



Appeal Decisions

Site visit made on 21 November 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2024

Appeal A Ref: APP/G5180/C/22/3299745

Land at Westbury Court, 252 Croydon Road, Beckenham, BR3 4DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Padfield Trading Ltd against an enforcement notice issued by London Borough of Bromley.
 - The notice was issued on 28 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of 9 windows within the flank elevations of an existing block of flats, six within the south-west elevation and three within the north-eastern elevation.
 - The requirements of the notice are to:
 1. Permanently remove the additional six windows from the south-western elevation and the additional three windows from the north-eastern elevation, as identified on the attached photographs.
 2. Fill the gaps left by the removal of the windows with material similar to the rest of the flanks of the building, matching the fabric of the building.
 3. Dispose of the windows in a lawful manner (by, for example, re-using them on another building, selling them on, refurbishing them, providing them to a registered waste carrier - not by fly-tipping or burning them).
 4. Permanently remove from the Land all building materials arising out of compliance with 1 & 2.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/G5180/W/22/3294094

Westbury Court, 252 Croydon Road, Beckenham, BR3 4DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Padfield Trading Ltd against the decision of London Borough of Bromley.
 - The application Ref DC/21/05607/NDFLAT, dated 3 December 2021, was refused by notice dated 23 February 2022.
 - The development proposed is construction of one additional storey to create two self-contained 1 bedroom flats, over the 6 No existing 1 bedroom flats. The new upper floor will replicate the existing upper floor in roof form and materials.
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Appeal C Ref: APP/G5180/W/22/3301183

Westbury Court, 252 Croydon Road, Beckenham, BR3 4DA

- 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 Padfield Trading Ltd against London Borough of Bromley.
 - The application Ref DC/22/01284/FULL1, is dated 22 March 2022.
 - The development proposed is erection of new 3 storey rear extension with rooms in roof space containing 3 no 2 bedroom flats and 1 no 1 bedroom flat with 8 car parking spaces, cycle and refuse storage and amenity area.
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Decisions

Appeal A

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B

2. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the construction of one additional storey to create two self-contained 1 bedroom flats, over 6 No existing 1 bedroom flats. The new upper floor will replicate the existing upper floor in roof form and materials, at Westbury Court, 252 Croydon Road, Beckenham, BR3 4DA, in accordance with the application DC/21/05607/NDFLAT, dated 3 December 2021, and the plans submitted with it.

Appeal C

3. The appeal is dismissed.

Appeals A, B and C

Preliminary Matters

4. The appeals relate to Westbury Court, which comprises a three storey block of flats built in the 1950s.
5. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the policies most relevant to the appeals, I have not reverted to the parties for comment.

Appeal A

The Appeal on Ground (c)

6. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the installation of nine windows within the flank elevations of the block of flats, does not constitute a breach of planning control. The breach refers to six windows within the south-western elevation and three within the north-eastern elevation.
7. S55(1) of the 1990 Act provides a broad definition of development and includes building operations in, on, over or under land. S55(2)(a)(ii) excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which do not materially affect its external appearance.

