



Appeal Decision

Site visit made on 16 August 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 OCTOBER 2024

Appeal Ref: APP/G5180/W/24/3339727

Land Adjacent to 47 Sunningvale Avenue, Biggin Hill, Bromley TN16 3BX

- 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 Jane Popely, Rowan Developers Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/00971/FULL1.
 - The development proposed is Two pairs of three storey four bedroom, semi-detached dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have had regard to the Written Ministerial Statement and draft National Planning Policy Framework published on 30 July 2024. Whilst national policies relating to housing land supply are proposed to change as part of this consultation, these changes can only be given limited weight at this stage. Even if the proposed changes were to be accepted, it would not materially affect the outcome of my decision since I have identified conflict with the development plan in respect of other main issues. Therefore, in this instance it has not been necessary to consult the parties on these changes.
3. The appeal site previously formed part of a larger site which was occupied by a detached dwelling and outbuildings, surrounded by trees. It is the subject of a group Tree Preservation Order¹ (TPO). Trees have been removed from the rear of the plot as part of several planning permissions related to houses forming Sunningvale Close which is located to the rear of the appeal site.
4. A Tree Replacement Notice² (TRN) has also been issued in relation to the appeal site. This seeks to ensure that additional protected trees which have been removed from the site are replaced. The evidence indicates that no appeal was submitted against the TRN and it remains in force.

Main Issues

5. The main issues are:

¹ Tree Preservation Order No. 1517, relating to 49 Sunningvale Avenue, Biggin Hill, dated 9 September 1998, confirmed as an opposed Order 4 March 1999

² Dated 3 September 2020

- the effect of the proposal on the character and appearance of the area, with particular regard to the loss of trees and the replacement of trees required by the TRN; and
- the effect of the proposal on the character and appearance of the area, with particular regard to design and layout.

Reasons

Trees

6. The appeal site is a corner plot which slopes sharply down from its rear to the front of the site. It is within a housing estate, located on the slopes of a valley. Consequently, the site is clearly visible in views from both directions on Sunningvale Avenue and longer-range views across the valley. The grouping of trees within the appeal site create a pleasant transition from the denser woodland up the valley to the east. The trees also soften and screen views of the tightknit dwellings to the rear of the site on Sunningvale Close. Consequently, the appeal site makes a positive contribution to the character of the area.
7. As a result of the sharp change in ground levels, properties on either side of the street rise above, or are set down below the highway. Street trees line the highway, and many properties maintain trees and mature vegetation within their frontages, site boundaries and rear gardens. This provides an important visual softening of the surrounding development.
8. Unlike the most recent appeal scheme³ the proposal would retain T18 (Beech) and T24 (Corsican Pine). The applicant's Arboricultural Survey identifies these as grade B trees, of moderate quality and value with a life expectancy of 20+ years. They are tall, well-established and attractive trees which, due to their height and proximity to the highway, are very prominent in local views and distinctive in longer views across the valley. They, therefore, make a significant positive contribution to the character of the area.
9. Other than T18 and T24 all other trees within the site would be removed, as well as a street tree. The grouping of these remaining trees on site contribute to its sylvan and verdant appearance and therefore also make a positive contribution to the character of the area. The Arboricultural Survey identifies the trees as grade C trees which are of low quality and value with a life expectancy of 10+ years.
10. The TRN requires 39 specified trees to be planted within the appeal site, following the unauthorised removal of 15 trees subject to the TPO. Compliance with the TRN would involve planting across the northern, southern and eastern boundaries of the appeal site with Maples and Hawthorn, and Beech planted in the central part of the site. Over time, these trees would enhance the contribution of the appeal site to the character of the area by infilling unplanted parts of the appeal site.
11. In determining the previous appeal the Inspector confirmed that, whilst the appellant claimed that trees which have been removed from the appeal site did not require consent, there was no evidence, including the approval of service runs and the legal opinion, which suggested the requirements of the

³ APP/G5180/W/21/3275379

TRN are not in effect. The legal opinion⁴ was written prior to the issuing of the TRN, and the appellant's evidence indicates agreement that the TRN took effect and remains in force.

12. The appellant indicates that it is difficult to establish which trees previously occupied the site⁵ and suggests that trees have been removed lawfully. However, the Council has provided a schedule of felled and damaged trees⁶. Whilst not dated, the schedule and photographic evidence⁷ demonstrate a significant loss of trees on the site between 2018-2019.
13. Whilst a number of trees subject to the TRN have been removed, the site and remaining trees continue to contribute positively, particularly in views across the valley to the west. The group value of the trees on the appeal site is attributable in part to the rare but important break in the built form that it provides, whilst also contributing to the leafy character of the streetscene.
14. Although the proposal would retain the two most prominent trees, all other trees would be lost. Whilst, with the agreement of the Council, the site has been used as a site compound related to a separate planning permission, I have no substantive evidence to demonstrate that the removal of the trees is necessary as a result of their condition or defects. Despite the proposed wild meadow gap, and proposed replacement tree planting, which would be predominantly focussed to the rear of the site, the loss of trees would diminish the site's contribution to the local sylvan character and would also be experienced in longer views across the valley. The level of harm would be significant.
15. I acknowledge that the trees which would be removed have been identified as grade C trees, and the Council do not dispute this. However, the group TPO classification enables the protection of trees that merit protection as a collective unit where the individual category would not be appropriate. In such cases each tree need not individually merit protection in the interests of amenity but the unit, as a whole, should. Furthermore, Policy G7 of the London Plan (2021) (LP) identifies that proposals should retain lesser category trees where these are considered by the local planning authority to be of importance to amenity.
16. The appellant, within the final comments, suggests that the replacement trees would be planted in similar locations to that required by the plan contained within the TRN. However, I note that the trees within the proposed planting schedule⁸ bear little relation to the TRN in terms of its layout and the spread of trees within the wider site. Furthermore, the plan within the TRN only illustrates the required replacement trees whilst the existing trees on site are not included in the plan. Consequently, the proposal, which involves the removal of the majority of trees on site would result in significantly fewer trees than envisaged by the TRN. I therefore do not find that the proposed replacement planting, which primarily involves trees to the rear of the site, would provide sufficient mitigation.

⁴ Appendix 4 of Appellant's Statement of Case

⁵ Duramen Consulting LTD letter Ref 24003(f2)

⁶ Appendix 13 of Council's Statement of Case

⁷ Appendix 14 of the Council's Statement of Case

⁸ Proposed Landscaping & Tree Planting Schedule Ref GCS-SA-05

17. Overall, I conclude that the proposal would have a harmful effect on protected trees, with particular regard to their amenity value, and would prevent the replacement of trees in accordance with the TRN. This would have a harmful effect on the sylvan character of the site, and the surrounding area. As such, it would be contrary to Policies 37, 73 and 74 of the Bromley Local Plan (2019) (BLP) and policy G7 of the LP. The policies require development of a high standard of design and layout which positively contributes to the existing streetscene and landscape. Policy 73 specifically requires proposals for new development to take account of existing trees, which in the interest of visual amenity are considered desirable to retain.

Design and layout

18. The number of houses proposed has been reduced from the most recent appeal scheme. Two pairs of semi-detached houses would be sited at the northern and southern ends of the site, with the space between denoted as a wildflower meadow.
19. Many properties on Sunningvale Avenue have lawns, trees and mature vegetation planting within their frontages and boundaries, which contribute to the verdant character of the area. This is particularly noticeable at properties immediately opposite the appeal site.
20. Small strips of landscaping would be provided between the pairs of semis. However, the majority of the frontages would be hardstanding which would have an urbanising effect and contrast unfavourably with the properties immediately opposite. The submitted drawings indicate that there would be no scope for landscaping at the corner where the appeal site meets Sunningvale Close, including the area adjacent to the side elevation of the new pair of semis. This would create a hard edge to the development which would not reflect the opposite corner onto Sunningvale Close adjacent to Casa Jora, which features a grassed area to soften the edge of the development.
21. There are examples of properties within the street which do not have landscaped frontages, and in this sense the predominantly hard frontages would not be alien features within the street scene. However, the limited soft landscaping would not reflect the leafy character of the area and would not represent high quality design which positively contributes to the street scene.
22. There is a wide mix of detached, semi-detached and terraced houses in varying designs within the immediate area. When viewed in isolation, the design and scale of the houses would be comparable to the other houses on nearby streets. They would occupy most of the plot widths. This would not be unusual as properties on Sunningvale Avenue generally have limited spacing between their side elevations. Whilst the proposal would reduce the existing verdant qualities of the area, I do not find that the proposal would appear cramped.
23. The design of the dwellings would promote sustainability and reduce energy consumption. It has been put to me that the appeal proposal would also make an efficient use of the site. However, the development plan is explicit that development will only be permitted if it responds positively to the character of the area. I have found that this would not be the case.

