



Appeal Decisions

Site visit made on 28 May 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 JUNE 2024

Appeal A Ref: APP/G5180/W/23/3331676

Land fronting 21 Dalton Close, Orpington BR6 9QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by W Berkton Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/00260/FULL1.
 - The development proposed is erection of a two storey 3-bedroom detached dwellinghouse.
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Appeal B Ref: APP/G5180/W/23/3331677

Land fronting 21 Dalton Close, Orpington BR6 9QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by W Berkton Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/00336/OUT.
 - The development proposed is erection of a two storey dwellinghouse.
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Decisions

1. Appeal A and appeal B are both dismissed.

Preliminary Matters

2. As set out above there are two appeals on this site. The two developments are identical. The only difference is that the application subject of Appeal A was submitted in full, whereas the application subject of Appeal B was submitted in outline form with matters of layout, scale and access for consideration at this stage, and matters of appearance and landscaping reserved for consideration later. I have considered each proposal on these different bases, however, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

3. The main issues are the effect of the proposals on:
 - i) the character and appearance of the area, including protected trees;
 - ii) the living conditions of nearby occupiers, and on future occupiers of the development, with respect to privacy; and
 - iii) surface water flooding.

Reasons

Character and appearance

4. The appeal site primarily comprises an area of grass in the centre of Dalton Close. This is a small cul-de-sac of 21 houses set in short terraces, most of which face towards the appeal site. The site accommodates two tall and mature silver Birch trees which are subject of a Tree Preservation Order¹. This grassed area, and the trees on it, forms a pleasant, landscaped area which provides a focal point for the Close. When combined with the grassed areas at the entrance to Dalton Close and the trees along Tubbenden Lane, the site contributes a verdant quality to the character of this suburban area.
5. There are some small variations in the detailed design of the individual houses in the Close, such as where integral garages have been converted, infill porches built, or window designs changed. Nonetheless, because of the built form of the terraces, the rhythm of doors and windows, and the consistent building line of most of the terraces, a strong sense of uniformity persists. The distinctiveness of this is strengthened because of the stark contrast between the design of the houses in the Close and the houses in the surrounding area, such as those on Tubbenden Lane or Shelly Close, which are generally semi-detached houses.
6. The appeal site's central position in the Close, means the developments would be seen firmly in the context of the other houses there. Its detached design would contrast harshly with the terraced form of housing in the Close and its position, surrounded on most sides by the road and detached from all other housing, means both developments would appear incongruous.
7. My attention has been drawn to other forms of development nearby on Northolme Rise and Tubbenden Close. However, neither of these examples comprise the provision of a single dwelling as isolated from its neighbouring houses as the current proposals are. In addition, the appeal site has a very different context to that of the scheme at Windsor Drive, also referred to by the appellant. I note the reference to the example of infill development in the National Model Design Code, but in this case the proposals would be prominently sited in the street, instead of to the rear of houses as shown in that example.
8. The proposals would necessitate the removal of one of the protected trees; T2. The trees are categorised as being low quality in the appellant's tree survey report. At the time of my visit, they were in full leaf and seemed in reasonably good health. In any case, due to their height and spread they both act as significant positive landscape features in the area, being a focus for Dalton Close and being visible from a number of positions on Tubbenden Lane. The loss of T2 would therefore have an adverse impact on the verdant character of the area. The tree survey report indicates one replacement tree would be planted, however this would take a considerable period of time to be comparable in size to T2. Indeed, when it did reach that size, it would most likely obscure light into a bedroom and the dining room of the proposed dwelling, which it would be very close to.

¹ No. 2742/2021

9. The plans suggest that tree T1 would be retained, and its roots protected during construction. The tree and its branches would be very close to the house and there may be a need for substantial pruning to facilitate construction. Even if the tree could be retained in its current form it would be very close to the side elevation of the house and would most likely obscure a considerable amount of light to the southeast facing kitchen window and also to the patio doors and southeast facing bedroom window. Although these rooms would be served by other windows, their best source of sunlight would be from these southeast facing windows. As such there would be future pressure to remove T1, and were it to be removed, a detrimental effect on the character of the area would result. The appellant has queried the worthiness of the trees for protection. Nonetheless, they are protected, and I consider them to be valuable landscape features.
10. As appearance is a reserved matter in Appeal B, it is possible that the positioning of windows could be altered in an application for reserved matters approval. However, as T1 and the replacement tree would be so close to the dwelling and would be of significant scale, it is likely that any windows on the two elevations facing these trees would be subject to a loss of light. Landscaping is also a reserved matter, but it is highly unlikely that the replacement tree could be planted in any other position on the site.
11. Overall, both developments would contrast harmfully with the established character and appearance of the area and would necessitate the removal of at least one protected tree which would add to the harm. The developments would therefore be contrary to policy 37 of the Bromley Local Plan (BLP) which says that developments should complement the form of adjacent buildings and positively contribute to the street scene. They would also fail to accord with policies 73 and 74 which require proposals to take account of existing trees and encourage appropriate new planting in suitable locations.
12. Though referred to in the reasons for refusal, there would be no direct conflict with BLP policy 8, which requires houses to be 1m from the side boundary, or policy 6 which refers to residential extensions.

Living conditions

13. The developments would be provided with a small garden to the southwest and a larger area to the southeast. Nearly all the houses in the Close would have a view from their first-floor windows into the garden to the southeast of the house. Although boundary fencing and T1, if retained, would provide some mitigation, the perception of being overlooked by so many houses would mean this garden would not be sufficiently private. I note the conclusions of the Inspector into a previous appeal² on the site where he found there would be no loss of privacy. However, that scheme differs from the ones before me insofar as the previous scheme showed the area to the southeast of the house to be mainly used for parking, not garden.
14. The garden to the southwest would be in front of No 21 and there would be a close and direct view from the first-floor window at No 21, and to a lesser extent from No 20, over this garden area. However, a combination of the proposed boundary hedge and a replacement tree would most likely mean that any views from nos. 21 or 20 would be limited.

² Ref APP/G5180/W/21/3277453

15. The Council states the distance between the first-floor windows in the surrounding houses and those at the site would be 17m. This is broadly in line with the advice in the National Model Design Code for the separation distance between rear elevations of dwellings. Clearly the schemes would introduce the potential for intervisibility between facing windows which does not presently exist. However, such a relationship is not uncommon in suburban areas and it is not considered that this close relationship would result in an unacceptable loss of privacy for occupiers of either the developments or neighbouring residents.
16. Nonetheless, the short distances between neighbouring properties and the proposed southeast garden at the site would mean the developments would fail to provide a satisfactorily private garden space. Therefore, the privacy of the future occupiers of the development would not be ensured. As such, in this respect also, the proposals would conflict with policy 37 which requires developments to respect the amenity of future occupants by ensuring they are not harmed by inadequate privacy.

Flood Risk

17. The Council suggest the site is crossed by a surface water flow route with a high depth and velocity of flood water. The appellant does not dispute this, but instead suggests that a planning condition could be used to secure a surface water drainage scheme. Whilst in most circumstances a scheme to manage surface water drainage from the site could be secured by a condition, in this case such a scheme would need to address not just water from the appeal site but also from elsewhere, the volume of which is not known. As such, at this stage, I could not be confident that a surface water drainage scheme could adequately address surface water. Without that, both developments could increase the flood risk at neighbouring houses and could be at risk of flooding themselves. Therefore, I cannot conclude that the developments would accord with policies 115 and 116 of the BLP and policy SI 13 of the London Plan which together seek to reduce the impact of new development on flood risk and require development to incorporate sustainable urban drainage systems or otherwise demonstrate alternative surface water management methods. I find no conflict with policy 117 which relates to water infrastructure capacity.

Other Matters

18. The Council can only demonstrate a housing land supply of about 3 years, which they accept is a significant undersupply. In such circumstances, paragraph 11d of the National Planning Policy Framework (the 'Framework') applies. This states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
19. The contribution of a single dwelling to the Council's housing supply, particularly at a time when they cannot demonstrate a sufficient supply, would align with paragraph 60 of the Framework in that it would boost the supply of housing. But as one dwelling is a very limited contribution, it carries modest weight. Conversely, as a small site, it could be built out relatively quickly, which is supported by paragraph 70, so this counts considerably in its favour. The proposals would also be well located in terms of access to sustainable modes of transport and other shops and facilities, as supported by chapter 9 of

the Framework. But as this would be expected of any development, particularly in London, it carries little weight.

20. However, as set out above, the schemes would cause harm to the character of the area. This would contrast with paragraph 135 which says developments should be sympathetic to local character. There would also be conflict with this paragraph in that it states that development should provide a high standard of amenity for future users, which the developments, by not providing suitable private garden space, would fail to achieve. Also, the lack of certainty regarding the effect on flooding would conflict with paragraph 157 which sets out that development should take account of flood risk. I give substantial weight to these adverse effects.
21. Overall, when considered against the Framework as a whole, I consider the harms of both schemes would significantly and demonstrably outweigh the benefits.
22. The appellant's statement refers to reasons for refusal relating to highway issues and sustainability issues. However, the Council raised no concerns in these regards and I have no reason to disagree.

Conclusion

23. Both proposals would fail to accord with the development plan as a whole and there are no other considerations, including the provision of the Framework, which indicate the decisions should be otherwise than in accordance with the development plan. Therefore, for these reasons, both appeals are dismissed.

A Owen

INSPECTOR