

Appeal Decision

Site visit made on 21 August 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 4 September 2024

Appeal Ref: APP/G5180/W/23/3335928

**26 Hawthorne Road & land r/o 28 Hawthorne Road and
10 & 12 Wyncroft Close, Bromley BR1 2HH**

- 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 Becquet Developments Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/22/03477/OUT.
 - The development proposed is the construction of new access drive and erection of 4 dwellings with garages, and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of new access drive and erection of 4 dwellings with garages, and associated landscaping at 26 Hawthorne Road & land r/o 28 Hawthorne Road and 10 & 12 Wyncroft Close, Bromley BR1 2HH in accordance with the terms of the application, Ref DC/22/03477/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was submitted in outline with all matters except for access and layout reserved for subsequent approval. Consequently, I have assessed the appeal proposal on that basis and have considered the submitted plans as indicative, except where they relate to access and layout.
3. On 30 July 2024 the Government published a consultation on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" and "National Planning Policy Framework: draft text for consultation". Also, a Written Ministerial Statement entitled "Building the homes we need" was published on the same date. The Council and the appellant were given the opportunity to comment on these publications. I have considered their responses when determining this appeal.

Main Issues

4. The main issues are the effect of the proposal on:
 - protected trees, with particular regard to their amenity value;

- the living conditions of occupiers of 28 Hawthorne Road (No 28), with particular regard to privacy, outlook, and sunlight; and
- protected species.

Reasons

Trees

5. There are numerous trees within the appeal site, several of which are subject to a Tree Preservation Order (TPO). One of the protected trees is located close to the site's boundary with Hawthorne Road, the remaining protected trees are grouped together close to the boundary with 12 Wyncroft Close (No 12).
6. The proposal seeks to retain most of the trees, but two would be felled to facilitate the development including one of the protected trees. The protected tree is identified as Tree T27 within the Arboricultural Report¹ and is located at one end of the group of trees close to No 12.
7. Tree T27 may be subject to greater wind loading due to the recent removal of surrounding trees and its included union provides access for pathogenic infection. I note that it is not disputed that these factors will lead to its failure. Nonetheless, it remains in a healthy state and the Arboricultural Report forecasts that it has a life expectancy of 10 to 20 years.
8. Whilst the group of protected trees are located toward the centre of the site, they are tall and well-established. As such, they can be appreciated in mid to long distance views and contribute to the sylvan character of the area. The loss of Tree T27 would reduce the visual amenity provided by this group of protected trees as the massing of the overall group would be reduced.
9. Given the appearance, scale, and age of Tree T27, its replacement with a tree with a diameter breast height of circa 14-16cm would not mitigate the harm caused to the visual amenity. Furthermore, the benefit of allowing more light to proposed Unit 3 would not, alone or in combination with the replacement planting, outweigh the identified harm.
10. I acknowledge that the Arboricultural Report erroneously shows Tree T1 within the garden of 24 Hawthorne Road, whereas it is located within the appeal site. Nevertheless, I am satisfied that with the suggested protection measures it would not be affected by the appeal proposal.
11. Overall, I conclude that the proposal would have a harmful effect on protected trees, with particular regard to their amenity value. As such, it would be contrary to Policy 73 of the Local Plan, London Borough of Bromley, Planning Division, January 2019 (BLP). This Policy indicates that proposals for new development are required to take account of existing trees, which in the interest of visual amenity are considered desirable to retain.
12. Whilst the loss of the protected tree would be harmful, the extent of the harm is reduced by the fact that its visual amenity is linked to a wider group of protected trees, all of which would be retained, and it is at increased risk of failure. Consequently, I ascribe moderate weight to the identified harm.

