



Appeal Decision

Site visit made on 16 November 2023

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/G5180/W/23/3321461

Land to the rear of 5 Hamlet Road, London SE19 2AP

- 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 CP Hamlet Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/02549/FULL1, dated 23 June 2022, was refused by notice dated 23 December 2022.
 - The development proposed is the construction of a part single storey, part two storey single dwellinghouse with associated pedestrian access to the side of no.5 Hamlet Road, cycle store, refuse store and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a part single storey, part two storey single dwellinghouse with associated pedestrian access to the side of no.5 Hamlet Road, cycle store, refuse store and landscaping at land to the rear of 5 Hamlet Road, London SE19 2AP in accordance with the terms of the application, Ref DC/22/02549/FULL1, dated 23 June 2022, subject to the conditions set out in the attached Schedule.

Preliminary Matter

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023. The Council and appellant were given the opportunity to provide comments. The appellant responded setting out their thoughts on the changes. I have taken these into account accordingly.

Main Issues

3. These are the effect of the proposal on the:
 - a) living conditions of the occupants of adjoining dwellings on Hamlet Road, with reference to the potential for noise and disturbance and privacy.
 - b) existing traffic and parking in the area and the safety of all highway users on Hamlet Road.

Reasons

Living conditions

4. The proposal is for a detached part single, part 2 storey dwelling to the rear of 5 Hamlet Road, a property subdivided into 4 flats. The site is vacant, overgrown with vegetation, and around 700 square metres in size.
5. Access to the site would be via the existing pedestrian access to the side of No 5. This contains existing steps adjacent to the front elevation, dropping to level access to the site. The access already serves an entrance to the lower ground

floor flat, No 5A and provides access to the shared communal area to the rear for all the flats, and the site. The shared access is around 2.8-3m wide down the side of No 5, although it has been landscaped in places and neighbours argue that the space is a private garden.

6. The proposal seeks to introduce gravel hardstanding to the side access, running from the bottom of the steps to the dwelling. Legal rights of access and land ownership matters are separate to planning, and I have based my assessment upon the proposals and plans before me.
7. *Noise and disturbance* - There would be an increase in pedestrian movements down the side of No 5 because of the proposal. This would be mostly noticeable to the occupiers of No 5A. However, it is important to note that the existing access is shared, and the proposal is for one family dwelling. The appellant also proposes a bin store and parcel/letter box to the front of No 5. This would reduce some delivery movements along the access. Therefore, the increase in pedestrian traffic would be moderate.
8. Noise or disturbance arising would likely be from people talking, footsteps or a bicycle being pushed past. None of these sources would be particularly loud, even on a gravel surface. It would also be transient and passive. Combined with the moderate increase in movements arising from one dwelling, this would not result in unacceptable levels of noise and disturbance.
9. *Privacy* - The side elevation of No 5 has a door and window to No 5A's kitchen. Future occupants would pass this window. However, given the transient movement of future occupiers, there would be no direct overlooking. Furthermore, any overlooking that did occur would be passive, akin to a window serving a house on a street frontage. No 5A's private amenity area is enclosed by a tall fence at the rear of No 5, and there would be no loss of privacy to this space.
10. The communal amenity space for the flats at the rear is currently open, but planting is proposed to the side of the access that would offer some screening. Also, any overlooking of this space would not be prolonged, such that enjoyment of the space would not be adversely affected.
11. The removal of the fencing to the front elevation of No 5 would not result in the access becoming publicly accessible. This is because someone would need to cross the shared, but clearly private frontage, to gain access. Additionally, given the boundary treatment, size of the proposal and the pedestrianised access, there would be no adverse effect upon the occupants of No 3. There would be an adequate distance between properties and the communal and private amenity spaces.
12. *Conclusion* - The proposal would not have an unacceptable effect on the living conditions of the occupants of dwellings on Hamlet Road. This would be compliant with Policies 3, 4, and 37 of the Bromley Local Plan (January 2019) (BLP) and Policy D3 of the London Plan (March 2021) (LP). These seek to optimise site capacity ensuring no unacceptable impact on residential amenity.

Traffic, parking and highway safety

13. The proposal would have no effect upon the existing parking arrangements for the flats at No 5, and no existing vehicles would be displaced on street. This is

clear from the plans, which details the proposed bin and parcel store placed adjacent to the existing bin storage area.

