



Appeal Decision

Site visit made on 19 June 2024

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2024

Appeal Ref: APP/G5180/W/23/3335738

15 Fox Hill, Anerley, Bromley, London, SE19 2UX

- 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 Fox Hill Development RH Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/22/05020/FULL1
 - The development proposed is the erection of a 4 bedroom detached dwelling with associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 4 bedroom dwelling, construction of vehicle access and associated works at 15 Fox Hill, Anerley, Bromley, London, SE19 2UX in accordance with the terms of the application, Ref DC/22/05020/FULL1, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the banner heading above has been taken from the decision notice, as this better reflects the proposal and includes reference to the proposed access.
3. The second reason for refusal is no longer pursued by the Council following the submission of a Preliminary Ecological Assessment (PEA).
4. The Council refer to an Urban Design Guide adopted in July 2023, after the appeal scheme was determined, but it is not relevant to the main issue in this appeal.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of the occupiers of 13 Tudor Road with particular reference to outlook and daylight, and the occupiers of 17 Fox Hill, with reference to outlook.

Reasons

6. The appeal site comprises part of the garden space of 15 Fox Hill and is located behind a continuous stone wall fronting Fox Hill. The site has a steep gradient that drops towards 17 Fox Hill. The dwelling at 15 Fox Hill is situated on the corner of Fox Hill and Tudor Road.

13 Tudor Road

7. The appeal site has a shared boundary with part of the rear terraced garden serving 13 Tudor Road. There is established planting alongside this boundary which would be unaffected by the proposed development. The submitted overshadowing statement concludes that there would be no notable increase in overshadowing to the neighbouring gardens. The statement indicates that shadowing from the large beech tree covers a large proportion of the lower garden area of 13 Tudor Road, but the diagrams do show a small amount of shadowing from the proposed dwelling.
8. Whilst the Council consider that the effect of a solid building is very different to soft tree coverage, given the shadowing from the building effects only 23% of the lower garden area in late afternoon, the impact would be considered acceptable. This is particularly relevant as the garden space affected equates to a small amount of the usable garden at this property.
9. Representations raise concerns that the overshadowing statement fails to depict removed trees and foliage, boundary walls and fences. However, the modelling illustrates the shadowing from the trees due to be retained and the proposed dwelling, which is reflective of the development proposed. In respect of the fencing, the modelling shows shadowing from the fence line.
10. The rear wall of the proposed dwelling would run parallel to the boundary for its width. Due to being set in from the boundary, the established planting and the elevation being stepped, it would not unacceptably enclose the lower rear garden or create a dominating effect that would negatively affect outlook.

17 Fox Hill

11. The northeastern boundary between the appeal site and 17 Fox Hill is demarcated by a brick wall which increases in height as it extends past the rear wall of number 17. The flank wall of 17 faces the appeal site and does not contain any windows, the rear windows and first floor terrace face the rear garden.
12. Reference is made to the set-back between the ground floor of the proposed building and boundary line, not being dissimilar to the previous scheme. Whilst part of the building line remains unchanged, the sense of enclosure is reduced by the entrance stair being moved back. As a result, most of the side elevation of the proposed dwelling would face the flank wall of No 17, where there are no windows. The four bay bike stand at ground floor would align with the terrace at No 17 but this is set back from the boundary and would be significantly lower.
13. Views from the balcony and terrace of 17 Fox Hill would not be dominated by the proposed dwelling due to its position and design. A large proportion of the proposed dwelling would sit behind the main building line of 17 Fox Hill, with the elements of the proposal visible from the terrace being limited to oblique views of the corner and the single storey rear section. Whilst the terrace appeared well used at the time of my visit, the bench on it was positioned facing away from the appeal site, suggesting that the main outlook for users would be to the rear and the adjoining property. The proposed development would not negatively alter this arrangement.

14. For the reasons identified above, I conclude that the proposed development would not cause material harm to the living conditions of the occupiers of 13 Tudor Road and 17 Fox Hill. As such it would not conflict with policies 3 and 37 of the Bromley Local Plan (2019) and the Supplementary Planning Guidance Number 2. These policies seek to ensure that proposals do not unacceptably effect daylight. The Council refer to Policy 4 which considers Housing Design, but this is not relevant to the main issue in this appeal.

