No. 41 Hazlemere Road and the side boundary to No. 46 Silverdale Road. The site probably previously formed part of the rear garden to 41 Hazlemere Road but is now separated from it. The site is within the Petts Wood Area of Special Residential Character (ASRC), which is said to be characterised by its open, suburban and semi-rural environment.
6. Properties around the site are generally well sized, mainly semi-detached dwellings sitting within well sized plots. Houses in Hazlemere Road display a more consistent appearance and use of external finishes than those in Silverdale Road. However, there is a degree of consistency in Silverdale Road in the use of gables to front elevations, with the semi-detached dwellings having adjoining gables centrally within each pair.
7. Houses are set back from their frontages. This, together with the gaps between buildings and the mature trees and planting within gardens and which also provides wider framing to the area, establish a character that is both spacious and verdant and accords with its ASRC designation.
8. The appeal scheme would introduce a large detached dwelling into a plot with a somewhat shallow depth in comparison to the prevailing pattern of plot depths. Although distances to the side boundaries from the proposed dwelling would not be short, they would noticeably alter from front-to-back and be different on either side. They would also be different from the more regular spacing between buildings elsewhere in the vicinity. This is a consequence of the house not sitting perpendicular to the site's boundaries. The large crown roof would accentuate the scale of built form and somewhat contrived nature of the proposal.
9. Whilst variety and difference does not necessarily lead to harm, in this particular instance the proposed building would not be a positive addition, appearing manifestly at odds with the form and appearance of the surrounding properties. It would not reflect the established built form nor prevailing spacious pattern of development within the locality.
10. The appeal scheme would also add a substantial amount of built development into what is currently an important visual break in the street scene, between the houses in Hazlemere Road and those in Silverdale Road. It would be directly opposite the TTCA. In particular, it would be opposite the garden of No. 66 Great Thrift, which assists in providing space and mature landscaping around and between properties.
11. Indeed, based on what I have read and from what I saw when I visited the site and the surrounding area, it seems to me that the significance of the TTCA is derived not just from the architecture and degree of homogeneity amongst the buildings. It is also derived from the positioning of the buildings, the space around them and thus the suburban, low density and verdant context in which they sit.
12. There is no statutory protection for the setting of a conservation area in the Planning (Listed Buildings and Conservation Areas) Act 1990. However, Paragraph 200 of the National Planning Policy Framework (the Framework)

states that harm or loss to the significance of a designated heritage asset, or from development within its setting, should require clear and convincing justification.

13. The proposal would be evident in certain views towards and from the TTCA. It would draw the eye and be an obvious incursion into what is currently an open area that helps to provide a transition into the conservation area. Whilst there would be a limited negative effect, it would nonetheless be harmful to the setting of the TTCA.
14. Although the house would be largely finished in render and would incorporate a gable on the front elevation, towards the northern end of the house, these would not overcome the harm I have identified. I therefore conclude that the development would harm the character and appearance of the area and the setting of the TTCA.
15. Accordingly, the development conflicts with the requirements of Policies 3, 4, 8, 37, 42 and 44 of the Bromley Local Plan 2019 (BLP) insofar as they seek to ensure developments respect local character, particularly in an ASRC and that the effects of development adjacent to a conservation area do not detract from its setting.
16. Given my observations above, the level of harm I would attribute to the TTCA would be less than substantial. Nevertheless, considerable importance and great weight should still be given to the conservation of this designated heritage asset when balancing the harm against any public benefits. This is a matter I return to below.

Living Conditions

17. The adjoining house at No.46 Silverdale Road has a large first floor rear terrace area which is adjacent to the boundary with the appeal site. The proposed dwelling would be positioned such that its rear elevation would be in very close proximity to the terrace. Not only would the terrace be offered direct overlooking of the proposed dwelling's rear patio, which is often meant to be the most private part of a rear garden, but it would also offer views into the nearest windows on the rear elevation. The proposed upper floor windows would similarly offer views across the neighbour's terrace area.
18. A degree of mutual overlooking might be expected in a suburban location such as this one. Nevertheless, the proximity of the proposed dwelling to the neighbour's terrace area would give rise to a level of mutual overlooking that would not generally be expected or considered acceptable in a setting such as this one. Whilst I acknowledge that the existing terrace appears to offer a greater degree of overlooking across neighbouring gardens than might usually be expected, this in itself is not a reason to exacerbate such matters. A condition would not be capable of overcoming the harm I have identified.
19. It is suggested that the terrace to No.46 is in some way contrary to 'regulations' as it does not have 1.8m high obscure glazing around it. However, there is no evidence to suggest that it would need to necessarily be that high to accord with Building Regulations. Furthermore, there is no evidence to indicate that there is a planning condition regulating either the height or opaqueness of any barrier around the terrace area. Accordingly, there is no substantive evidence before me to indicate that the Council is considering or

could pursue enforcement action against a breach of planning control. As such, this is not a matter to which I can attach weight.

20. In the circumstances, I find that the proposal would adversely harm the living conditions of neighbours and future occupiers of the proposed dwelling. Accordingly, the proposal is contrary to Policies 3,4, and 37 of the BLP which, amongst other things, seek to ensure developments respect the living conditions of existing and future occupiers.

Other Matters

21. My attention has been drawn to several paragraphs in the Framework which are said to support the development. However, in addition to the Framework's paragraphs designed to avoid harm to heritage assets, I am satisfied that the proposal would not be sympathetic to local character and thus would also be contrary to Paragraph 130 of the Framework. Furthermore, by failing to safeguard the environment, the scheme would run counter to key components of the Framework's overall objective of making effective use of land.
22. I was referred to a previous appeal decision opposite the site. However, I have considered the appeal proposal on its individual merits and with regard to the specific circumstances of the site and its surrounds.
23. It is said that the development could provide sufficient internal space and off-street parking to meet the required standards. However, this would be expected for any development to be considered acceptable and so does not weigh positively in favour of the scheme.
24. I am aware that the appeal site has been physically severed from No. 41 by a fence and is in a different ownership. However, in terms of the overall effect on the character and appearance of the area, its current status is less harmful than the proposal and is not a reason to allow the development.

Heritage and Planning Balance

25. Paragraph 202 of the Framework requires that where 'less than substantial harm' occurs it should be weighed against the public benefits of the proposal.
26. The Government's objective is to significantly boost the supply of housing. The appeal site would provide an additional dwelling that would accord with the Framework's support for windfall sites. There would be associated social and economic benefits although some of these would be limited by virtue of time and the scale of the proposal.
27. The provision of one new dwelling with adequate access to services would make only a limited numerical contribution towards housing supply. However, the extent of the under-delivery of housing in the area puts added emphasis on all new housing developments, of whatever scale. In these circumstances I attribute considerable weight to the proposal.
28. The Framework advises that any harm to the significance of a heritage asset (including from development within its setting) should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm to the significance. I have found that the public benefits of the proposal should be afforded considerable weight. However, I judge that they would not outweigh the harm

to the setting of the TTCA and its significance, which although minor, is required to be attributed great weight.

29. The harm to the designated heritage asset provides a clear reason for refusing the development. Therefore, notwithstanding the housing land supply position, there is no need to refer to the test in paragraph 11 d) ii) of the Framework. As a result, the presumption in favour of sustainable development does not apply.
30. Whilst there would be some beneficial aspects of the scheme, I have not found there to be justification for permitting the less than substantial harm to the heritage asset. Furthermore, I have found the proposal would cause considerable and long lasting harm to the wider character and appearance of the area, as well as the living conditions of neighbouring occupants and those of any future occupants of the proposed dwelling.
31. For these reasons, the proposal would conflict with the development plan taken as a whole. There are no other material considerations, including the Framework, which lead me to determine the appeal other than in accordance with the development plan.

Conclusion

32. For the reasons given above, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR