



Appeal Decision

Site visit made on 9 January 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2024

Appeal Ref: APP/G5180/W/23/3322196

The Elms and land adjacent Mottingham Lane, Mottingham, Bromley, London SE9 4RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr C Berbec against the Council of the London Borough of Bromley.
 - The application Ref DC/22/04874/FULL1 is dated 12 December 2022.
 - The development proposed is the erection of a replacement dwelling associated with hard and soft landscaping with refuse and cycle.
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Decision

1. The appeal is dismissed and planning permission for the erection of a replacement dwelling associated with hard and soft landscaping with refuse and cycle is refused.

Preliminary Matters

2. The appeal is against the non-determination of a planning application. The Council's appeal statement indicates that it would have refused planning permission for reasons relating to it being inappropriate development and resulting in the loss of openness of Metropolitan Open Land (MOL), harm to the character of the area and the setting of listed buildings, and risk of harm to valuable trees. The main issues below are therefore taken from the Council's appeal statement.
3. The National Planning Policy Framework (the Framework) was revised in December 2023. The parties were invited to make comments on this, but no further submissions were made. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

4. The main issues are:
 - whether the proposal is inappropriate development on MOL;
 - the effect of the proposal on the openness of MOL;
 - the effect of the proposed development on the character and appearance of the area, the setting of the Fairmount Grade II listed building, and on Norlesden House as a non-designated heritage asset;

- the effect of the proposal on protected trees; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal represents inappropriate development

5. The development plan for the area comprises the London Plan 2021 (LP) and the London Borough of Bromley Local Plan 2019 (BLP). The site forms part of a designation of Metropolitan Open Land (MOL) in the BLP. Policy 50 of the BLP and Policy G3 of the LP state that MOL will be given the same protection as Green Belt. BLP Policy 49 sets out the approach to proposals in the Green Belt, seeking to protect it from inappropriate development.
6. The site comprises open grass and scrubland at the front with some trees, and more significant tree planting to the rear. The MOL also covers the buildings and land adjacent to the appeal site, an extensive area of woodland and an open valley beyond the site and adjacent properties, and the nursery and adjacent woodland opposite.
7. Paragraph 154 of the Framework lists the types of new buildings that are not inappropriate in the Green Belt, subject to certain conditions. This consideration also applies to MOL. These include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces (paragraph 154(d)), limited infilling in villages (paragraph 154(e)) and limited infilling or the partial or complete redevelopment of previously developed land which would not have a greater impact on openness than the existing development (paragraph 154(g)). Policy 49 of the Local Plan also refers to these exceptions.
8. There are limited remnants of a previous building on the site, including some hardstanding, and the appeal documents indicate that it accommodated a dwelling which was demolished sometime before 1987. As the building no longer substantively exists, the proposal would not provide a replacement building under paragraph 154(d) of the Framework. Although the introduction of MOL policy may have preceded the demolition of the previous building, I must determine the proposal in accordance with current planning policies.
9. There is no definition of what constitutes a village in terms of paragraph 154(e) of the Framework. However, the site is within a residential area in the Mottingham suburb of London and there is little evidence before me that this is a village. As such, irrespective of whether the proposal would be infill development, I consider that the site is not in a village and the proposal would not fall within the provision of paragraph 154(e).
10. The Framework's definition of previously developed land refers to land which is or was occupied by a permanent structure. However, it excludes land that was previously developed but where the remains of the permanent structure have blended into the landscape. Although there are some remnants of the structure which occupied the site some time ago, as these have blended into the landscape and there is no other built development, the site is not previously developed land. Therefore, regardless of how limited infilling may be defined,

the proposal would not meet the exception in paragraph 154(g) of the Framework.

11. There is no case made that the proposal would not constitute inappropriate development on MOL for any other reasons. As such, I find the appeal proposal would be inappropriate development on MOL. It would be contrary to Policies 49 and 50 of the BLP and Policy G3 of the LP.

Openness

12. As set out in the Framework, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. This consideration also applies to MOL. Openness is the absence of development and has both spatial and visual dimensions.
13. The site lies between existing properties on the north side of Mottingham Lane. It is undeveloped and has a predominantly open frontage with some mature trees close to the road and boundaries. There was previously a building on the land, but that structure was removed some time ago.
14. The proposed dwelling would be located towards the front of the site on open land. The introduction of a large new building would inevitably lead to a loss of spatial openness. This would be appreciated from the street and, although the glazed box accommodating the stairwell would provide some limited, glimpsed views to the rear, there would also be an erosion to the visual openness of the site.
15. The effect on openness is not only related to the size of the proposal but also its purpose and the intensity of its use. The introduction of a dwelling would also result in a hardstanding which would be used for the turning, manoeuvring, and parking of vehicles. Such a feature and activities would also reduce spatial and visual openness compared to the existing use of the site.
16. Development in this part of the MOL comprises the large residential buildings on sizeable plots on either side of the appeal site. I have no information on the history of the modern single storey nursery on the opposite side of Mottingham Lane which also lies in the MOL. From the street, there are views through the site of woodland at the rear and longer distance views of development interspersed with trees on the opposite side of a valley. The proposal would erode this gap, causing harm to the spacious character of the site.

Character and appearance and effect on heritage assets

17. The appeal site lies between Fairmount and Norlesden House which are substantial sized buildings within large plots. The character of the wider area is more mixed, including some single storey structures on the opposite side of Mottingham Lane and some modern and traditional two storey dwellings further along the street. Residential development continues along both sides of the road to the east of the site and continues for a little way along the same side of the lane further west.
18. Fairmount is a grade II listed building, a designated heritage asset. It is of historic significance as it was the former residence of the famous cricketer W G Grace. It comprises a two storey later Victorian house in yellow brick with a gable, amongst other things. The appeal site makes a positive contribution to

the setting of this building as it provides an open view of it along Mottingham Lane.

19. Norlesden House is a locally listed building, a non-designated heritage asset in terms of the Framework. Its significance derives in part from it being a little altered mid to late Victorian large, detached house in Gothic Revival style, having stock brick walls with polychromatic bands in red and blue and pitched natural slate roofs. The appeal site positively contributes to its setting as it provides open views of the building from the road.
20. The contemporary high-quality design of the proposed dwelling is intended to avoid a pastiche approach, but the flat roofs would fail to reflect the pitched roof forms of the adjacent buildings and other dwellings in the vicinity. Further, although the structure would have varied heights and building line, the length of its frontage, flat roof and two and three storey height would result in a large, horizontal form, incompatible with the more vertical forms of the adjacent historic properties.
21. The proposed white render, natural slate and timber batten wall finishes would provide visual breaks to the façade, but these would be at odds with the largely yellow brick walls of the neighbouring Fairmount and Norlesden House. The structure would be set back from the road to reflect the building line of the adjacent built form, with a footprint and size intended to reflect the original building on the site. However, although Fairmount is listed for historic rather than architectural reasons, the design, scale and siting of the proposed dwelling forward of it would negatively affect the setting and thus the significance of this listed building in views from Mottingham Lane. The incongruous, modern development would also harm the setting and significance of Norlesden House as a non-designated heritage asset, particularly in side views travelling eastbound along the road.
22. For the reasons set out and having regard to the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the proposal would not preserve the setting of the listed building, Fairmount, although the harm would be less than substantial. Paragraph 208 of the Framework states that less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposed development.
23. Paragraph 209 of the Framework outlines that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application.
24. The proposal would provide an additional family-sized house, incorporating green infrastructure and enabling stewardship of a previously neglected windfall site, making more efficient use of the land. However, the public benefits of the development would not outweigh the great weight to be given to the harm to the setting of the listed building, Fairmount, caused by the proposed dwelling. Further, when taking a balanced judgement having regard to the significance of the non-designated heritage asset, Norlesden House, the harm to its setting would not be outweighed. Therefore, I conclude that the proposed development would conflict with the Framework.
25. Policy 8 of the BLP requires new residential development of two or more storeys in height to retain a minimum 1m space from the side boundary of the

site for the full height and length of the building, to ensure adequate separation between properties. There is a spacious gap between Norlesden House and the appeal site boundary. The proposed dwelling would be sited between 0.7m and 1.65m from the mutual boundary with the neighbouring property and, due to this very small distance, it would harmfully erode spaciousness and conflict with the requirements of Policy 8.

26. Overall, the proposal would harm the character and appearance of the area as it would not preserve the setting of Fairmount as a Grade II listed building, would harm Norlesden House as a non-designated heritage asset and would erode spaciousness. It would be contrary to Policies 4, 8, 37, 38 and 39 of the BLP. Together, these require housing schemes to provide minimum boundary separation distances and respect local character, complementing the scale, proportion, layout and materials of adjacent buildings and areas. They also require development to respect heritage assets, including the setting of listed and locally listed buildings. The proposal would also conflict with the Framework where it sets out the approach towards designated and non-designated heritage assets and requires development to be sympathetic to local character.

Protected trees

27. The site contains several mature trees close to the road frontage as well as more dense tree planting to the rear. The mature trees are protected by a blanket Tree Preservation Order constituting mixed woodland, which also extends to the rear and opposite the site. There is a very tall Wellingtonia tree close to the boundary with Fairmount.
28. The proposed dwelling would be sited close to the Wellingtonia tree. The Arboricultural Report (AR) assesses this tree as being in moderate to good condition with a long life expectancy. Due to its height, elongated canopy, health, expected lifespan and siting forward of the neighbouring building some distance from the other trees, this tree is a distinctive and prominent natural feature which contributes positively to the local landscape.
29. The AR identifies the Wellingtonia tree's root protection area (RPA) based on the stem diameter according to British Standard 5837 Trees in Relation to Design, Demolition and Construction (BS5837). However, the AR states that the tree has been topped in the past and therefore it requires less rooting volume than required by BS5837. Given the relatively small canopy of this tree, the AR also identifies a smaller RPA but there is no explanation of how the resized RPA has been calculated.
30. The Impact Assessment Plan in the AR shows that a small part of the proposed building would encroach into the smaller RPA for the Wellingtonia tree, and the proposed driveway would be even closer to it. The Arboricultural Method Statement indicates a construction exclusion zone immediately around the tree trunk and restricted activity zones. The latter include restrictions on construction vehicle operations and use of no-dig and hand-dig methods of construction in the smaller RPA.
31. However, the amount of encroachment from the proposed structure would be much greater using the BS5837 calculated RPA for the Wellingtonia tree. Given the limited evidence for the smaller RPA, I cannot be certain that there would not be significant risk of damage to this protected tree during construction,

including from cutting roots to provide foundations, compaction of the soil, and pollution.

32. Furthermore, the proximity of the proposed house to the tree would lead to a future risk of pressure to prune or remove it from future occupiers perceiving a risk of branch or tree failure, as well as potential harm from falling tree branches and debris.
33. Consequently, I conclude that the proposal would harm the protected Wellingtonia tree. This would be contrary to Policy 73 of the BLP where it seeks to retain trees in the interests of visual amenity and protect trees of environmental importance. It would also conflict with the Framework which requires decisions to recognise the intrinsic character of trees.
34. Policy 43 of the BLP relates to trees in Conservation Areas. However, the site is not within a Conservation Area and therefore I find no specific conflict with this policy when reaching my decision.

Other considerations

35. The evidence indicates that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites and that the shortfall is substantial. The proposal would provide an additional family-sized dwelling for the owner on a windfall site at low risk of flooding, making more efficient use of the land. As this would make a modest contribution to the overall housing land supply and addressing the shortfall, I attach moderate weight to this benefit.
36. The proposal would maximise biodiversity gain through landscaping and integrated green infrastructure. As all developments should contribute to this objective, I attach only limited weight to this benefit.
37. In addition, the appellant and third parties consider that the development would enable stewardship of the site, avoiding previous problems of fly-tipping and unauthorised use. I afford this matter little weight.
38. The proposed development would meet the nationally described space standards. Nevertheless, compliance with the development plan in relation to this matter is a neutral factor in the planning balance.
39. There are some references to the site being within the Green Chain designation, but I have not been directed to any relevant policies or conflict with the development plan in this respect.
40. The appellant has expressed general dissatisfaction with the Council's handling of the application. However, this is a matter between those parties, and it cannot have any bearing on my determination of this appeal.

Planning Balance

41. I have concluded that the proposal would be inappropriate development on MOL which is, by definition, harmful. It would also result in a harmful loss of openness of the MOL. Furthermore, there would be harm associated with the adverse impacts of the proposal on the character and appearance of the area and on designated and non-designated heritage assets. The harm to the significance of the listed building is not outweighed by the public benefits and the harm to the locally listed building is also not outweighed. Substantial weight should be given to the harm to the MOL. Very special circumstances will

not exist unless the harm to the MOL and any other harm are clearly outweighed by other considerations.

42. I attach moderate weight to the contribution the proposal would make to boosting the supply of housing and providing an additional dwelling where a five-year housing land supply cannot be demonstrated. I also accord limited weight to its contribution towards green infrastructure and avoiding neglect and anti-social use of the site. However, these other considerations would not clearly outweigh the harm to the MOL by reason of inappropriateness, loss of openness and other harm. Consequently, the very special circumstances necessary to justify the proposed development do not exist.
43. The fact that the Council cannot demonstrate a five-year housing land supply triggers the circumstances in paragraph 11(d) of the Framework. However, in this case, the application of the policies in the Framework that protect designated heritage assets provide a clear reason for refusing the proposed development in accordance with paragraph 11(d)(i). As such, the presumption in favour of sustainable development does not apply.

Conclusion

44. The proposal would conflict with the development plan when taken as a whole and material considerations, including the Framework, do not indicate that the decision should be made other than in accordance with it. Therefore, the appeal is dismissed, and planning permission is refused.

A Wright

INSPECTOR