24. For the above reasons, I conclude that the scale and layout of the proposal would harm the character and appearance of the surrounding area. I therefore find that it would conflict with Policies 4 and 37 of the Bromley Local Plan (2019) (BLP). Amongst other aspects, these policies seek to secure development of a high standard of design and layout which positively contributes to the existing streetscene and landscape.

Other Matters

25. The provision of four dwellings would assist in boosting the supply of homes as supported in paragraph 60 of the Framework. As a small site, it could be developed quickly and support for such sites, particularly windfall sites within existing settlements, is provided by paragraph 70. The Framework also encourages the optimal use of underutilised land. Combined, I give these factors significant weight.
26. Although the proposal would retain the two most valuable on-site trees, all others would be removed. I have also found that the proposed replacement planting would not be sufficient to mitigate the resulting harm to the character and appearance of the area. The failure of the proposals to represent a high quality form of development carries substantial negative weight which weighs heavily against the proposals.
27. The proposal would provide homes which meet internal space standards, have adequate access to natural light and an acceptable level of off-street car parking. However, the absence of harm or development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.
28. A number of concerns from third parties have been raised in relation to the development. These include its effect on highway safety, local wildlife, and the living conditions of neighbouring occupiers. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.

Planning Balance and Conclusion

29. The Council is unable to demonstrate a five-year supply of deliverable housing sites and advises that the supply is 3.38 years. The appellant does not dispute this position. Furthermore, the evidence confirms that the Council's Housing Delivery Test 2022 (HDT) results (published in December 2023) indicate that housing delivery against the Council's housing requirement has fallen below 85% over the HDT period. This requires the addition of a 20% buffer to the Council's housing requirement in accordance with Footnote 8 of the Framework. Applying this buffer now gives a supply of 2.96 years, which is a significant undersupply.
30. As a consequence of the housing supply and delivery positions, paragraph 11 d) of the Framework applies. This states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
31. However, the Framework also sets out, in paragraph 131, that the creation of high quality and beautiful places is fundamental to what the planning process should achieve. Furthermore, paragraph 136 of the Framework indicates that

trees make an important contribution to the character of urban environments, and should be retained where possible. Policies 4, 37, 73 and 74 of the BLP are therefore consistent with the Framework. In view of my conclusions related to trees and character and appearance, the appeal proposal conflicts with both the Framework and the development plan.

32. The appellant has directed me to policies H1 and H2 of the LP, which encourage development on windfall sites to increase housing supply and encourages the development of small sites, respectively. These are consistent with the Framework and weigh in favour of the proposals. But in the same way that I consider the conflict with the parts of the Framework relating to quality of design and trees significantly outweighs the accordance with those seeking to provide housing; the conflict with the parts of the LP which aim to ensure development respects local distinctiveness and retains trees considered to be important to amenity outweigh the support from policies H1 and H2.
33. As described above the benefits associated with four additional new homes would be significant. The Framework also gives substantial weight to the value of using suitable brownfield land within settlements for housing. I recognise that the windfall development would incorporate high-quality building fabric alongside renewable technologies. These all weigh in favour of the proposal.
34. However, in my view, the adverse impacts of granting permission, related to the loss of trees and harm to the character and appearance of the area, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
35. The harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework and the presumption in favour of development, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR