



Appeal Decision

Site visit made on 27 September 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Appeal Ref: APP/G5180/W/23/3317084

4a Blakeney Road, Bromley, Beckenham, BR3 1HA

- 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 Mortlake Investments against the decision of the London Borough of Bromley.
 - The application Ref DC/22/03437/FULL1, dated 26 August 2022, was refused by notice dated 24 November 2022.
 - The development proposed is demolition of the existing detached dwelling and the subsequent construction of two x three storey buildings with habitable roof space to accommodate a total of 9 apartments (within a mix of 4 x 1b/2p, 4 x 2b/4p, and 1 X 3b/4p) with associated access, private and communal amenity space, refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the Council against the appellant. This is subject of a separate decision.

Preliminary Matters

3. As part of the appeal, the appellant has provided a swept path¹ analysis and an Ecological Impact Assessment² (EIA). This information does not amend the proposal, rather it has been submitted to support the proposal in terms of its effect on highway safety and biodiversity. The Council and interested parties have had an opportunity to comment on this information as part of the appeal proceedings. Therefore, no party would be prejudiced by my consideration of it as part of the appeal.
4. The Council consider the swept path analysis to address its concerns regarding highway safety and, subject to conditions, no longer wishes to contest this reason for refusal. From the evidence before me and my observations on site, I am of the same view.
5. Alongside the appellant's final comments on the Council's statement of case, they also submitted bat emergence and re-entry surveys. New evidence is not normally accepted at this late stage in the appeal process. While I recognise that the surveys needed to be undertaken during the appropriate season, there has been no change in circumstance to justify accepting the late evidence

¹ Appendix 11 of appellant's Appeal Statement, Drawing No: ITP 392-1-01 P1, dated 14.01.23.

² Prepared by Enzygo Environmental Consultants for Blakeney road, Mialex Limited, reference CRM.1916.004.EC.R.001, dated 9th February 2023.

outside the statutory time limits. Furthermore, interested parties have not had an opportunity to comment on the surveys and would therefore be prejudiced if I were to accept this late evidence. Given this, in line with the Procedural guide: Planning appeals - England, I have not taken the surveys into account in the determination of this appeal.

Main Issues

6. In the context of the above, the main issues are the effect of the proposal on:
- the living conditions of neighbouring occupants with particular regard to outlook and privacy, and whether the proposal would provide satisfactory living conditions for future occupants of the proposal in this regard;
 - biodiversity, with particular regard to protected species; and
 - the character and appearance of the area.

Reasons

Living conditions

7. The appeal site consists of a fairly modest sized house with a considerable rear garden. From the evidence before me, I understand that the rear garden was recently cleared of all vegetation and at my time of visiting the site, most of it comprised bare ground.
8. Either side of the appeal site are three-storey, purpose-built blocks of flats, known as Embassy Gardens and The Archways, 4 Blakeney Road. Both buildings have sections that extend away from Blakeney Road towards the rear of the plots. These sections have windows in them that face the appeal site. The existing boundary treatments consist of a closed board fence, brick wall and some vegetation set in the grounds of the neighbouring buildings. None of which are particularly tall. As a result, the appeal site is directly overlooked by many windows on the first and second floors of the neighbouring buildings.
9. In terms of outlook, views from most of these windows would be of landscaped garden set between the two proposed buildings. The proposed building at the front of the site closest to Blakeney Road would be located in a similar position to the existing house. It would be set back a comparable distance from the highway as the neighbouring blocks of flats and positioned between them. Given this and the screening provided by some existing mature trees at this point on the boundary, only the outlook from a small number of windows in the neighbouring block of Embassy Gardens would be affected by the proposed front building. Nonetheless, these windows currently face the existing house and, while the blank flank elevation of the proposed front building would be taller and slightly deeper than the existing house, the change in outlook would not be to such a degree that it would harm the living conditions of these occupants.
10. The proposed building positioned towards the rear of the site would be partly aligned with rows of garages located in the rear of the neighbouring plots. However, part of its flank elevation would be directly opposite some of the windows serving Embassy Gardens. This elevation would be three-storeys high with rooms in the roof and would be necessarily blank to protect the privacy of the existing neighbours. As a result, the outlook from these windows, which

currently consist of views across the appeal site of mature trees and other vegetation within the rear gardens of the neighbouring properties, would significantly change. There would be a substantial and stark contrast between this existing view and the blank flank elevation of the proposal. Therefore, although there would be around 17 metres between these windows and the flank elevation, there would be some appreciable harm to the living conditions of these occupants in this regard.

