



Appeal Decision

Site visit made on 20 June 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2023

Appeal Ref: APP/G5180/W/22/3303582

Brook House, Chislehurst Road, Chislehurst BR1 2NJ

- 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 Mr A Yazdani against the Council for the London Borough of Bromley.
- The application Ref 21/05417/FULL1 is dated 15 November 2021.
- The development proposed is described as the "Demolition of existing building and the erection of a building containing 9 flats with associated underground and surface car parking, cycle parking, bin storage and associated landscaping (revision following extant planning approval ref: 20/00723/FULL1)."

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr A Yazdani against the Council for the London Borough of Bromley. This application is the subject of a separate decision.

Preliminary Matters

3. I have determined this appeal on the basis of the Council's failure to determine the planning application within the statutory timescale. However, I have had regard to the Council's statement, in so far that it provides clarity on the reasons why the Council would have refused planning permission had it been able to do so.
4. In the absence of any evidence from the Council to indicate otherwise, it would appear that there is no dispute between the parties as to the acceptability of the other elements of the proposal. I shall therefore confine my detailed considerations to character and appearance and the living conditions of nearby residents alongside the living conditions for future occupiers as set out in the Council's statement.

Main Issues

5. In light of the above the main issues are the effect of the proposed development on:
 - i) the living conditions of nearby residents with specific regard to privacy;
 - ii) the character and appearance of the area with specific regard to overbearing and cramped form of development; and

- iii) the living conditions of future occupiers with regard to light and ventilation.

Reasons

Living conditions of nearby residents

6. The appeal site is surrounded by existing residential properties including those on Berryfield Close and Asprey Close. Given the scale and height of the proposal, the built development would be visible from these neighbouring properties. Windows proposed at ground level would mainly be screened from neighbouring properties due to the boundary treatments. However, the windows and the terraces at first and second floor level, and in particular along the flank elevations, would be more prominent and would face towards these neighbouring properties at close quarters.
7. In regard to the impacts on the residents at Asprey Close, the property most affected would be Pines End adjoining the site to the east. It is acknowledged that the proposal has incorporated design elements such as high level windows and oriel windows to reduce actual and perceived levels of overlooking. Furthermore, from my site observations there is a well-established vegetated boundary under the control of the appellant between these properties that would further minimise levels of overlooking from the proposal. This could be secured and enhanced by way of a condition.
8. Nevertheless, the proposed elevation includes the provision of two first floor windows serving bedrooms 1 and 2 of Flat 6, facing Pines End providing direct views of the property and its garden. These are single aspect rooms and thus the provision of any obscured glazing, to mitigate overlooking, would have a detrimental impact on the living conditions of any future residents of Flat 6 leading to a poor outlook.
9. With regard to the flank elevation adjoining the properties in Berryfield Close, the proposal would provide additional windows along this elevation when compared to the existing situation. As with the opposite flank, high level and oriel windows have been incorporated at the first floor level to mitigate overlooking from bedrooms in Flats 7 and 8. However, bedroom 1 of Flat 8 provides a corner window that would create additional levels of actual and perceived overlooking. This would be particularly prevalent at Nos 1, 2 and 3 Berryfield Close. The increase in actual and perceived levels of overlooking, coupled with the loss of the screening vegetation along the boundary due to the proposal would result in a loss of privacy for these neighbours.
10. The appellant has drawn my attention to a previous planning permission¹, highlighting that the scheme was found acceptable in regard to the living conditions on the nearby residents. However, whilst it is acknowledged that the approved scheme contained 2 upper floor windows in each flank elevation, and terraces at the rear of the site that would provide actual and perceived levels of overlooking, the scheme subject to this appeal contains significantly more openings on both flanks, which would lead to a considerable increase in the perception of overlooking and loss of privacy experienced at the adjoining sites. Therefore, I consider that the previous planning permission would not be

¹ London Borough of Bromley Planning Ref: 20/00723/FULL1

significantly more harmful than the appeal scheme and therefore I have given it limited weight.

11. The limited separation between the sites, combined with the increase number, size and positioning of the proposed windows, would mean that there would be a significant perception of overlooking between the neighbouring properties at relatively close quarters.
12. As such, the development would harm the living conditions of the nearby residents by reason of unacceptable overlooking and loss of privacy. This would be contrary to Policy 37 of the Bromley Local Plan 2019 (BLP), Policy D3 of The London Plan, March 2021 (LP) and paragraph 130 f) of the National Planning Policy Framework (the Framework) which, amongst other matters, seek to ensure that new developments protect the living conditions of occupiers of neighbouring dwellings from loss of privacy and expects new developments to secure a high standard of amenity for existing and future users.