8. It was held in *Burroughs Day v Bristol CC* [1996] EGCS 126 that, for works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole and not a part in isolation.
9. The number and arrangement of windows in the front elevation significantly contribute to the building's visual interest and aesthetic quality. The windows are relatively large and although have a clear vertical emphasis, they are subdivided horizontally by glazing bars into smaller panes, with contrasting brick header detailing above the openings.
10. In contrast, the pre-existing plans show that both side elevations were largely blank, save for five narrow windows positioned towards the front¹. Although the window proportions are much smaller, their design is evidently intended to complement those in the front elevation as they too are subdivided with glazing bars with contrasting brick header detailing above the openings. The windows on the rear elevation are different again, being modern casement style with larger windowpanes and no header detailing.
11. The windows subject to the enforcement notice are taller and wider than the other side windows described above. Although similar in size to those on the front elevation, they differ in style and appearance, being conventional casements with larger, undivided areas of glazing. Nevertheless, their general size and appearance is similar to those windows in the rear elevation.
12. As six additional windows of differing proportions and design have been inserted into a previously blank part of the south-western elevation, there has been a material change in the external appearance of that side of the building.
13. However, those new windows cannot be readily seen from the public realm along Croydon Road. Due to the position and orientation of the windows on the neighbouring property at Dukes Court, and the trees along the boundary beyond the building, the windows are not readily seen by the occupiers of that property either. Consequently, the affected part of the side elevation is largely seen in isolation and not generally read in combination with any other elevation or the composition of the building as a whole.
14. The three windows in the north-western elevation can be seen from Croydon Road and that side elevation can clearly be read in combination with the front elevation. The contrasting style of the respective windows is therefore readily appreciated. However, the windows are also seen alongside three other windows in that elevation which are the same style and in the same alignment. As the enforcement notice does not seek to address those windows, they form part of the existing baseline appearance of that elevation (and the building as a whole). In that context, the additional three windows do not materially affect the appearance of the elevation.
15. The windows are visible from the adjacent flats at Ripon House but again are seen alongside the same style windows which are not part of the matters, as well as the similar windows in the rear elevation.
16. Therefore, applying the principles established in *Burroughs Day*, I conclude that the windows do not materially affect the appearance of the building as a whole

¹ Three additional windows may also have been in place in the north-eastern elevation

and thus are not development under s55(2)(a)(ii) of the 1990 Act. It follows that the matters alleged in the notice do not constitute a breach of planning control, on the balance of probabilities.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
18. In these circumstances, the appeal on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Appeal B

Preliminary Matters

19. I have taken the description of the proposal from the application form but have deleted the additional '*will*' in the second sentence, which is evidently a typo.
20. Essentially, the proposal is to construct an additional storey accommodating two, one-bedroom flats, on top of the existing block of flats. The application was made under Schedule 2, Part 20, Class A of the GPDO.
21. Class A permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats. The permitted development right is subject to limitations and conditions and to a requirement for prior approval.
22. The principle of the development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan. I have therefore only had regard to the policies of the development plan insofar as they are material to the matters for which prior approval is sought.
23. Paragraph B of Part 20 of the GPDO requires that when determining an application under Class A, the local planning authority must have regard to the Framework so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

Main Issue

24. Paragraph A.2 of Class A lists the matters for which prior approval must be sought before beginning the development. The Council's officer report confirms that it finds all matters to be acceptable other than that relating to the external appearance of the building (A.2(1)(e)). I find no reason to disagree with that assessment, insofar as it relates to those other matters.
25. Therefore, the main issue is whether prior approval should be granted having regard to the external appearance of the building.

Reasons

26. The appellant has referred me to a number of appeal decisions regarding the scope of how the external appearance of the building should be considered. The Inspectors dealing with Class A developments at Raffles House, Hendon and Garfield Road, London both took the view that paragraph A.2(1)(e)

- suggests a relatively narrow assessment confined only to the appearance of the building itself, rather than its effect on the wider area².
27. However, in another Class A appeal decision relating to Campshill Road, London³, the Inspector considered it a matter of planning judgement as to whether consideration is given to the effect in terms of the building's intrinsic design and/or to the effect in terms of the building's relationship with nearby properties.
28. Other decisions⁴ are provided relating to Part 1, Class AA development at Quoins, Bourne End; The Cedars, Buckhurst Hill; and London Road, Waterlooville, where the Inspectors have applied a narrow assessment on the respective buildings, even though the list within paragraph AA.2(3)(a)(ii) is prefaced by the word 'including'⁵.
29. However, the appellant has also provided a Class AA appeal decision⁶ relating Franklin Street, London, where the Inspector found that the word 'including' indicates that AA.2(3)(a)(ii) is not a closed list, and that the wider context or street scene could be taken into account. That is consistent with the later judgement in *CAB Housing Ltd, Beis Noeh Ltd & Mati Rotenberg v SSLUHC* [2022] EWHC208 (Admin).
30. In that case, Mr Justice Holgate rejected the claimants' submissions that the 'external appearance' control is confined to an assessment of the impact of that appearance on the subject property itself, as opposed to its surroundings, stating that there is nothing in the language of the GPDO to justify that construction. Nevertheless, the judgement is made within the context of Class AA, which uses the word 'including', so does not provide the same level of assistance for Class A, which does not.
31. In my view, it is a matter of planning judgment as to whether consideration is given to the effect in terms of the building's intrinsic design and/or to the effect in terms of the building's relationship with adjoining or nearby properties. It is not necessary and will not always be sensible or appropriate to consider the external appearance of the building in isolation; the street context may be relevant and what is acceptable on one site may not be on another.
32. As noted, Westbury Court comprises a 1950s block of flats designed with two flanking mansard style, hipped, front gables connected by a recessed central feature section. The building is three storeys, finished in brick, with a tiled roof. Ripon House, on its north-eastern side is similarly three storey scale.
33. Both the Council and the appellant refer to neighbouring Dukes Court and No 244 Croydon Road, located on the other side of the junction with Westbury Road, as four storeys. However, both are three storeys below eaves level with additional accommodation at roof level. I note the appellant's reference to the appeal decision⁷ for No 244 but the Inspector states that the height and scale of the proposed development would be in keeping with existing developments

² Appeal References: APP/N5090/W/21/3267852 and APP/T5720/W/21/3275203

³ Appeal Reference: APP/C5690/W/20/3264055

⁴ Appeal References: APP/K0425/D/21/3271339, APP/J1535/D/21/3266264 and APP/X1735/D/21/3269472

⁵ the external appearance of the dwellinghouse, including the design and architectural features of— (aa) the principal elevation of the dwellinghouse, and (bb) any side elevation of the dwellinghouse that fronts a highway;

⁶ Appeal Reference: APP/Y5420/D/21/3268817

⁷ Appeal Reference: APP/G5180/W/14/3000427

- in the area and does not, as inferred, explicitly state that a four storey building would be in keeping.
34. Therefore, although there is variation in height, this side of Croydon Road is largely characterised by three storey blocks of flats, some of which contain additional accommodation at roof level. Dukes Court and No 244 currently provide the upper height parameter, which is not untypical of their respective corner locations.
35. Consequently, the existing scale and design of Westbury Court sits comfortably within its context with the main eaves level being generally consistent with its neighbours. Accordingly, it is not appropriate to consider the external appearance of the building in a vacuum or in isolation. The relationship between the appeal site and neighbouring properties is, in this case, a relevant aspect of the consideration of the effect of the development on the external appearance of the building.
36. Paragraph 124 of the Framework states that decisions should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, and is well-designed.
37. In that regard, I note the Council's concerns that the extension to the whole of the building would add to its scale within the street scene. However, I am mindful that in many cases that will be an inevitable consequence of the permitted development right, which establishes the principle that a building may be extended by up to two storeys and which was introduced to support key Government priorities to boost housing delivery and increase densities by making effective use of existing buildings. Those considerations were similarly recognised by the Inspectors in the appeal decisions submitted by the appellant relating to Raffles House; Eastfield Place, Oxford⁸; and Seaforth Court, Eastbourne⁹.
38. Although the apex of the extended building would be higher than Dukes Court and No 244, the difference would be relatively minor and would be confined to the narrowest parts of two hipped roofs. The additional massing above the ridge line of Dukes Court would therefore be relatively limited and would not result in a domineering and undue punctuation in the roofline along this part of Croydon Road.
39. The building would clearly have a greater visual presence within the street scene and surrounding area because of the additional storey. However, it would not be unacceptably intrusive or out of keeping because of its overall height, having regard to the above commentary on the permitted development rights and given that all four of the buildings in this row have differing heights. This side of Croydon Road is not therefore as sensitive to such changes, compared to the opposite side of the road, which is consistently two storey in scale.
40. Nevertheless, the scale of the appeal proposal is four storeys, plus the additional height of the roof. That therefore differentiates the development from its neighbours in that the full four storey scale below the eaves line would be presented to the street scene. That too would increase the presence of the

⁸ Appeal Reference: APP/G3110/W/21/3269650

⁹ Appeal Reference: APP/T1410/W/20/3263486

building in the street scene as the front eaves would be raised above that of its neighbours.

41. However, that would be mitigated by retaining the mansard roof design in the uppermost storey, which would bring the roof tiles and eaves of the front part of the side elevation down to the neighbouring eaves level.
42. As the extension would be confined to the footprint of the existing building, the building line and space to the front and back of the building would be retained. The proposal would not therefore affect the pattern of development (as opposed to form) or appear as an inappropriate overdevelopment of the site.
43. The Council consider that the proposed roof extension would integrate appropriately with the elevational design strategy of the existing building, subject to matching materials. In the main I agree. Nevertheless, elongating the recessed central section without any articulation creates an area of dead work above the main feature window and entrance, which is uncharacteristic of the relatively busy architectural composition of the front elevation. However, that harm, and the mitigated harm of raising the front eaves, are not sufficient to warrant withholding prior approval.
44. I conclude that the external appearance of the proposed building would be acceptable for the purposes of Part 20, Class A of the GPDO. Within the context of that permitted development right, the external appearance of the building would also accord with paragraph 124 of the Framework.
45. In reaching my conclusion, I have had regard to London Borough of Bromley Local Plan (LP) Policies 4, 6 and 37 and London Plan Policies D3 and D4. Those policies expect, amongst other things, that all development proposals, including extensions to existing buildings, to be of a high standard of design and layout.

Conditions

46. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO is subject to the following conditions of paragraph A.2:
 - The development must be completed within a period of 3 years starting with the date of this decision.
 - Before beginning the development the developer must provide the local planning authority with a report for the management of the construction of the development which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated.
 - The developer must notify the local planning authority of the completion of the development as soon as reasonably practicable after completion. That notification must be in writing and must include the name of the developer; the address or location of the development; and the date of completion.
 - Each new dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Town and Country (Use Classes)

Order 1987 (as amended) and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

Conclusion

47. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Appeal C

Preliminary Matters

48. The appeal follows the failure of the Council to give notice within the prescribed period of a decision on an application for the erection of a three storey rear extension with rooms in roof space, containing three 2 bedroom flats and one 1 bedroom flat with 8 car parking spaces, cycle and refuse storage and amenity area. The Council has subsequently resolved to contest the appeal for reasons which are reflected in the main issues below.

Main Issues

49. The main issues are the effect of the proposed development on:

- the character and appearance of the area; and
- the living conditions of the occupiers of neighbouring properties with particular regard to privacy; and
- whether the proposed development would provide a safe and secure pedestrian entrance.

Reasons

Character and appearance

50. I appreciate that the building is not listed but it is an attractive building nonetheless, with a pleasing, symmetrical architectural composition which makes a positive contribution to the character and appearance of the area.

51. The extension would be sited in an off-set position at the rear of the existing building and would run across the majority of its width. It would be three storeys with additional accommodation in the roof space.

52. Although the roof would be hipped, when viewed from the front that would only be evident on one side. Consequently, the roof would appear to apply two different styles where it links to the flanking symmetrical parts of the existing building. That would appear awkward and poorly resolved, and materially different to that of Rippon House, where a uniform approach is applied to the central connecting roof.

53. Significant additional harm would also arise from the roof level, lift overrun which would have the appearance of a box-like, side dormer extension and which would amount to a visually intrusive feature in its own right. The harm arising would not be acceptably mitigated by the use of matching materials and its position behind the main building line. Moreover, it is not shown that its proposed position, or accommodating the lift in a side facing gable, are the only feasible design options.