11. The appellant has drawn my attention to a recent planning application³ that was recommended for approval by officers to the Council's Development Control Committee. In that case, a 15-metre separation distance was considered acceptable to ensure no mutual overlooking or privacy impacts. However, the harm I have identified above relates to the resulting outlook from the flats in Embassy Gardens and not overlooking or privacy. Furthermore, while I do not have the full details of the application before me, it appears that the site and scheme were significantly larger than the appeal before me and the context of the site considerably different. The example is therefore not determinative, and I afford it limited weight in my decision.
12. In terms of privacy, none of the windows proposed as part of the development would directly face windows serving the neighbouring flats. There would be a fairly generous separation distance between the windows, and any views taken from the proposed windows of the development into the windows serving the neighbouring flats would be oblique. Moreover, I saw there is already a degree of mutual overlooking between Embassy Gardens and The Archways across the appeal site. Nonetheless, given the large amount of glazing proposed on the north elevation of the front building and south elevation of the rear building, the proposal would introduce a new relationship of perceived overlooking.
13. Both proposed buildings would also have second floor terraces with only a relatively short balustrade and no side screens. This would allow direct views from the terraces into the windows of the neighbouring properties, which, despite the separation distance, would compromise the privacy of the existing occupants. Together with the perceived overlooking, this would result in harm to the living conditions of the existing occupants in this regard.
14. With regards to the privacy of future occupants of the proposal, although there would be over 25 metres between the proposed buildings, the windows in each building would directly face one another. These windows would be extremely large. Therefore, despite the separation distance, the perception of being overlooked would be significant. The second-floor terraces would also face one another, and the garden spaces would be directly overlooked by the neighbouring properties. The proposal would therefore not provide satisfactory living conditions for future occupants in this regard.
15. The appellant has drawn my attention to the recent planning application⁴ discussed above, in terms of what the Council considered an acceptable separation distance in that case. However, I do not have the full details of the application before me. Given this, and for the reasons set out above, I have afforded this example limited weight in my decision. In any event, I have determined the appeal on its own planning merits.

³ Planning application reference: 22/03013/FULL1.

⁴ Planning application reference: 22/03013/FULL1.

16. Overall, the proposal would result in harm to the living conditions of neighbouring occupants with regards to outlook and privacy. It would also not provide satisfactory living conditions for future occupants with regards to privacy. Accordingly, it would conflict with Policy 37 of the Bromley Local Plan (2019) (Local Plan) in this regard. This seeks to ensure all development proposals respect the amenity of occupiers of neighbouring buildings and those of future occupants by providing healthy environments and ensuring they are not harmed by inadequate privacy.

Biodiversity

17. The Conservation of Habitats and Species Regulations 2017 imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal. Bats are listed as an EPS under these regulations.
18. The EIA submitted with the appeal concludes that minor enhancements in combination with mitigation would demonstrate an overall net gain for biodiversity on the appeal site, which, in the event the appeal was allowed, could be secured by condition. With regards to bats, its records there to be no evidence of roosting bats. Nevertheless, it identifies the existing house on the appeal site to have moderate suitability for them and recommends that bat emergence and re-entry surveys are undertaken to enable suitable and relevant mitigation measures to be put in place.
19. Circular 06/2005⁵ advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. It goes on to advise that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not convinced that any such circumstances exist in this case.
20. I therefore find that insufficient information and evidence has been provided to demonstrate that the development would not have an unacceptable adverse effect on bats. The proposal would therefore conflict with Policy 72 of the Local Plan, which seeks to ensure development will not have an adverse effect on protected species. It would also conflict with Policy G6 of the London Plan (2021), which requires development proposals to manage impacts on biodiversity. For the same reasons it would also fail to meet the statutory duty I have set out above.
21. The supporting text to Policy 69 explains that development proposals should begin by understanding their wider context and viewing promotion of nature conservation as integral to the site. Nonetheless, the policy itself relates to development proposals that may significantly affect the nature conservation interest or value of a Local Nature Reserve (LNR), Site of Importance for Nature Conservation (SINC) or a Regionally Important Geological Site (RIG). While there are these types of sites in the wider area, there is no evidence before me to suggest that the proposal may significantly affect their interest or value. The policy is therefore not applicable in this case.

⁵ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, dated 16 August 2005.

Character and Appearance

22. The section of Blakeney Road where the appeal site is located is wide with generous pavements. It comprises a mixture of houses and purpose-built blocks of flats on generous plots, set back from the highway. This gives the area a feeling of spaciousness. There are also several street trees that together with grass verges and frontage planting add greenery to the street scene.
23. The age, form and style of the buildings vary, as does their overall height. While most of the buildings are between 1-3 storeys, 4-storey buildings are not uncommon in the wider area. Also, Bouverie Lodge, which sits relatively close to the appeal site, is currently 5 storeys with permission for an upwards extension.
24. The proposal would increase the amount of built form on the appeal site. Nevertheless, on this side of Blakeney Road there is a range of built form located behind the buildings fronting the highway within the rear of the plots. Therefore, while tandem layouts are not a common feature of the area, the proposal would not be out of keeping with the existing pattern of development.
25. The proposed frontage building would be set back a similar distance from the highway to its neighbours. It would be 3-storeys with rooms in the roof, making it taller than the adjacent buildings and significantly taller than the existing dwelling. Nevertheless, it would be a comparable height and scale to other development in the wider area and would not appear incongruous. Similar sized gaps to those currently between the existing dwelling and neighbouring properties would be maintained. Therefore, despite the increase in height, the front building would not appear cramped.
26. The proposed building to the rear of the site would be narrower than the front building. Views of it from Blakeney Road would be restricted by the front building and the frontage planting in the plots of the neighbouring buildings. Moreover, it would be set over 25 metres back from the rear of the front building. Given this, it would have a very limited effect on the street scene and would not make the proposal appear cramped. Accordingly, overall, while the appeal site is narrow compared to neighbouring sites, for the reasons above, the proposal would sit comfortably within its plot.
27. Although the roof of the proposed front building could be considered bulky and would be noticeable due to its form, materials, and large dormer style windows, it would not necessarily be detrimental. There are a variety of roof forms and roof materials along this section of Blakeney Road, which reflect the age and style of the buildings. In the same way, the more modern design of the proposal would be of its time. While the dormer windows would be fairly unique in the area, their flat roof design reflects the flat roof profiles of buildings in the area, including The Archways. Furthermore, there are already a few relatively imposing buildings in the immediate area, including Bouverie Lodge. For these reasons, while the proposal may be prominent, it would not dominate the street scene, nor would it detract from the character and appearance of the site and its setting in the street scene.
28. I sympathise with those who live nearby that have been affected by the removal of the established trees and plants within the rear garden of the existing house. On my visit, it appeared that some grass had also been removed from the frontage. Nevertheless, there is established planting within

the frontages of the buildings either side of the appeal site, particularly along the frontage of Embassy Gardens. Given this, and the narrow width of the appeal site, the limited soft landscaping within its existing frontage did not have a detrimental effect on the green character of the street. In my view the frontage planting of the neighbouring buildings is highly likely to remain in a similar form for aesthetics. Therefore, while the appeal site in its current form does not add to the greenery of the area, it does not detract from it.

29. The proposal would incorporate landscaping, including some planting within the frontage of the development. This would soften the proposed parking area and would add to the existing greenery in the street scene. While this landscaping could be considered limited, there are frontages within the surrounding area that also have limited greenery, for example the frontage of Blakeney Hall opposite the appeal site. The proposal would therefore not appear out of place.
30. Accordingly, for the reasons above, the proposal would not harm the character and appearance of the area. It would accord with Policies 3, 4 and 37 of the Local Plan in this regard. These seek to ensure that residential development achieves a high standard or design and layout and does not have an unacceptable impact upon the character, appearance, and context of the area.

Other Matters

31. The proposal would provide 9 apartments in an accessible location close to public transport and facilities, which would contribute a net gain of 8 residential units towards the Borough's housing supply. The Council cannot demonstrate a five-year supply of deliverable housing sites. From the evidence before me, the current five-year housing land supply figure is 3.99 years, which shows there to be a moderate shortfall in supply. The delivery of 8 additional residential units in an accessible location weighs in favour of the scheme and, when factoring in the supply shortfall, attracts moderate and meaningful weight as a scheme benefit.
32. The proposal would also have moderate social and economic benefits resulting from the construction of the apartments and their subsequent occupation, as future occupants would be likely to contribute to the viability of local services and facilities.

Planning Balance and Conclusion

33. Given the shortfall in housing supply, paragraph 11d) falls to be considered. In this case permission should be withheld only where the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole. In that context I have reasoned that the proposal would be acceptable in terms of its effect on the character and appearance of the area.
34. However, this absence of harm neither outweighs nor addresses the harm I have identified to the living conditions of future and neighbouring occupants with regards to outlook and privacy and, in absence of evidence to the contrary, significant harm to European protected species. In this regard the proposal would conflict with policies 37 and 72 of the Local Plan and Policy G6 of the London Plan (2012), and overall, would conflict with the development plan read as a whole.

35. Policies 37 and 72 of the Local Plan and G6 of the London Plan are broadly consistent with the provisions of the Framework to create places with a high standard of amenity for existing and future users, and to protect and enhance biodiversity.
36. Therefore, while the Framework seeks to significantly boost the supply of homes and recognises the important contribution that small sites can make to meeting the housing requirement of an area, the adverse impact of the proposal would outweigh the benefits I have identified above. The proposal would not, therefore, benefit from the presumption in favour of sustainable development.
37. For the reasons above, having had regard to the development plan as a whole and all relevant material considerations, I conclude that the appeal should be dismissed.

Hannah Guest

INSPECTOR