Character and appearance

13. The appeal site is a large, detached property located on the northern side of Chislehurst Road with the flank elevation adjoining the cul-de-sac of Berryfield Close. The area is principally a residential neighbourhood, with varying styles of properties, albeit these properties are generally large, detached houses sitting in generous plots. There are a number of established trees that line the streets providing a pleasant and verdant feel to the surrounding area. The proposal seeks to demolish the existing substantial property and replace with 9 flats with an underground car park and associated landscaping.
14. As set out in LP Policy D3 there is a need to accommodate more intensive development on small sites in suburban locations whilst retaining the features that make those locations distinctive places in which to live. Given the varied nature of the character and appearance of Chislehurst Road and the surrounding area, it seems to me that there is scope for a development to be designed to optimise the capacity of this site more intensively.
15. The existing site is long and relatively narrow, being constrained by the adjoining access to Berryfield close, where the residential properties face the flank elevation of the appeal site. The proposal consists of a linear development with the built form above ground level being of two and three storey heights, albeit the third storey comprises accommodation mainly in the roof space with terraces at the rear. The proposal would have a greater mass and bulk than the existing and neighbouring properties. However, the articulation and use of complementary materials would successfully break up its overall massing and bulk and would not appear dominating within the existing environment.
16. The layout would broadly reflect a previously approved² layout, albeit that the rear projection has been repositioned in a more central area. Nevertheless, the general building line of development would be retained. While the building would provide additional bulk and mass from that previously approved, and would be larger than neighbouring dwellings, the overall layout, scale, and height would respect the character and appearance of the area. The scheme would be conventional in appearance but appropriate in design for its intended use, and a condition could ensure high quality external materials.

² London Borough of Bromley Planning Ref: 20/00723/FULL1

17. The overall increase in built form would be set back in the site similar to the existing arrangement, albeit accommodated over more of the site. Furthermore, the incorporation of the subterranean level for car parking would reduce any impacts associated with high levels of forecourt parking, thus retaining some of the existing trees and allowing for suitable soft landscaping. Given these factors, the positioning of the proposal within the plot and relationship with neighbouring buildings, provides an adequate degree of spacing around the proposal, as such it would not appear cramped or overbearing.
18. I note the concerns regarding the loss of trees particularly the contribution they make to the pleasant and verdant feel to the surrounding area. However, only low-value specimens would be affected. Furthermore, details of a soft landscaping scheme could be secured by a condition, which together with the retained trees would not unduly diminish the continuity and overall integrity of the appeal site and the character and appearance of the area in general. Overall, the proposed development, due to its design, scale and layout, would be a sympathetic addition that would not be out of keeping with the varied built form of the area and would not have a detrimental effect on the surrounding locality.
19. The proposal would not therefore harm the character and appearance of the surrounding area, and does not result in a cramped or overbearing form of development. As such, it would accord with the principles of BLP Policies 4, 8 and 37 and the LP Policy D3 which amongst other things, requires all new development to be design led, be of high quality and compatible with development in the surrounding area. The proposal would also comply with Paragraph 130 c) of the Framework insofar as it requires development to be sympathetic to local character.

Living conditions of future occupiers

20. It has been put to me that bedroom 3 and the study of Flat 9 would fail to provide high quality accommodation, having regard to lighting and ventilation, which would be provided solely by rooflights. However, the sectional drawings demonstrate that the rooflights would provide adequate levels of daylight into the rooms as well as a sill height which provides a modest outlook. These units are also provided as openable to allow for ventilation for future occupants.
21. The proposal would therefore provide a good standard of living conditions for future occupiers. As such, the proposal would comply with BLP Policies 4 and 37 and LP Policy D6 which seek, amongst other things, to achieve high quality housing, and the Framework which also seeks to deliver high quality design and a good standard of amenity for all existing and future occupants of buildings.

Other Matters

22. In addition to those matters considered above, local residents have raised concerns relating to, but not limited to loss of light, impact on trees, overdevelopment and highway safety. However, I note that the Council raises no objections to these matters as part of the appeal, and they did not form part of their statement of case. In any event, as I am dismissing the appeal for the reasons set out, it has not been necessary for me to consider these matters further.

Planning Balance

23. The Council accepts that it cannot demonstrate a five-year housing land supply at present. The appellant advises that the supply figure is 3.31 years, and this is not disputed by the Council.
24. Consequently, as set out in Footnote 8 of the Framework, Paragraph 11 d) ii. should be applied. This directs that the relevant development plan policies which are most important for determining the application should be considered out-of-date, and 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. Paragraph 130 of the Framework requires, among other objectives, to create places that deliver a high standard of amenity for existing and future users. The proposed development would fail to meet these objectives as I have found harm to the living conditions of the existing adjoining residents and this conflict carries significant weight.
26. The appeal would provide a contribution to the supply of housing, set against the positive approach to housing growth within the Framework. The Framework makes clear that small sites such as this can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. Based on the information before me and my visit, the appeal site is in a sustainable location with a range of shops and facilities in relatively close proximity and with convenient access to alternative transport modes. Thus, any future residents would have good access to facilities. Furthermore, it would also benefit the local economy in the short term through construction activity and in the longer term through the introduction of an increased population to support businesses. These are matters to which I attribute modest weight noting the contribution 9 flats would make to the Council's housing undersupply.
27. Given my findings, the adverse impacts of allowing this appeal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this case.

Conclusion

28. In conclusion, the proposed development conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. The scheme also fails to accord with the requirements of the Framework.
29. For the reasons given above I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR