



Appeal Decision

Site visit made on 11 September 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 NOVEMBER 2024

Appeal Ref: APP/G5180/D/24/3341032

Dees Halt, Raggleswood, Chislehurst, Bromley BR7 5NH

- 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 Lloyd Bromhead against the decision of the Council of the London Borough of Bromley.
- The application Ref is DC/23/03809/FULL6.
- The development proposed was originally described as: Two Storey Side and Rear Extension, Single Storey Side and Rear Extension, Loft Conversion and External Remodelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the appeal site is in a conservation area (CA), I have had regard to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), which requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
3. The appeal was submitted under the Householder Appeals Procedure. The appellant's submissions include a letter from the appellant's arboricultural consultant dated 15 March 2024, after the application was decided by the Council. The letter includes rebuttal comments to the Council's reasons for refusal. However, it also includes a drawing extract from a tree constraints plan indicating a modified root protection area (RPA) set against the RPAs considered by the Council when it decided the application.
4. Procedural guidance¹ advises that the appeal process should not be used to evolve a scheme and there are no provisions within the Rules for amendments to be submitted. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage. I have also had regard to the 'Wheatcroft Principles' and the Holborn judgement². Even if the modified RPA would not alter the overall level of incursion into the RPA, the Council has not had an opportunity to assess or comment on this matter and would therefore be unfairly prejudiced if I were to consider it. I have therefore considered the proposal as it was considered by the Council, taking account of the letter only in terms of the rebuttal comments, excluding the matter of the modified RPA.

¹ The Procedural Guide: Planning appeals – England 2024

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]; Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin).

Main Issue

5. The main issue is whether the proposal would preserve or enhance the character or appearance of the Chislehurst Conservation Area (CA), including taking account of any effect upon trees.

Reasons

6. The appeal property is a brick built detached house set back from the road within a generous and wide plot, which slopes upward towards its rear boundary. The street is characterised as a private road of individual detached dwellings in spacious plots, with a wide variety of designs, including those with traditional and more contemporary architectural detailing. The site includes a number of existing trees, and is subject to two Tree Preservation Orders, one to the front of the appeal site and another towards the rear. Trees in conservation areas are also protected under certain circumstances.
7. The significance of the CA stems partly from its topography, whereby a central plateau is surrounded by commons with historically scattered village development, large country estates and densely wooded valleys. Later development is characterised by the Arts and Crafts movement, with large homes being commissioned or built speculatively in the English vernacular on spacious parcels of land within established woodland, accessed by winding rural lanes. Further development later took place in parcels of land within large rural estates, some in a comprehensively planned way reflecting neo-vernacular forms. Nonetheless, a consistent rural, wooded or village character remains.
8. According to the Supplementary Planning Guidance for the Chislehurst CA (SPG), the appeal site is within 'sub-unit 6 – Old Hill to Railway Station', characterised as a diverse area of development with a mixture of uses. The strong characteristic of this area is the generally 'organic' nature of its development and consequent form relative to the careful planning and layouts, and innovative architecture in other parts of the CA. The area contains a cohesive but diverse mixture of building styles with a complex and stimulating layout. The Officer Report which considered the application sets out that the area lacks a specific architectural style, and numerous properties on the street share a similar scale and massing to that of the proposal. My own observations are such that I find no reason to disagree.
9. The proposal would result in extensions and additions to the host property, and the overall appearance would be of a Georgian rendered style. Although such a style would contrast with its host, it would not be incongruous in the context of a street where the character is predominantly of individually designed dwellings of varying periods, including classical, neo-classical, and more contemporary forms, with a wide variety of external materials including full and part render.
10. While the proposed extensions and additions would result in an increase to the footprint and volume of the dwelling, the proposal would retain the existing gap to the neighbouring property of Treetops, with a generous gap remaining towards its other neighbour at Silvertrees. The existing and proposed street scene drawings demonstrate that the increased ridge height of the host property would be lower than the neighbouring property at Silvertrees, and that the transition in height towards the neighbouring property of Tree Tops would be respected. Overall, the proposal would not result in an unacceptable discordance in the street scene.

11. As a result of the proposal, the appeal property would still be situated in a generously sized plot with a deep remaining rear garden space. The relationship with neighbouring built forms is such that the proposal would not appear overbearing or dominating to its immediate neighbours, nor would it result in any unacceptable harm to neighbouring privacy. These factors, together with my own observations indicate that the proposal would not result in overdevelopment within the plot, even taking account of a lawful development certificate for a proposed garden building (ref: 23/03509/PLUD) to the rear of the plot which appeared to be under construction at my visit.
12. The proposal would not be of the same materials as its host, and it would therefore conflict in part with criterion a) of Policy 6 of the Bromley Local Plan 2019 (BLP). However, it would not conflict with the remaining parts of BLP Policy 6, nor BLP Policies 8 and 37, which seek to ensure adequate side space and high standards of design. There is no stated requirement for proposed extensions or additions to be proportionate within the policy wording and supporting text of BLP Policies 6, 8 and 37. Given the key characteristics of this part of the CA, including the individual nature of properties within it, the proposal would not harm its character or appearance in terms of the proposed built form. The absence of an objection by the Council's Conservation Officer in terms of built form is notable in this regard.
13. For these reasons, I am satisfied that in this case, the built form of the proposal would respect the character and appearance of this part of the CA, where properties are of an individual nature with a wide variety of external materials, and this would outweigh the limited conflict with BLP Policy 6.
14. The SPG sets out that despite the intensity of settlement in this sub area of the CA, extensive woodland still remains (such as in private gardens) providing a sylvan atmosphere and green setting, which should be maintained with any future development. From my own observations, trees form a key characteristic of this part of the CA and the existing trees within the appeal site make a positive contribution to the character and appearance of the CA and to amenity. My findings are supported by the views of the Council's Conservation Officer, who states that the mature landscape is a critical element of this part of the CA.
15. The application was accompanied by a Tree Survey and Preliminary Arboricultural Impact Assessment and Arboricultural Method Statement (the tree report). In essence, no trees are proposed for removal to facilitate the proposal, but the associated works, hard surfacing and retaining structures to the front garden of the property could affect existing trees within the appeal site.
16. From the evidence before me, the level of RPA incursion in the tree report does not take proper account of the existing surfaced and/or unsurfaced ground. The Council identifies one example in this regard - T6/7 (Sweet Chestnut), which is a protected tree³ in proximity to the highway and is highly visible within the streetscene. This tree thus makes an important contribution to the character and appearance of the CA.
17. Further information submitted by letter dated 14 December 2023 sought to overcome the Council's concerns. Image 1 within that letter is stated to include