Other Matters

15. Representations have been received regarding loss of habitat, lack of an ecological appraisal, loss of trees and adverse impacts on wildlife without mitigation. The submitted PEA addresses these concerns through various mitigation measures and would ensure that biodiversity enhancement takes place. The PEA also ensures that the scheme increases the sites biodiversity.
16. The appeal site is located within the Belvedere Road Conservation Area and the wider site at 15 Fox Hill contains a Victorian villa which is locally listed. The significance of the conservation area is derived by its verdant character, distinct urban grain, historic layout and large villa type properties. The large birch tree at the site is a prominent and positive feature in the road. The proposed dwelling would be in keeping with the position and plot sizes of existing dwellings and subservient in terms of its height. Its siting and mass would mean that the focus from Fox Hill would remain on the protected tree. The proposed development would therefore preserve the character and appearance of the Belvedere Road Conservation Area and the setting of the non-designated heritage asset.
17. Representations have been received in respect of highway safety, the loss of on street parking and additional traffic arising from the proposed development. The Highway Authority do not object to the loss of the parking space and consider the new vehicle access acceptable, provided no loose material is used and no surface water is discharged to the highway. The site is located in an area with a high Public Transport Accessibility Level, with a rating of 4, where there is an expectation that public transport will be utilised and proposing one parking space is compliant with the standards in the London Plan. Whilst one off-street parking space would be lost, one would be gained on the proposed driveway. Given that the street has a strong place function with other vehicle driveways serving properties, road users are expecting vehicles to be slowly edging out onto the road. Therefore, I do not consider that the proposed development would result in a highway safety issue nor that it would result in an unacceptable increase in traffic or congestion.
18. A number of representations refer to the design and mass of the proposed dwelling. The principle of a contemporary building was considered in the previous appeal decision whereby a larger dwelling of a similar design was considered acceptable in terms of its contribution to the character and appearance of the area including the conservation area.
19. Any disturbance during construction would be for a temporary period and there is no evidence before me to substantiate concerns regarding land stability. With reference to the concern about the appropriateness of boundary treatments, these can be controlled via condition.

Conditions

20. The Council has suggested planning conditions in the event that the appeal is allowed. Some of those conditions are pre-commencement conditions. I have sought and obtained the written consent of the appellant for the pre-commencement conditions which I have imposed.
21. In addition to the standard time condition, it is necessary for a condition to list the approved plans in the interest of certainty.
22. The mitigation set out in the appellant's arboricultural statement is secured via condition as it is necessary to safeguard protected trees on site. A landscaping condition is also required to secure an appropriate setting and boundary treatment for the proposed dwelling.
23. The mitigation measures detailed in the PEA are secured via condition to ensure that there would be an acceptable impact on the ecology of the site. Conditions requiring the submission of details for external finishes and openings are required to control the design of the dwelling and the impact on the conservation area. The appellant suggests that the proposed conditions could be combined but I have left them separate so that the appellant may discharge them together or individually.
24. A condition restricting further openings is required to safeguard privacy and given the site is within an air quality management area, a condition is required to restrict emission rates from new gas boilers.
25. Conditions requiring SUDs, the control of surface water are required to reduce flood risk and pressure on existing infrastructure.
26. A condition requiring that adequate parking is retained to avoid the development negatively affecting on street parking, and that the proposed surface does not affect highway safety would ensure that the proposed development is not prejudicial to highway safety. A condition requiring a construction and environmental management plans would also achieve this aim and manage the impact arising during construction.
27. The council's suggested condition regarding the provision of cycle storage is deemed necessary to ensure adequate facilities are retained in perpetuity and reduce reliance on private car transport.

Conclusion

28. For the reasons given above the appeal should be allowed.

V Goldberg

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 drawing nos 01A, 04B, 05B, 06C, 07C, 08A, 09A, 10C, 11B, 12B, 13A, 14A, 15C, 16C, 22, 25A, 26A and 27A (all drawing numbers have prefix of 340-21-)
- 3)
 - (i) Prior to the commencement of the development hereby approved (including the arrival of machinery and materials and all preparatory work), tree protection measures in accordance with the tree protection plan approved as part of the Tree Survey Arboricultural Report (12 December 2022) shall be installed and a schedule of supervision by an arboricultural consultant, shall be submitted to the local planning authority for approval.
 - (ii) Development shall only proceed in accordance with the recommendations within the approved Tree Survey Arboricultural Report and the schedule of supervision approved under part (i).
 - (iii) Following each supervisory visit, the arboricultural consultant shall submit a memo to the Local Planning Authority (via trees@bromley.gov.uk) with a record of their findings.
 - (iv) Once installed, tree protection measures shall not be moved or removed, but shall be retained in situ until completion of the development and all materials and machinery have been removed from the site, unless otherwise agreed in writing by the Local Planning Authority.
- 4)
 - (i) Prior to commencement of above ground works details of the treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:
 1. A scaled plan showing all existing vegetation to be retained and trees and plants to be planted which shall include use of a minimum of 30% native plant species of home-grown stock (where possible) and no invasive species
 2. Proposed hardstanding and boundary treatment
 3. A schedule detailing sizes and numbers of all proposed trees/plants
 4. Specification to ensure successful establishment and survival of new planting.