¹ Arboricultural Report, Becquet Developments Limited, 26 Hawthorne Road, Bromley, BR1 2HH, Valley Trees

Living conditions

13. The Existing and Proposed Site Plan² shows a proposed dwelling fronting onto Hawthorne Road, next to that dwelling would be an access road, which leads to a cul-de-sac development of a further three dwellings. Proposed Unit 2 would be located very close to the boundary with No 28. The Site Plan shows indicative locations for bedroom windows including three on the elevation of proposed Unit 2 facing directly toward No 28.
14. Although the proposed dwelling would be a significant distance from No 28, the windows would only be a short distance from the boundary and would directly overlook No 28's rear garden. Moreover, the vegetation along the boundary with No 28 is sparse and provides limited screening. The vegetation is also located on neighbouring land and is therefore outside of the control of the appellant. In addition, the rear garden of No 28 appears to be well used due to the presence of a swimming pool. As such, if the windows within proposed Unit 2 were in the indicative locations along the boundary with No 28 they would cause harm to neighbouring occupiers' living conditions, with regard to a loss of privacy.
15. Notwithstanding this, the proposal is for outline planning permission with appearance reserved for subsequent approval. The precise location of the bedroom windows would be subject to a future application for approval of reserved matters. Given there are no indicative locations for bedroom windows in the eastern and southern elevations, I am satisfied that the internal arrangement of a dwelling in this position could be designed to ensure that there would be no or very limited overlooking of No 28 and other neighbouring properties. Therefore, the harm identified above would not occur.
16. Whilst proposed Unit 2 would be located close to the boundary with No 28, No 28 is set within spacious grounds; as such, the presence of a dwelling at the end of the garden away from the property would not be overbearing on neighbouring occupiers. Moreover, given the orientation of the appeal site and the location of proposed Unit 2, it would cast shadows over part of No 28's garden. However, the effect of the shadowing would be limited when considering the size of the garden and the fact the most affected area would be the section of garden furthest from the dwelling. Therefore, it would not have a harmful effect.
17. Proposed units 3 and 4 would be located a significant distance from the site boundaries which would ensure that they would not appear overbearing or significantly overshadow 5 and 6 Rosemount Drive (Nos 5 and 6) or No 12. The distance between the proposed elevations of units 3 and 4 and Nos 5, 6 and 12 would ensure that future occupiers of the proposed development would not harmfully overlook occupiers of those properties. Furthermore, the Council would be able to control the detailed design at the reserved matters stage, to ensure any overlooking of neighbouring properties would be minimised.
18. The principle of residential development is established in the area. An additional four dwellings constructed at a low density would not lead to a

² Drawing Ref. P869-005-RevC

significant increase in noise. Moreover, there is no substantive evidence that the proposal would have a harmful effect on air quality.

19. A neighbouring occupier submitted that the effect of the appeal proposal would amount to a breach of their rights under Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998. Namely the right to respect for their private and family life and their home, and the right to the peaceful enjoyment of their possessions. They also indicated that the effect of the proposal would lead to “visual intrusion” which is a legal nuisance, as described in the *Fearn v Board of Trustees of the Tate Gallery Judgment*³, due to the indicative window locations and the presence of a swimming pool.
20. The Council would be able to control the detailed design at the reserved matters stage, such to maintain satisfactory living conditions for neighbouring occupiers. Consequently, the proposal would not unacceptably interfere with neighbouring occupiers’ rights or amount to visual intrusion.
21. Considering the above, the proposal would not have a harmful effect on the living conditions of occupiers of No 28, with particular regard to privacy, outlook, and sunlight. The proposal would comply with Policy D4 of The London Plan, the Spatial Development Strategy for Greater London, March 2021 (LP) and BLP Policies 3, 4, and 37. These policies indicate that the design of development proposals should be thoroughly scrutinised, new backland residential development should ensure there is no unacceptable impact on residential amenity, amongst other matters.

Protected species

22. The Badger Monitoring Report⁴ concluded that Sett 1 was a main sett and would require mitigation to ensure that the sett was unaffected by the proposed development. It also concluded that Sett 2 is an outlier sett which could be closed under a Natural England Licence.
23. The appellant has submitted conflicting evidence in relation to the required mitigation for Sett 1. The Monitoring Report states, “It is considered that a 20m buffer zone will be required around sett 1 to ensure no excavations ...” Whereas the Badger Buffer Zones Note⁵ indicated that a 10m no dig zone should be implemented and any groundwork within 20m should be monitored and supervised by an ecologist.
24. The Note referred to standards specified within Badger Protection: Best Practice Guidance for Developers, Ecologist and Planners⁶. Section 5.1 of that guidance indicates that work near a sett can cause disturbance and therefore certain activities may require a licence. The guidance states that this includes the “Use of lighter machinery (particularly for digging) within 20 metres of any sett entrance.”
25. In accordance with the guidance, a 10m no dig zone would be appropriate and any works within 20m of Sett 1 should be supervised by an ecologist and some works may require a licence. With these provisions in place and

³ *Fearn and others v Board of Trustees of the Tate Gallery* [2023] UKSC 4, 2023 WL 01424017

⁴ Badger Monitoring Report, 26 Hawthorne Road, Bickley, The Ecology Partnership, October 2023

⁵ Badger Buffer Zones, The Ecology Partnership, 3rd April 2024

⁶ Badger Protection: Best Practice Guidance for Developers, Ecologists and Planners (England), August 2023

subject to a condition requiring a new survey prior to commencement of the development, the proposal could be constructed without having a harmful effect on badgers.

26. The Preliminary Ecological Appraisal confirms that the proposal would not have a harmful effect on any other protected species. There is no substantive evidence to the contrary and the Council do not dispute this.
27. Therefore, the proposal would not have a harmful effect on protected species. It would comply with BLP Policy 72 and LP Policy G6 which indicate that planning permission will not be granted for a proposal that will have an adverse effect on protected species and proposals should manage impacts on biodiversity. The proposal would also be in accordance with Chapter 15 of the National Planning Policy Framework (the Framework) which indicates that planning decisions should contribute to the natural environment by minimising impacts on biodiversity.

Other Matters

28. The proposal for four large, detached dwellings set in spacious grounds, including cul-de-sac development would assimilate with the prevailing pattern of development in the area. The proposal would therefore not appear as overdevelopment of the appeal site.
29. There is no substantive evidence that the proposal would harmfully effect land stability or effect the foundations of neighbouring properties. Furthermore, the maintenance of existing trees to be retained as part of the development could be secured at the reserved matters stage when the appellant seeks approval for landscape matters.
30. The conduct of the Council during the determination period is a matter between the parties and is not determinative to the outcome of the appeal. Similarly, whether the owner of the site or the owner of Becquet Developments Ltd lives locally is not a determinative matter.
31. There is no substantive evidence before me of restrictive covenants which would preclude the proposed development from taking place. Nonetheless, restrictive covenants are a civil matter and outside of planning control. As such, the presence, or not, of a covenant is not determinative in this appeal.

Planning Balance

32. The appeal proposal would harm the visual amenity of the area through the loss of a protected tree. There would be conflict with BLP Policy 73. No policies have been cited that would support a proposal that conflicts with this policy. As such, the proposal would not be in accordance with the development plan as a whole.
33. However, the Council can only demonstrate 2.96 years of deliverable housing land supply, this amounts to a very significant level of undersupply. The Council has also underdelivered in relation to the Housing Delivery Test (HDT). Therefore, the presumption in favour of sustainable development as outlined within paragraph 11(d) of the Framework applies.

34. The Council has assessed the proposal on the basis that it would provide a net gain of 3 dwellings. However, the dwelling that was previously on site has been demolished and its demolition is not included as part of this proposal. There is no evidence before me that a single dwelling could be lawfully constructed on the site if I dismissed this appeal. Therefore, I have assessed the proposal on the basis that it would provide a net gain of 4 dwellings.
35. The Framework indicates that trees make an important contribution to the character of urban environments. In addition, it advises that planning decisions should ensure that developments are sympathetic to the local character. Although, the proposal would lead to the loss of two trees, including one subject to a TPO, most of the trees would be retained. Whilst the proposal would be harmful to the sylvan character of the area, the pattern of development would assimilate with the surrounding area. I therefore ascribe moderate weight to the harm.
36. Nonetheless, the Framework advises to support the Government's objective of significantly boosting the supply of homes, it is important a sufficient amount of land can come forward where it is needed. The proposed dwellings would be in an accessible location close to public transport and other services and facilities. There would also be economic benefits associated with the construction period and increased spend due to an increased local population. This permission would help address the shortfall in deliverable housing land supply and support the Council to improve their performance in relation to the HDT. With this in mind, I ascribe substantial weight to the benefits of the proposal.
37. When assessed against the policies in the Framework, taken as a whole the adverse effects of allowing the appeal would not significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development applies and this indicates that permission should be granted.

Conditions

38. The Council has indicated the conditions that it considers would be appropriate. I have considered these in light of the guidance contained within the Planning Practice Guidance (PPG) and the Framework.
39. Conditions specifying a time limit to implement the permission and submit an application for the approval of reserved matters, identifying the reserved matters, and approved plans are necessary in the interest of certainty.
40. A condition requiring a Construction Method Statement to be agreed with the Council, is necessary in the interest of preserving neighbouring occupiers' living conditions and highway safety. In addition, conditions requiring the existing access to be stopped up and specifying a minimum distance between garage doors and a footpath are necessary in the interest of highway safety.
41. A condition requiring details of a surface water drainage scheme to be submitted to and approved by the Council is necessary to ensure that the site drains adequately. Conditions requiring a further badger survey and for

the implementation of tree protection measures are necessary in the interest of ensuring that there would be no harm to protected species or trees.

42. Conditions requiring details of site levels, refuse storage, cycle parking, external lighting, parking spaces, biodiversity enhancements and replacement tree planting to be agreed, are not necessary as these matters would be covered within subsequent applications for approvals of reserved matters.
43. Furthermore, conditions requiring details of the layout of the access road and turning areas, would not be reasonable as these details have been approved as part of the permission granted by the appeal.
44. The PPG states "...blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity." No substantive reasons have been given for the proposed blanket removal of permitted development rights for small scale domestic alterations. As such, a condition restricting permitted development rights is neither reasonable nor necessary.
45. Finally, in the interest of brevity and minimising the number of conditions attached to the planning permission, I have combined some of the proposed conditions into single conditions.

Conclusion

46. The proposed development would conflict with the development plan but material considerations, specifically the presumption in favour of sustainable development, indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be allowed, and planning permission is granted.

J Hobbs

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, and scale, "the reserved matters" shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with drawing Nos PB869-005-RevC and 2110054-TK06 Rev. C.
- 5) 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 include:
 - 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 resulting from demolition and construction works;
 - viii) contact details of the site and project manager responsible for day-to-day management of works;
 - ix) delivery, demolition, and construction working hours.

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

- 6) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, 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 management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any

other arrangements to secure the operation of the scheme throughout its lifetime.

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

- 7) No development shall take place until an additional badger survey report is submitted to and approved in writing by the Local Planning Authority. If there is evidence of new setts or badger activity within the site, the new survey report shall include additional or amended mitigation. The measures outlined within the new report shall be implemented prior to the commencement of development.
- 8) Prior to occupation of the approved development, the existing access shall be stopped up at the back edge of the highway, in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The approved enclosure shall be permanently retained, and the footway reinstated as appropriate.
- 9) A minimum distance of 5.0m shall be provided between the front doors of the garages and the back edge of the footway.
- 10) The development shall be implemented in accordance with the Tree Protection Plan, Site Supervision Measures and General Site Care Measures contained within the Arboricultural Report (Valley Trees, 26 October 2021).