³ Council's ref: Tree Preservation Order No. 1681

shading to illustrate unsurfaced area and a hatched overlay to indicate the proposed new hard surfacing. The letter indicates that the RPA incursion level would be 19%, just under the 20% threshold advocated in BS5837: 2012. The image also shows that the proposed side extensions would be within the two circular RPAs calculated for T6/7, but this area is unshaded and unhatched. The absence of an update to table 2 of the tree report (which details all RPA incursions) together with further detail of the calculations made does not assist me in this regard. Therefore, I am not satisfied that the RPA incursion for T6/7 has been properly calculated, nor that any revised calculation would be within the 20% threshold of BS5837:2012. Consequently, the evidence before me is not clear and compelling.

18. For these reasons, it has not been demonstrated that the proposal would not result in unacceptable harm to existing trees and that the proposed tree protection measures would be sufficient to prevent harm. As trees are an important characteristic of the CA, and T6/7 makes an important contribution to the character and appearance of this part of the CA, I am not content to leave such matters to be resolved by conditions, including a condition to control foundation design, whether informed by a trial pit or otherwise. Even if I were to accept the modified RPA submitted to the appeal, the absence of detailed calculations in this case would not alter my findings that the evidence before me concerning the effect upon existing trees is not sufficiently clear and compelling.
19. There is an ongoing enforcement investigation concerning the alleged felling of a protected oak tree within the appeal site. There is no substantive evidence before me as to whether any formal action has been taken by the Council, nor to indicate how the proposal would compromise any investigation. Although the appellant suggests that an application for tree works (Ref 00/00228/TREE) resulted in no objection by the Council, the full details of the application are not before me, including full details of the decision given or the terms of the application. For the avoidance of doubt, as an Inspector dealing with a s78 appeal, it is not my role to determine whether the felling of the oak tree is unlawful.
20. The appellant draws my attention to case law, referenced as "Rutland DC v Secretary of State, Mynors 3rd Edition Section 20-62", without full citation. If the relevant case is *Rutland DC v Secretary of State for the Environment* [1990] J.P.L. 144; [1990] 1 WLUK 342 (DC), then, as the appellant suggests, the case indicates that in considering an application following an illegal tree felling, the determining authority must consider the land as it exists at the time – i.e. with the trees felled. I have done so.
21. However, it was also indicated that the determining authority should assess the site as it might be if a tree planting order were to be made. The tree evidence and submitted plans before me indicate the location of the felled oak tree. Image 1 identifies a suitable location for a replacement tree of a species to be agreed in the same location, subject to the outcome of the investigation. In the absence of any evidence to the contrary, this would appear to satisfy the duty to replace an unlawfully felled tree.
22. The Council is concerned about future pressure for further tree works, given the proximity of T6/7 to the proposed development. There is no compelling evidence before me to counter the appellant's position that expected growth to

T6/7 would not be significant and future works would be light in nature. Suitable materials and products such as gutter guards could be used to minimise the effects of falling debris. However, it is difficult for Councils to resist applications for further works to trees where safety is an issue, including applications to fell, and such works could have an adverse effect upon the character or appearance of the CA.

23. In any event, these matters would not alter my overall finding that the proposal fails to demonstrate that it would not result in harm to trees. As the existing trees make a positive contribution to the character and appearance of the CA, and are a key characteristic of its significance, the proposal fails to demonstrate that it would not harm the character or appearance of the CA.
24. The National Planning Policy Framework (the Framework) makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. In accordance with the Framework, the harm I have identified is less than substantial, due to its localised nature, but nevertheless of considerable importance and weight. Under such circumstances, the harm must be weighed against any public benefits of the proposed development. The only benefit of the proposal would be an improvement to residential amenity for the occupiers of the appeal property, which is not a public benefit.
25. I therefore conclude that the proposal would not preserve or enhance the character or appearance of the Chislehurst CA, with particular regard to trees. It would cause less than substantial harm to the significance of a designated heritage asset, and there are no public benefits that would outweigh this harm. The proposal therefore fails to satisfy the provisions of the Act and the Framework, and conflicts with BLP Policies 41, 43, 73 and 74. Taken together, these policies seek to preserve and enhance the character and appearance of CAs, and to resist development that would damage or lead to the loss of one or more significant and/or important trees within a CA; and to ensure that development proposals take account of existing trees.

Other Matters

26. The appellant draws my attention to the Council's handling of the planning application with reference to communications about the effect of the proposal upon trees. However, the conduct of the Council is not a matter that affects my findings on the main issues and/or the planning merits of the scheme.

Conclusion

27. For the reasons given above, the proposal conflicts with the development plan read as a whole, and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

J Moore

INSPECTOR