14. The proposal would also be car free and proposes no parking on site. To secure this, a planning obligation commits to providing car club membership. This ensures that the proposal is properly car free and reduces the dominance of vehicles on streets. The site is in a highly accessible area, being Public Transport Accessibility Level (PTAL) 5. These measures would encourage the use of sustainable methods of travel. This would be compliant with Policies T6 and T6.1 of the LP, where residential development with a PTAL of 5-6 should be car-free.
15. Policy 30 of the BLP details that it will normally require off-street parking spaces, and sets a minimum standard for this type of development. This is 1.5 spaces. This is inconsistent with the LP. Yet, the LP was adopted after the BLP, and the conflict must be resolved in favour of Policies T6 and T6.1. Thus, there is policy compliance with regard to parking provision.
16. Nevertheless, even if the future occupiers did own a car, the evidence presented by the appellant demonstrates adequate levels of parking stress in the area overnight. This is when residents normally require a space and thus, the addition of one, or even 2 cars parked on street is unlikely to lead to unacceptable levels of parking stress that would cause harm to amenity or highway safety. This is even taking account of the busy nature of the road, the bus route and the high number of accidents. If anything, these conditions would discourage car ownership.
17. If delivery vehicles parked illegally outside the site, this is a matter for the police or local highways authority. Notwithstanding, there are many properties on the street and deliveries to these dwellings are commonplace. The addition of one dwelling would not result in significantly greater adverse or unsafe highway manoeuvres from delivery drivers. There would be some disruption to surrounding residents during construction. However, this could be managed through the imposition of a construction management scheme and would be temporary.
18. Therefore, the proposal would have an acceptable effect on existing traffic and parking in the area and safety of all highway users on Hamlet Road. The proposal would be compliant with Policy 32 of the BLP, which seeks to ensure road safety is not significantly adversely affected.

Other Matters

Planning obligation

19. The planning obligation ensures that a future occupier is provided with car club membership for 3 years from the date of occupation (including a credit of 20 hours free driving time in year one). This would be necessary to make the development acceptable in planning terms and directly related to the development as it would facilitate car free development. It would also be fairly and reasonably related in scale and kind, and complies with Framework tests.

Belvedere Road Conservation Area

20. The dwelling itself would be located outside the Belvedere Road Conservation Area (CA), with only the access to the side of No 5 within the CA. The proposal

is of an acceptable design and the changes proposed to the access would have a neutral effect upon the significance of the conservation area.

Previous appeal decisions

21. The scheme is different to the previous appeal¹, which was for a greater number of dwellings. Thus, the impact was more intensive and my conclusions are different to that of the previous Inspector.
22. The appeal decisions cited in the Council's Statement of Case are for larger schemes. Two² pre-date the LP and thus the development plan was different. The Beckenham decision³ was for a much larger development of 10 flats, which could have a greater effect upon on street car parking.

Biodiversity

23. The Ecological Impact Assessment, dated July 2020, has a requirement in the report to review the finding within 2 years. An updated Ecological Appraisal (November 2023) was provided by the appellant, demonstrating that the 2020 surveys remain valid. The Council were provided with the opportunity to comment and suggested a condition.

Other considerations

24. As detailed above, legal rights of access and land ownership are private matters for the appellant and interested persons. The appellant has served notice upon the occupants of No 5 and signed Certificate B on the application form. The site is suitable for residential development and would be accessible in the event of an emergency.
25. The proposed access width would be sufficient for pedestrian traffic. It is desirable to provide level access to all new developments and the access length would be longer than advocated in guidance, such as Manual for Streets. However, these factors are existing, and it would be realistic to assume that the future occupiers of this dwelling would be fully aware of the site's access arrangements. Even if circumstances were to change, retrofitting accessible measures can normally be accommodated.
26. In relation to the Public Sector Equality Duty, due regard has been paid to minimising the disadvantages suffered by whoever the future occupiers of the additional house would be, insofar as they are different to those without a relevant protected characteristic. Although the appeal is to be allowed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one. Future occupants would pass the refuse store on leaving the site, such that drop offs would be convenient. I see no evidence how motorised vehicles could access the site because of the steps. Thus, the access to the site is suitable in this specific circumstance.
27. Any disruption to utilities on street would be managed by the contractors carrying out the work. I can only consider this proposal and any future proposals are not before me.

