



Appeal Decision

Site visit made on 14 September 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/G5180/W/23/3317076

School Cottage, The Avenue, St Pauls Cray, Orpington, Bromley BR5 3DJ

- 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 Hatherley Investments Ltd against the decision of London Borough of Bromley.
 - The application Ref DC/22/04074/FULL1, dated 18 October 2022, was refused by notice dated 16 January 2023.
 - The development proposed is the demolition of existing property and construction of six 2 bedroom flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - 1) whether, having regard to development plan policy, the proposed development would represent unacceptable development within Urban Open Space;
 - 2) whether, having regard to development plan policy, the proposed development would result in harm to the provision of education land;
 - 3) the effect of the proposed development on the character and appearance of the area;
 - 4) the effect of the proposed development on the setting of the grade II listed school;
 - 5) the effect of the proposed development on highway and pedestrian safety, and;
 - 6) the effect of the proposed development on biodiversity.

Reasons

Urban Open Space

3. The appeal site comprises a former caretaker's house associated with Kemnal Technology College which is a secondary school. It forms part of an allocation of an area of Urban Open Space in the Bromley Local Plan (2019). The appeal site currently comprises grass to the front and has a number of mature trees within it. These aspects reinforce its allocation as forming part of an area of Urban Open Space.

4. Policy 55 of the local plan outlines that proposals for built development in Urban Open Space will only be permitted under a limited number of criteria. These are where the development is related to the existing or allocated use, or the development is small scale and supports the outdoor recreational uses or children's play facilities on the site, or any replacement buildings do not exceed the site coverage of the existing development on the site.
5. Policy G4 of the London Plan (2021) also recognises the significance of open spaces and that development proposals should not result in the loss of protected open space.
6. The proposed development would involve the construction of six flats with associated parking to the front. The proposed form of development would be independent of the school and would therefore not be related to the existing use of the site. Although the development of six flats would be relatively small scale in terms of number, it would not support the outdoor recreational uses. The proposed building, including the associated parking area would exceed the site coverage of the existing development.
7. The policy also states that subject to the clauses as set out, where built development is involved, the Council will weigh any benefits being offered to the community such as new recreational or employment opportunities, against the proposed loss of open space. In terms of providing benefits to the community, the proposed development would deliver a small number of residential properties.
8. I acknowledge that the property on site is no longer occupied by an employee of the school, however it clearly retains its visual and physical attachment to the school and its grounds despite the presence of boundary treatments. Furthermore, the fact that it is not occupied does not change the land use designation in the local plan, that being as part of Urban Open Space.
9. The proposed development would therefore not constitute one of the circumstances as set out in Policy 55 of the local plan. It would result in the harmful loss of open space and represent unacceptable development in the Urban Open Space. The proposed development would therefore be contrary to Policy 55 of the Bromley Local Plan (2019) and Policy G4 of the London Plan (2021) as set out above.

Education land

10. As set out, the appeal property is a former caretaker's dwelling for the school, the grounds of which it is located in. It is allocated in the local plan as forming part of the education land.
11. Policy 27 of the local plan recognises the significance of educational facilities within the borough and outlines three ways in which this will be provided for. The first is through assessing the need for the range of education infrastructure over the plan period and by allocating sites accordingly. I have taken this to mean that at the time the local plan was adopted, the allocation of the site for education, which includes the appeal site, was considered in light of this need and therefore allocated as such accordingly.
12. The second means to ensuring the provision of an appropriate range of educational facilities is by defining land with permitted use for education purposes as 'education land' and safeguarding these sites for education

- purposes for the period of the plan. The redevelopment of education land for alternative uses will not be permitted. The third aspect covers extensions to schools and is not pertinent to the proposed development.
13. The proposed development would deliver six flats which would be independent and entirely separate from the school. Although the property is no longer occupied by an employee of the school, as I have identified above, it clearly retains its visual and physical attachment to the school and its grounds. Furthermore, the fact that it is not occupied does not change the land use designation in the local plan, forming education land, regardless of ownership.
 14. The evidence shows how the site has been marketed for sale. Although this suggests a willingness to sell, there is no detailed analysis of the need from a land use educational perspective. The evidence does not lead me to a firm conclusion that the land would not be needed for education purposes at a future date and the policy is clear that the intention is to safeguard such sites from non-educational uses for the plan period.
 15. A copy of a letter from the Department of Education has been submitted with the appeal. This letter confirms that the Secretary of State does not intend to make a direction in relation to the land under Schedule 1, Part 3 of the Academies Act 2010 and that consent has been given to the disposal and transfer of the land.
 16. Although it is not a function of the Department of Education to determine land use planning matters in relation to planning policy, the letter does add some weight to the argument that the land is not needed for education use at this point in time. Similarly, however, it does not make any assessment of how it relates to the purpose of safeguarding education land for the plan period and whether or not disposing of the land conflicts with the aim of the policy, that being to safeguard education land during the plan period.
 17. The Council have referred to the 'agent of change' principle and the implications any future development may have on the operation of the school. In my experience, it is not uncommon for residential properties to be in close proximity to educational establishments in such an arrangement as is proposed. Whilst there may be some noticeable comings and goings, these are largely confined to the start and end of the school day and not at unacceptable times. There may also be noise generation from the use of the playing fields, however this would be confined to during the school day and possible evening and weekend use for sports. I do not consider, however, that any of these factors would result in unacceptable living conditions for future occupants or result in unreasonable or onerous limitations on the operations of the school having regard to the agent of change principle.
 18. Therefore, the proposed development would fail to safeguard the appeal site as education land, resulting in harm through its loss, and would be contrary to Policy 27 of the Bromley Local Plan (2019).

Character and appearance

19. The existing property is a two-storey detached dwelling which was formerly occupied by the school caretaker. It sits adjacent to the existing school access from The Avenue. Its flat roof, proportioned fenestration and well-defined

glazing bars take their cue from the architecture and design of the school building, which is a grade II listed building.

20. Were it not for its evident visual and physical connection with the school, the appeal property would appear somewhat isolated and uncharacteristic with the regular pattern of residential development in the area beyond the school grounds. In short, the property would be unlikely to be there were it not for its association with the school.
21. The proposed development would sever the connection with the school and, in this regard, by forming an independent standalone building, it would appear isolated and alien in its context. The proposed design nevertheless draws on a number of key features in terms of the architectural detail used in the main school building, particularly in terms of the materials, fenestration, flat roof and central stairwell. Although this would provide some visual cohesion, the isolated siting of a building of significantly greater scale and mass than the existing building would appear confusing and unintended, when considered against the existing situation.
22. It would not be uncommon to have a dwellinghouse on school grounds to provide caretaker or staff accommodation and in this regard such an arrangement is not uncharacteristic or unusual. It would however be uncharacteristic to have a small independent residential block of flats on part of a school site, even if that block would be located on the site of a former caretaker's house.
23. On the broader matter of character and appearance, I therefore find that in terms of appearance, the general design approach would be harmonious, however the nature of the development, particularly its scale and siting, would be at odds with the character of the school setting and the wider area.
24. It would therefore be contrary to Policies 4 and 37 of the Bromley Local Plan (2019) and Policy D4 of the London Plan (2021). Collectively, these policies require that development is of a high-quality design and that new housing should enhance the quality of local places, respecting local character and context by positively contributing to the street-scene and landscape.

Setting of listed building

25. The school building is a grade II listed building. The listing description identifies that it was built in 1938 in a modern style. It is centrally positioned on a large site surrounded by playing fields.
26. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 ('the LBCA Act') requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications.
27. Despite the cessation of its use in terms of occupation by the school caretaker, and that the site appears to have been sold, the appeal property nevertheless, being located within the school grounds is an ancillary building, at least, if not in addition to, for its historical context.
28. Due to its historical association combined with its physical and visual connection, the appeal property lies within the setting of the grade II listed school. The existing building appears relatively subservient and includes trees

and grass which positively contribute to the setting of the listed building. Despite some design connections in the proposed development, the development would sever the connection and historical association with the school, and this would cause minor harm to its setting.

29. The proposed building would be situated close to the school entrance on The Avenue. Due to its scale and siting it would draw attention away from the school building and would not appear subservient when viewed from The Avenue, where it would appear significantly more dominant than the existing building. I acknowledge that there is a reasonable degree of separation from the main school building, and for this reason I find that the scale and siting would cause minor harm in this regard.
30. I observed on my site visit that there are several mature trees on the site boundary. These trees positively contribute to the verdant setting of the school where there is an emphasis on mature trees being located on the site boundary and within the site. Although it is not clear in the evidence, it would appear that a number of trees would be required to be removed to construct the proposed car park. I find that their removal would cause further minor harm to the setting of the listed building.
31. For these collective reasons, the proposed development would fail to preserve the setting of the listed building. Having regard to paragraph 202 of the National Planning Policy Framework (2023) (the Framework), given the separation from the school building and that the site contains an existing building I find that the development would cause less than substantial harm to the setting of the listed building. I do not, however, find that this harm is outweighed by the provision of the proposed residential properties or any other public benefits of the proposed development.
32. The proposed development would therefore be contrary to Policy 38 of the Bromley Local Plan and Policy HC1 of the London Plan (2021). Collectively, these policies require developments to preserve the setting of listed buildings.

Highway safety

33. The proposed development would be accessed via an existing access which leads to the school from The Avenue. I observed on my site visit, which took place at the end of the school day, that this access point was used by a moderate number of pupils on foot leaving the school grounds. Given the school's main entrance appears to be located on Sevenoaks Way, it is likely that the access on The Avenue is not the sole or primary means of access for pupils. This access from The Avenue also leads to a staff car park.
34. On my site visit, I observed that whilst pupils were leaving the school grounds on foot, there were no vehicles accessing or egressing the school site. I have taken this to be due to the fact that staff would typically leave the school premises after pupils, although I appreciate that this may not always be the case.
35. The comings and goings of vehicles for the proposed development would be less predictable and would be unlikely to be concentrated solely to times just before and after pupils have used the access on foot or other means, as appears to be the current situation.

36. The increase in vehicle movements from future occupants, their visitors and deliveries, at various times throughout the day, would increase the risk of conflict with pupils accessing the school via this access on foot or by other means.
37. The existing building also has a pedestrian access from the footpath leading to its entrance. This ensures occupants are not required to walk in the roadway to access the site. The proposed plans do not show any such access and therefore any future occupants or their visitors arriving on foot or in a wheelchair would be required to utilise the road to access the property. Unlike the conflict with pupil movements at the start and end of the day, this would be at various times throughout the day and would result in a further risk of conflict between vehicles and pedestrians.
38. On the matter of parking, six parking spaces are proposed. This would be a ratio of one per dwelling. The site has a low PTAL rating of 1b and the Council outline how a maximum number of 9 parking spaces should be provided. Although the site is not readily accessible to local shops and services, there are bus stops located on Midfield Way. I also observed on my site visit that The Avenue did not appear to suffer from any significant parking stress that would lead to conditions that would be prejudicial to highway safety. There are also short, widened sections of the carriageway where vehicles can park without causing an obstruction. I therefore find that the level of parking would be appropriate for the development, and this would not lead to an unacceptable impact on highway safety.
39. Therefore, although I find that the parking implications of the development would not cause an unacceptable impact on highway safety, I find that the proposed access arrangements would increase the intensity of use and thus increase the risk of conflicts between pedestrians and vehicles. Consequently, this would be unacceptable in highway safety terms. It would be contrary to the aims of Policy 32 of the Bromley Local Plan (2019) and Policy T4 of the London Plan (2021) in terms of ensuring developments do not increase road danger.

Biodiversity

40. The evidence shows that the site lies within an allocated area of Urban Open Space which the Council consider may offer suitable wildlife habitat, commuting and/or foraging habitat and may therefore present ecological and biodiversity constraints for the development.
41. I observed on my site visit that the proposed development would likely require the removal of existing trees on the site to allow for the construction of the proposed car park. It would also result in the removal of the grassed area in front of the property. Both these features, when combined with the other biodiversity features surrounding the site, have the potential to provide features of ecological significance.
42. The evidence does not identify any aspects of ecological significance or biodiversity value and there is no assessment of whether the development would or would not have an adverse impact on biodiversity or whether mitigation measures would be necessary.

43. The appellant states there is no indication of any protected species being present, although there is no substantive evidence before me to support this. The appellant has also set out how, when the application was first submitted, no request was made for any survey to be carried out. The Council clearly considered that there was insufficient information in this regard, and this is a matter to which I am in agreement with. I acknowledge that the failure to request information may cause frustration to the appellant, however this in itself is not sufficient to close the matter as a relevant consideration in this case.
44. Therefore, the lack of certainty over the potential harm that may be caused to matters of biodiversity significance weighs against the appeal in the planning balance and would conflict with the requirements of Policy 72 of the Bromley Local Plan (2019) and Policy G6 of the London Plan (2021) that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.
45. Policy 69 of the local plan cited in the Council's reason for refusal in relation to biodiversity relates to areas allocated as a Local Nature Reserve (LNR), Site of Importance for Nature Conservation (SINC) or a Regionally Important Geological Site (RIG) and therefore is not applicable in this case.

Other Matters

46. As the application of policies in the Framework that protect the Local Green Space and designated heritage assets provides a clear reason for refusing the proposed development, it does not benefit from the presumption in favour of sustainable development as has been suggested by the appellant.

Planning Balance and Conclusion

47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
48. The proposed development would result in a slight increase in the Council's overall housing number. It would also bring a small number of additional residents to the area who would contribute to the local economy. I give these factors moderate weight in favour of the development.
49. However, the cumulative harm that I have identified that would be caused to the Urban Open Space, the provision of education land, the character and appearance of the area, the setting of the grade II listed school, highway and pedestrian safety, and biodiversity attracts significant weight that outweighs the benefits associated with the proposed development.
50. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
51. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR