



Appeal Decision

Site visit made on 19 June 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/G5180/W/24/3339247

Land adjacent to Hollyhead, Jail Lane, Biggin Hill, Bromley TN16 3AU

- 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 Mrs Joslin-Smith against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/00180/FULL1.
 - The development proposed is for the provision of 1 no. dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for the provision of 1 no. of dwellinghouse at land adjacent to Hollyhead, Jail Lane, Biggin Hill, Bromley TN16 3AU in accordance with the terms of the application, Ref DC/23/00180/FULL1, subject to the conditions in the attached schedule.

Preliminary Matters

2. Paragraph 154 of the National Planning Policy Framework (the Framework) indicates that the construction of new buildings should be considered inappropriate in the Green Belt, subject to a few exceptions. One of the identified exceptions is limited infilling in villages. The appeal site is within the green belt and the appeal proposal comprises limited infilling in a village. As such, it is not inappropriate development in the Green Belt. This is not disputed by either the Council or the appellant.
3. In May 2018 the Council issued an enforcement notice¹ for a breach of planning control due to the construction of a detached timber clad building on land owned by the appellant without planning permission. An appeal² against the enforcement notice was dismissed in December 2020. The Council has identified that the enforcement notice was not complied with. This decision is without prejudice to any ongoing enforcement action relating to that building.
4. The appellant has confirmed in writing that the latest version of the proposed block plan and landscaping details was submitted on 15 August 2023.

Main Issues

5. The main issues are the effect of the proposal on:
 - the character and appearance of the area;
 - biodiversity, with particular regard to habitat suitable for foraging and commuting wildlife; and,

¹ Enforcement notice Ref. EN/16/00390/OPDEV

² Appeal Ref. APP/G5180/C/18/3205844

- highway safety, with particular regard to intervisibility.

Reasons

Character and appearance

6. The appeal site is a parcel of grassland located on Jail Lane. From the pictures provided, the appeal site used to be bound by thick vegetation. However, most of this has been cleared other than an Oak tree. The surrounding dwellings are generally low-lying and set within large plots. Most boundary treatments in the area contain some form of vegetation. The area is characterised by spacious, verdant development. This creates a semi-rural character on the edge of Biggin Hill, providing a transition between the settlement and the countryside.
7. To enable sufficient visibility for vehicles exiting the site, all of the vegetation along the site's frontage, including the Oak tree, would need to be removed or trimmed to a low height. As above, most of this vegetation has already been cleared, without the need for planning permission. Nonetheless, the loss of the Oak Tree would cause further harm to the verdant character of the area.
8. However, the proposed dwelling is set back within the site and there is a large area to plant new vegetation toward the front of the site. The proposed siting of the dwelling, alongside a comprehensive landscaping scheme would ensure that the appeal proposal assimilates with the spacious and verdant character of the area. Moreover, a condition requiring the landscaping scheme to be approved and maintained for five years, could be attached to any planning permission. This would provide a suitable level of control, to ensure that the proposal does not harm the character and appearance of the area.
9. With appropriate mitigation, the appeal proposal would not have a harmful effect on the character and appearance of the area. It would therefore comply with Policies D4 and G7 of the London Plan, The Spatial Development Strategy for Greater London, March 2021 (LP), and Policies 37 and 73 of the Local Development Framework, Local Plan, London Borough of Bromley Planning Division, January 2019 (BLP). These policies indicate that if planning permission is granted that necessitates the removal of trees there should be adequate replacement based on the existing value of the tree, and proposals should positively contribute to the existing street scene and landscape, amongst other factors.

Habitats

10. Given the site's location on the edge of the settlement close to the wider countryside and in proximity to a pond, it may provide suitable habitat for foraging and commuting wildlife. A baseline assessment of the existing habitats present on the site has not been provided. Without further evidence, it is difficult to ascertain the quality of the habitats present on site and the wildlife they could support.
11. Nonetheless, the Council accepted that the vegetation previously along the site's frontage, including a Holly tree, could be removed in a precautionary manner to protect existing habitat. The Council also acknowledged that it could be replaced with vegetation with a higher ecological value. Whilst the Council sought to retain the Oak Tree, which is still present on site, a condition would ensure that its ecological value is assessed, and any replacement planting would lead to a biodiversity net gain. Although the tree may be of a high

ecological value, given the size of the appeal site and the scope for habitat enhancements, it is likely that a biodiversity net gain could be secured for the site. Moreover, appropriate habitat for foraging and commuting wildlife could be secured.

12. Therefore, with appropriate mitigation, the appeal proposal would not have a harmful effect on biodiversity, with particular regard to habitat suitable for foraging and commuting wildlife. It would therefore comply with BLP Policy 73 which indicates that proposals for new development will take particular account of existing trees which in the interests of wildlife habitat are considered desirable to be retained.

Highway safety

13. The appeal proposal would lead to an intensification of use of the existing access. Despite the clearance of some vegetation along the site frontage, there is still insufficient visibility for drivers exiting the site, to the right. Currently there are many tall obstructions, including a post and rail fence, an Oak tree, and a close boarded fence surrounding neighbouring land.
14. In May 2022, planning permission³ was granted for the erection of a dwellinghouse on neighbouring land. Condition 11 attached to that planning permission requires visibility splays to be provided free of obstruction to visibility, more than 1m in height.
15. The appellant has indicated that the landowner of the neighbouring plot of land would be willing to undertake the necessary removal of vegetation, to allow suitable visibility for the appeal proposal. It is unclear whether the clearance works have already been undertaken as there is a close boarded fence around the site.
16. However, the approved plans for that permission show the retention of the vegetation to the front of the site. Nonetheless, Condition 7 requires a landscaping scheme to be submitted to and approved in writing by the Council. As such, there would still be an opportunity for the neighbouring landowner to seek an agreement for the removal of the vegetation with the Council.
17. Unlike the proposal on neighbouring land, the appellant does not own all the land required to be cleared to ensure appropriate visibility for drivers exiting the site. Therefore, a Grampian condition requiring a legal agreement to be submitted to and approved by the Council, which ensures the land is clear of obstructions, prior to occupation of the proposed dwelling and would remain free of obstruction in perpetuity, is necessary. In addition, a condition requiring the necessary visibility splays to remain free of obstruction is required, to ensure that the land owned by the appellant is free from obstruction in perpetuity.
18. The Planning Practice Guidance⁴ (PPG) states that Grampian conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. There is no indication that the neighbouring landowner would be willing to enter into a legal agreement. Nonetheless, there have been discussions between the appellant and neighbouring landowner concerning the clearing of the land.

³ DC/21/02728/FULL1

⁴ Planning Practice Guidance – Use of Planning Conditions, Paragraph: 009 Reference ID: 21a-009-20140306

Moreover, the land could be subject to a landscaping scheme associated with the neighbouring planning permission, which may show the vegetation being removed. Therefore, there is some prospect of the action being performed within the time-limit imposed. Consequently, a Grampian condition would be appropriate in this instance.

19. With an appropriate legal agreement, the appeal proposal would not have a harmful effect on highway safety, with particular regard to intervisibility. Therefore, it would comply with LP Policy T4 and BLP Policy 32 which indicate that the Council will ensure that road safety is not significantly adversely affected, and proposals should not increase road danger.

Conditions

20. The Council has indicated the conditions that it considers would be appropriate. I have considered these in light of the guidance contained within the PPG and the Framework.
21. Conditions specifying a time limit to implement the permission and approved plans are required in the interest of certainty. Conditions requiring details of the external finishes, and hard and soft landscaping schemes, to be approved by the local planning authority are required in the interest of character and appearance. Moreover, a condition requiring planting to take place in the first planting season following completion of the development or first occupation, and appropriate maintenance of the vegetation, is also required in the interest of character and appearance.
22. The condition requiring details of the hard landscaping scheme also includes a requirement to provide details of refuse storage and an electric vehicle charging point, to ensure that the proposed dwelling would be appropriately serviced and support the use of electric vehicles.
23. A condition requiring a habitat protection and enhancement plan is required to ensure that habitats which support foraging and commuting wildlife are either not harmed or suitably replaced, and to ensure the proposal provides a biodiversity net gain.
24. A condition requiring details of a Construction Method Statement to be approved by the local planning authority is necessary to ensure the living conditions of neighbouring residents are conserved and to ensure highway safety.
25. A condition requiring details of a surface water drainage system to be approved by the local planning authority is necessary to ensure that the proposed dwelling would drain appropriately. It would not be reasonable to attach a separate condition requiring details of a scheme which restricted surface water discharging onto the highway, as the drainage scheme will be subject to the drainage hierarchy outlined in the Planning Practice Guidance.
26. A condition requiring the proposed dwelling to be built in accordance with Building Regulations M4(2) 'accessible and adaptable dwellings' is reasonable to ensure there is an appropriate mix of housing in the borough.
27. As above, a Grampian condition is necessary to ensure that vegetation is cleared on neighbouring land and remains so in perpetuity, to provide suitable visibility splays. Furthermore, a condition requiring the identified visibility

splays to remain clear of obstruction above 1m in height is necessary to ensure highway safety.

28. It would not be reasonable to attach a condition which would prevent development permitted by Class A, AA, B, C or E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). It has been determined that the proposed dwelling is not inappropriate in the Green Belt. The GPDO restricts development in certain areas but not the Green Belt. It follows that development which falls in these categories, would not generally conflict with the purposes of the Green Belt or its essential characteristics of openness and permanence. Furthermore, there is no substantive evidence before me which would indicate that an extension permitted by the GPDO would be harmful to the character and appearance of the area or lead to it not appearing as limited infilling in a village.
29. It would also not be reasonable to attach a condition requiring an acoustic assessment to be approved. The proposed dwelling is in a residential area, there is no substantive evidence of noise sources which would be harmful to the living conditions of future residents of the dwelling.

Conclusion

30. For the reasons given above the appeal should be allowed and planning permission is granted.

J Hobbs

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawing:
 - Site Location Plan, dated 27 May 2021
 - Plans of Elevations Rev 1 As Proposed, dated 15 February 2023, Ref. QWC. 01
 - Proposed Block Plan, Planting & Landscape Details, submitted 15 August 2023
 - Highway Visibility Details, dated 9 August 2023
- 3) No development shall take place until a copy of a legal agreement with the neighbouring landowner has been submitted to and agreed in writing by the local planning authority. The agreement should ensure that the land over which the visibility splays, detailed in Condition 11, would travel is cleared of obstructions exceeding 1.0m in height and shall remain so thereafter.
- 4) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste; and,
 - viii) delivery and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a maintenance plan for the lifetime of the development.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be maintained thereafter in accordance with the approved maintenance plan.

- 6) No development above ground level shall take place until details of the materials to be used in the construction of the external surfaces has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) No development above ground level shall take place until a habitat protection and enhancement plan has been submitted to and approved in writing by the local planning authority. The habitat protection and enhancement plan shall include:
 - i) A plan showing habitat protection zones;
 - ii) Details of development and construction methods within habitat protection zones and measures to be taken to minimise the impact of any works;
 - iii) Details of the proposed management of the site, biodiversity enhancement features and a timetable for implementation.

The protection and enhancement plan shall be implemented in accordance with the approved timetable and the enhancement measures shall be retained thereafter.

- 8) No development above ground shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include
 - i) earthworks showing existing and proposed finished levels or contours;
 - ii) details of existing vegetation to be retained and new vegetation to be planted, including a schedule detailing sizes and number of all proposed trees/plants;
 - iii) boundary treatments;
 - iv) vehicle parking layouts;
 - v) details of an electric vehicle charging point;
 - vi) hard surfacing materials;
 - vii) external lighting;
 - viii) refuse storage;
 - ix) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before the development is first occupied in accordance with the agreed implementation programme and retained thereafter.

- 9) All planting, seeding or turfing comprised in the approved details of landscaping scheme 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 sooner; and any trees or plants which within a period of five 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.
- 10) The development hereby permitted shall be built in accordance with the criteria set out in Building Regulations M4(2) 'accessible and adaptable dwellings' and shall be retained thereafter.

- 11) The 43m by 2.4m visibility splays shown on plan "Highway Visibility Details" dated 9 August 2023, shall be free of any obstruction exceeding 1.0m in height and shall be retained as such thereafter.