- (ii) There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority.
 - (iii) Any new tree(s) that die(s), are/is removed or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which die, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details.
- 5)
 - (i) The recommendations outlined within the Preliminary Ecological Appraisal (PJC Consultancy Ltd, August 6 December 2023) (PEA), including the pre-works badger survey and suggested biodiversity enhancements, shall be incorporated into the permission hereby granted.
 - (ii) Prior to commencement of any development, a pre-works badger survey shall be undertaken to establish whether any badger setts have been established on site since the time of the PEA, and to provide measures to address any such developments.
 - (iii) Details of biodiversity enhancements, as well as any measures pursuant to (ii), shall be submitted to and approved in writing by the Local Planning authority prior to the commencement of any development, and these shall be included within construction works and permanently retained at the site thereafter.
- 6) Details (including samples) of the materials to be used for the external surfaces of the building shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of above ground works. The works shall be carried out in accordance with the approved details.
- 7)
 - (a) Prior to commencement of above ground works, details of the windows (including rooflights and dormers where appropriate) including their materials, method of opening and drawings showing sections through mullions, transoms and glazing bars and sills, arches, lintels and reveals (including dimension of any recess) shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced.
 - (b) The windows shall be installed in accordance with the approved details.
- 8) No windows or doors additional to those shown on the permitted drawings shall at any time be inserted in the flank and rear elevations of the dwelling hereby permitted, without the prior approval in writing of the Local Planning Authority.
- 9) The site is located within an Air Quality Management Area declared for NO_x: In order to minimise the impact of the development on local air quality any gas boilers must meet a dry NO_x emission rate of <40mg/kWh.

- 10) (a) Prior to commencement of the development hereby approved (excluding any ground clearance or demolition) a scheme for the provision of surface water drainage shall be submitted and approved in writing by the local planning authority.
(b) Before the details required to satisfy Part (a) are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer in accordance with drainage hierarchy contained within the London Plan Policy 5.13 and the advice contained within the National SuDS Standards.
(c) Where a sustainable drainage scheme is to be provided, the submitted details shall:
i. provide information about the design storm period and intensity, the method employed to delay (attenuate) and control the rate of surface water discharged from the site as close to greenfield runoff rates (81/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water
(d) The drainage scheme approved under Parts a, b and c shall be implemented in full prior to first occupation of the development hereby approved.
- 11) (a) Surface water from private land shall not discharge on to the highway.
(b) Prior to the commencement of above ground works details of the drainage system for surface water drainage to prevent the discharge of surface water from private land on to the highway shall be submitted to and approved in writing by the Local Planning Authority.
(c) Before any part of the development hereby permitted is first occupied, the drainage system shall be completed in accordance with the details approved under Part (b) and shall be retained permanently thereafter.
- 12) Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages
- 13) No development shall commence on site (including demolition) until such time as a Construction and Environmental Management Plan has been submitted to and approved in writing by the local planning authority. As a minimum the plan shall cover:
(a) Dust mitigation and management measures.
(b) The location and operation of plant and wheel washing facilities
(c) Measure to reduce demolition and construction noise
(d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:

- (i) Rationalise travel and traffic routes to and from the site as well as within the site.
 - (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity.
 - (iii) Measures to deal with safe pedestrian movement.
 - (iv) Full contact details of the site and project manager responsible for day-to-day management of the works
 - (v) Parking for operatives during construction period
 - (vi) A swept path drawings for any tight manoeuvres on vehicle routes to and from the site including proposed access and egress arrangements at the site boundary.
 - (e) Hours of operation
 - (f) Other site-specific Highways and Environmental Protection issues as requested on a case by case basis
 - (g) The development shall be undertaken in full accordance with the details approved under Parts a-f.
- 14) No loose materials shall be utilised for the parking area.
- 15) Before any part of the development hereby permitted is first occupied, bicycle parking (including covered storage facilities) shall be provided at the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The bicycle parking/storage shall be permanently retained thereafter.