



Appeal Decision

Site visit made on 29 May 2024 by R Parker

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

Appeal Ref: APP/G5180/D/24/3339043

5 Thorndon Close, Orpington BR5 2SH

- 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 Mr Tony Hurley against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/04605/FULL6.
 - The development proposed is part one/two storey side and rear extension.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. The application form described the proposal as 'two storey side and rear extensions', however part of the proposal is only single storey. Therefore, in the header above I have used the amended description from the appellant's appeal form, as it more accurately describes the appeal scheme.

Main Issue

4. The main issue in this appeal is the effect on the living conditions of neighbouring occupants at 7 Thorndon Close, with particular regard to light and outlook.

Reasons for the Recommendation

5. The appeal property is part of a group of houses built in a fan-shape, such that each house has a slightly different aspect, with unequal garden sizes and shapes. There is mature woodland to the rear of both dwellings. At present, neither the host property nor their attached neighbour No 7 have extended to the rear, however there is permission for a part single storey, part two storey extension to the rear of No 5, and I saw on site that work had commenced.
6. No 7 has a smaller, shorter garden than No 5, containing a single storey outbuilding along much of the side boundary with No 9 and another along the rear boundary. The woodland behind No 7 creates tall, dense tree cover along much of the boundary. Consequently, the outlook from the rear kitchen and

- bedroom windows and the garden is constrained, much more so than for No 5 which has a larger, more open garden.
7. The ground floor rear elevation of No 7 has a kitchen with a window set away from, and a door glazed with partially obscured glass close to, the side boundary. At first floor there is an obscure glazed bathroom window close to the boundary, with a bedroom window further away. Given the orientation of this pair of properties, No 5 has very little effect on daylight reaching the rear of No 7, however it will create some shade affecting sunlight in the early morning. Both houses have a deep eaves directly above the first-floor windows, which has some effect on daylight to the rear bedroom of No 7. The trees behind No 7 also create significant shade from midday onwards. Consequently, I saw that the rear rooms were rather dark.
 8. The proposed two storey rear extension would sit directly on the boundary with No 7. Due to its siting, height and depth, the proposed extension is unlikely to have any significant impact on daylight reaching No 7, as the rear of that property would still benefit from daylight for much of the day.
 9. The proposed rear extension would however create more shade than the existing dwelling does, due to its height, depth, and orientation. It would result in the ground floor rear window, glazed door, and garden of No 7 being shaded for more of the morning than at present. Although the proposal would only reduce sunlight for a relatively small proportion of the day, the morning is the main time when sunlight reaches these areas as, later, the tall trees create significant shade. Therefore, sunlight in the morning is particularly important to the living conditions of the occupiers. Consequently, the loss of sunlight that would result from this proposal would result in significant harm to the living conditions of the occupiers of No 7.
 10. In reaching this conclusion I have had regard to the appellant's sunlight diagrams, however no detail has been provided regarding the author or their qualifications. Furthermore, they only show the effect of the existing dwelling, existing and proposed extensions, not shading from other sources, and do not show how the shading changes through the morning. The diagrams also suggest there to be no shadows at all at mid-winter, which strikes me as improbable. Therefore, they do not capture the full impact of shading on No 7 and I give them minimal weight.
 11. The proposal would be set away from the clear glazed windows at ground and first floor in No 7 but would still be visible from these at an angle. Due to its proximity and scale, it would also be very apparent from the closer openings, although its impact would be reduced somewhat by the obscured glass in these. Nevertheless, it would create a distinct sense of enclosure compared to the existing situation.
 12. The existing outlook from the kitchen window is already limited by buildings and trees in other directions, therefore the relatively open outlook towards the garden of No 5 contributes positively to living conditions for the occupiers of No 7. Consequently, the increased sense of enclosure resulting from the proposal would adversely affect the outlook from the kitchen to the detriment of the living conditions of the occupiers of No 7. While the effect is not so great as to warrant refusal for this alone, it adds to the harm already identified in respect of sunlight.

13. The appellant has referred to a 45 degree 'rule of thumb' having been applied to the proposal; however, I have not been given details of where such a 'rule' is set out. Therefore, I do not have details of what this 'rule' requires and how it is to be applied, particularly whether it should be considered both horizontally and vertically, and whether it applies differently to single and two storey extensions. Accordingly, I can give it very little weight as a consideration in this case. In any event, in my experience such rules are designed to safeguard the light and outlook reaching neighbouring properties, and I have assessed these issues above.
14. The proposal would therefore harm the living conditions of the occupiers of No 7 with respect to sunlight and outlook, but not in respect of daylight. Accordingly, it would conflict with Policy 37 of the London Borough of Bromley Local Plan (adopted January 2019) which expects proposals to allow adequate daylight and sunlight to penetrate buildings and to respect the living conditions of current and future occupants of neighbouring buildings.

Other considerations

15. The existing permission is for a single storey extension adjacent to the boundary, with a two-storey section further away. Therefore, it would have some effect on light to and outlook from No 7, as recognised by the Council in its officer report for that scheme. Nevertheless, the separation distance of the two-storey element from the boundary means that scheme would have materially less impact on light and outlook for No 7 than the appeal proposal. Consequently, the ability to build that approved scheme only carries limited weight and does not justify the additional harm that would result from the appeal proposal.
16. In their Design and Access Statement the appellant refers to being able to build a similar mass under permitted development. Permitted development rights allow for rear extensions of more than one storey up to 3m deep subject to certain conditions and limitations. The part of the proposal nearest the boundary would therefore be of very similar size to what could be built as permitted development and would have very similar effects on sunlight to, and outlook from, No 7.
17. It is however necessary to consider whether there is a real prospect of this alternative, fallback, development being implemented. The appellant has commenced work on the approved rear extension: the rear ground floor elevation of the property has been taken out, and the foundations and lower part of the walls of the approved extension have been constructed. Significant progress has therefore been made on the approved scheme. That extension features the same stepped footprint as the appeal proposal and wraps around to the side of the dwelling. The whole extension would not be permitted development due to the overall depth and wrap around nature. Therefore, permitted development rights would not deliver the amount of accommodation the appellant seeks to achieve.
18. In these circumstances, I consider it is very unlikely that the appellant would now cease work and implement a much smaller alternative scheme. Consequently, I find that there is no real prospect that the permitted development alternative would be built, and that equivalent harm to living conditions would result, even if this appeal is dismissed. I therefore give this fallback very limited weight, and it does not justify the harm identified above.

19. A comparison has been drawn with the substantial rear extensions at 1 and 3 Thorndon Close. These properties have both been extended to the same distance, and their building lines are cohesive, thus they are not a direct comparison for the consideration of living conditions. Furthermore, the Council has stated that they have no record of planning permission for the latter extension. Therefore, these extensions do not justify the harm identified.
20. Paragraph 129 c) of the National Planning Policy Framework (Framework) advocates a flexible approach in applying policies or guidance relating to daylight and sunlight where they would otherwise inhibit making efficient use of a site. However, this flexibility is to be applied only where the resulting scheme would provide acceptable living standards. Additionally, the extant permission makes efficient use of the site, and it has not been demonstrated that the appeal proposal would meaningfully increase that efficiency. Therefore, applying policy on light to this scheme does not inhibit efficient use of the site, and a flexible approach is not appropriate. The Framework therefore does not justify the harm that would result from the proposal.
21. I recognise that the appellant wishes to provide accommodation for modern living, however it has not been demonstrated that either the existing dwelling, or the approved extensions, would not deliver liveable accommodation. Therefore, the additional first floor space proposed here would result in only private benefits to the appellant, which I give very little weight. This does not outweigh the harm identified.

Conclusion and Recommendation

22. For the reasons given above, the proposal would conflict with the development plan. Having had regard to the issues raised, including the benefits of the scheme, I find that there are no material considerations which are sufficient, either individually or cumulatively, to justify granting permission contrary to the development plan. Therefore, I recommend that the appeal should be dismissed.

R Parker

APPEAL PLANNING OFFICER

Inspector's Decision

23. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

L McKay

INSPECTOR