54. Due to the set back of the building and the width of Croydon Road, those harmful roof level additions would clearly be visible in the street scene and would significantly and adversely unbalance the existing symmetrical form of the building.
55. At the rear, the roof level recessed and Juliette balconies would be off-set and unrelated to the pattern of window openings below. That would appear haphazard and detract from the architectural composition of the elevation.
56. Whilst the footprint of the extension might follow that approved in August 2020¹⁰, the rear part of that redevelopment scheme was centrally positioned and avoided the significant roof level harm currently proposed.
57. In overall terms, the extension, particularly the proposed roof form, would have little regard to the architectural composition of the existing building and would appear as an awkward and visually jarring addition.
58. I therefore conclude that the proposed development would result in unacceptable harm to the character and appearance of the existing building and the surrounding area, contrary to LP Policies 4 and 37 and London Plan Policies D3 and D6. Those policies state, amongst other things, that all new housing developments will need to achieve a high standard of design and layout whilst enhancing the quality of local places.

Living conditions

59. Being attached to the rear of the existing building, the scheme necessitates the provision of substitute windows to the rear facing bedroom windows of existing flat numbers 1, 3 and 5¹¹. Whilst three such windows would face the side of the flatted development at Dukes Court, that building presents a largely blank side elevation towards the appeal site, save for a fourth floor window and the front corner windows and balconies.
60. In terms of the former, that would be a storey higher than the new side windows, so direct overlooking would be largely avoided. For the latter, the viewing angles would be so acute that overlooking would be similarly avoided. Therefore, although the development would result in direct overlooking towards Dukes Court, that would not result in an unacceptable loss of privacy to the occupants of the same.
61. The rear upper floor windows and external stairs and landing areas of the existing flats already allow for overlooking into the rear garden of No 2 Westbury Road. However, the extension would take the rear of the building significantly closer to the garden of No 2 and would include two projecting balconies at first and second floor level, and a recessed balcony at roof level. All would allow for clear and uninterrupted overlooking into the rear garden of No 2 and the properties beyond.
62. From the garden of No 2 in particular, the balconies would significantly heighten the perception and likelihood of more sustained and obvious overlooking than the existing arrangement, which is more distant and largely restricted to transient views from rear upper floor windows.

¹⁰ Ref: 18/05517

¹¹ They may include those already in place and subject to the enforcement notice and associated Appeal A

63. However, I am mindful that the Council approved a redevelopment scheme which includes similarly positioned first and second floor balconies; although that permission is now likely time expired and does not represent an extant fallback position. In any case, the Council's concerns appear to be restricted to the additional harm arising from the roof level balcony, which would sit alongside a Juliet balcony.
64. The appellant has suggested that the bottom half of the Juliet balcony could be conditioned to be obscure glazed, but that would do more to protect internal levels of privacy and would not prevent outward overlooking at standing height. Nevertheless, the effect of the same would not be dissimilar to the mutual overlooking achieved from windows between properties generally in such a suburban location.
65. However, by adding a further, higher balcony to an additional residential unit, the degree of overlooking will inevitably increase. Being recessed, overlooking would be channelled towards the rear garden of No 2 and beyond. A condition requiring the front enclosure to the balcony to be obscure glazed would provide some mitigation but only when future occupants are sitting down. A harmful degree of actual and perceived overlooking would still arise.
66. The appellant argues that the boundary would be at least 15m distant but that doesn't tally with scale shown on the plans, which suggests a significantly closer relationship. Even if I'm wrong on that, 15m would offer limited mitigation given the relative height differences.
67. I therefore conclude on this main issue that the development would result in harmful levels of perceived and actual overlooking into the rear garden of No 2 with the associated loss of privacy, contrary to LP Policy 37 and London Plan Policy D3. Those expect, amongst other matters, development to respect the amenity of occupiers of neighbouring buildings.
68. The Council also cite conflict with LP Policies 4 (housing design) and 8 (side space) and London Plan Policy D6 (housing quality and standards). However, I find those policies to have limited relevance to this main issue.

Pedestrian safety

69. No internal connection is proposed between the extension and the existing building. The new flats would therefore have their own dedicated entrance and would be used independently of the existing flats, which have their own main entrance legibly designed and centrally located on the front elevation, as well as existing 'back doors' on the rear elevation.
70. In contrast, the sole proposed entrance to the new flats would be located on the side elevation of the extension. Occupants and visitors would therefore have to walk between the side of the building and the side boundary, beyond the rear of the existing building, to gain access.
71. Given the largely blank side elevation of Dukes Court and the mature trees on the boundary beyond that building, there would be very little natural surveillance provided by the occupants of those flats.
72. Although there would be windows in the side of the existing building, they would be mostly narrow, secondary windows. There would be one, larger

bedroom window on each floor but occupants are likely to close the curtains when that room is in use, particularly on the ground floor, otherwise people accessing the new flats would be able to look directly into the room.

73. Moreover, the extension provides a largely blank side elevation other than the entrance itself and two windows above which serve the stairwell. Consequently, there would be limited natural surveillance from within Westbury Court. There would also be little or no passing surveillance from the public realm because of the intervening front parking and planting.
74. In terms of legibility, I appreciate that future occupants will know where their front door is, but it would not be visible from the street by visitors. It would also likely have limited visibility even when approaching from the side due to its limited articulation and position in a slightly recessed elevation. I appreciate that a sign could point the way but during the hours of darkness that may not be readily obvious.
75. In overall terms the access would have poor levels of legibility with little sense of 'arrival'. It would also have very limited levels of effective natural surveillance and would likely be perceived as an unsafe and uninviting environment to occupiers and visitors, particularly during the hours of darkness.
76. I therefore conclude that the proposed development would not provide a safe and secure pedestrian entrance, contrary to LP Policies 4 and 37 and London Plan Policy D3. Those policies expect, amongst other things, that safety and security measures are included in the design and layout of buildings and public areas.

Other Matters and the Planning Balance

77. The Council cannot demonstrate a five year supply of deliverable housing sites. That means, as per paragraph 11.d) of the Framework, granting planning permission 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.
78. I have found that the development would be harmful to the character and appearance of the area. Accordingly, the development would be contrary to paragraphs 131 and 135 of the Framework, which state that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
79. I have also found that the development would not provide a safe and secure pedestrian entrance and would be harmful to the living conditions of the occupants of No 2 through overlooking and loss of privacy. The development would therefore be contrary to paragraph 135 of the Framework which states that planning decisions should ensure that developments create places that are safe and which promote health and well-being, with a high standard of amenity for existing and future users.
80. The principle of development is not a matter of dispute and the development would make a modest contribution to the supply and variety of housing in accordance with paragraph 60 of the Framework. The development also gains support from paragraph 70 of the Framework, which recognises that small and

medium sized sites can make an important contribution to meeting the housing requirement of an area.

81. In the circumstances, the contribution to housing supply is capable of attracting substantial weight in favour of the development, as per the appeal decision referenced by the appellant¹². However, in this case, because of the identified pedestrian safety shortcomings, I have attached lesser, but nonetheless significant weight, in favour of the appeal proposal.
82. Paragraph 124 of the Framework seeks to promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained. However, even if I were to accept that the site is currently under-utilised, it is not shown that the homes could not be provided without the harm I have described.
83. Having regard to paragraph 123 of the Framework, I do not find that the development makes effective use of land because it does not safeguard and improve the environment or ensure healthy living conditions.
84. Paragraph 124 of the Framework also states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes. However, the footprint of the proposed extension would occupy part of the existing residential garden for the existing flats and thus would be excluded from the definition of brownfield/previously developed land in the Framework.
85. Weighing up all of the above, I find that the adverse impacts of the development 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.

Conclusion

86. For the reasons given above, and having considered all other matters raised, I conclude that the appeal proposal is contrary to the development plan as a whole and should be dismissed.

Richard S Jones

INSPECTOR

¹² Appeal Ref: APP/G5180/W/20/3253377