¹ APP/G5180/W/21/3268094

² APP/G5180/W/17/3191084 and APP/G5180/W/17/3197895

³ APP/G5180/W/20/3264344

Conditions

28. The plans are listed for certainty [condition 2]. A Construction and Environmental Management Plan would be necessary to ensure sufficient measures can be implemented in the interest of pedestrian and vehicular safety, and the living conditions of existing residents [condition 3]. However, I have removed "other site specific Highways and Environmental Protection issues as requested on a case by case basis" as this is not precise.
29. There are trees that require felling and lopping, following a comprehensive arboriculture assessment. There are also trees that are to be retained. Therefore, a tree protection plan and arboricultural method statement are necessary to ensure that the trees are suitably protected and managed [condition 4]. A Biodiversity Mitigation and Enhancement Plan is necessary to ensure there are no adverse effects upon biodiversity [condition 5].
30. These conditions are required to be pre-commencement conditions as it is fundamental to agree these details before development starts. Written agreement from the appellant as to the imposition of these was provided.
31. Samples of materials and window details are necessary to ensure the external appearance is satisfactory [conditions 6 and 7]. Notwithstanding the submitted landscaping plans, specific details of landscaping would be necessary to ensure the development is satisfactory [condition 8]. The hard landscaping must be implemented prior to occupation, to ensure that access to the dwelling is of sufficient width and surfacing.
32. Implementation of the foul and surface water drainage details is necessary to ensure the site is adequately drained [condition 9]. To ensure suitable air quality, a restriction on the emissions from any gas boiler installed is necessary [condition 10].
33. I have not imposed the conditions in relation to refuse or bicycle storage details being submitted, as this is already on the plans. However, implementation prior to occupation and retention is necessary to ensure suitable facilities are provided for future residents [condition 11]. It would be unreasonable to require implementation prior to construction, even if there are land ownership objections.
34. I have not imposed the car club condition because there is a planning obligation and it would be unnecessary. I have not imposed the condition requiring compliance with Building Regulations Part B5. Conditions requiring compliance with other regulatory regimes will not meet the test of necessity.

Conclusion

35. For the reasons given, the appeal is allowed.

Katie McDonald

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:
 - Proposed Site Plan 5HAM-DR-1010 Rev. PL1
 - Proposed Ground Floor Plan 5HAM-DR-1100 Rev. PL1
 - Proposed First Floor Plan 5HAM-DR-1101 Rev. PL1
 - Proposed Roof Plan 5HAM-DR-1102 Rev. PL1
 - Proposed Section AA 5HAM-DR-1150 Rev. PL1
 - Proposed Section BB 5HAM-DR-1151 Rev. PL1
 - Proposed Section CC 5HAM-DR-1152 Rev. PL1
 - Proposed East Elevation 5HAM-DR-1170 Rev. PL1
 - Proposed South-East Elevation 5HAM-DR-1171 Rev. PL1
 - Proposed South-West Elevation 5HAM-DR-1172 Rev. PL1
 - Proposed North-West Elevation 5HAM-DR-1173 Rev. PL1
 - Proposed North-East Elevation 5HAM-DR-1174 Rev. PL1
 - Proposed Landscape Plan 5HAM-DR-1300 Rev. PL1
 - Proposed Landscape Plan - Roof Level 5HAM-DR-1302
 - Proposed Refuse Store 5HAM-DR-5001.
- 3) No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) Dust mitigation and management measures;
 - ii) The location and operation of plant and wheel washing facilities;
 - iii) Measure to reduce demolition and construction noise;
 - iv) Delivery, demolition and construction working hours and,
 - v) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:
 - a) Rationalise travel and traffic routes to and from the site as well as within the site.
 - b) 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.
 - c) Measures to deal with safe pedestrian movement.
 - d) Full contact details of the site and project manager responsible for day-to-day management of the works.
 - e) Parking for operatives during construction period.
 - f) 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.

The approved Construction and Environmental Management Plan shall be adhered to throughout the construction period for the development.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall

have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 5) No development shall take place until a Biodiversity Mitigation and Enhancement Plan (BMEP) has been submitted to and approved in writing by the local planning authority. The BMEP should include mitigation, compensation, enhancement and management measures, including (not limited to) the siting/type of bird/bat boxes and hedgehog access. The development shall be carried out in accordance with the approved BMEP.
- 6) Prior to commencement of above ground works, samples of all external facing materials shall be submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.
- 7) Prior to commencement of above ground works, details of the windows including their materials, method of opening and drawings showing sections through mullions, transoms and glazing bars and sills, arches, lintels and reveals (including dimension of any recess) shall be submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.
- 8) Prior to commencement of above ground works, both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i. 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;
 - ii. Proposed hardstanding and boundary treatments;
 - iii. A schedule detailing sizes and numbers of all proposed trees/plants; and,
 - iv. Sufficient specification to ensure successful establishment and survival of new planting.

The landscape works shall be carried out in accordance with the approved details. All hard landscaping shall be carried out before the development is first occupied. All soft landscaping, including planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 9) The development shall be implemented in accordance with the details contained within the Foul & Surface Water Drainage Strategy Report: Revision A (dated July 2020) by Pitman Associates. These measures shall be retained permanently thereafter.

- 10) Any gas boiler installed in the dwelling must meet a dry NOx emission rate of <40mg/kWh.
- 11) The refuse storage shown on plan No 5HAM-DR-5001 and the bicycle storage shown on plan No 5HAM-DR-1300 PL1 to serve the dwelling shall be provided prior to the occupation of the development and permanently retained thereafter.

*****END OF CONDITIONS*****