



Appeal Decisions

Site visit made on 9 October 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2024

Appeal A Ref: APP/G5180/W/24/3341004

133 Baston Road, Hayes, Bromley, BR2 7BS

- 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 Mr Nigel Styles (South East Living Group) against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/03780/OUT.
 - The development proposed is the demolition of an existing dwelling. Erection of up to three dwellinghouses, parking, and associated landscaping. (Outline application in respect of access and layout).
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of an existing dwelling and erection of up to three dwellinghouses, parking, and associated landscaping at 133 Baston Road, Hayes, Bromley, BR2 7BS in accordance with the terms of the application, Ref 23/03780/OUT, subject to the conditions in Annex A.

Procedural Matters

2. The application was submitted in outline with access and layout to be determined at this stage. I have determined the appeal on this basis treating any plans that show the scale and appearance of the dwellings or the landscaping of the site as indicative.
3. Although not being determined at this stage, the description of the development on the application form makes reference to the scale of the proposed houses. As a result, I have used the description given on the appeal form instead. However, the reference in this description of the development to what matters are to be determined at this stage is superfluous, and so I have omitted this from my formal decision.
4. In the light of the Transport Technical Note and Road Safety Audit submitted at appeal stage the Council have confirmed that they are no longer contesting the fifth reason for refusal that related to highway safety. In addition, the Council have confirmed that they accept the findings in the Light Study also submitted by the appellant at appeal stage. So, in respect of the reason for refusal relating to the living conditions of nearby residents, they are no longer contesting the proposals impact on daylight and sunlight but continue to contest outlook and privacy.

Background and Main Issues

5. The part of the site, closest to the road which includes one of the accesses, the loop road and an area of landscaping lies in the Green Belt as defined by *The London Plan (March 2021)* (LP). In addition, the front part of the site up to the existing dwelling is within the Bromley, Hayes and Keston Common Conservation Area.
6. As a result, the main issues in the appeal are:
 - whether or not the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the *National Planning Policy Framework* (the Framework) having regard to the effect of the proposal on the openness of the Green Belt and the purposes of including land within it;
 - whether or not the proposal would preserve or enhance the character or appearance of Bromley, Hayes and Keston Common Conservation Area, its setting and the wider area that includes land within the Green Belt;
 - the effect of the proposal on the living conditions of nearby occupiers with particular regard to outlook and privacy;
 - the effect of the proposal on ecology and biodiversity; and
 - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate development

7. Policy G2 of the LP and Policy 49 of the Bromley Local Plan (adopted January 2019) set out the forms of development that may be considered acceptable within the Green Belt. These include engineering operations provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The same is indicated in paragraph 155 of the Framework.
8. Within the part of the site in the Green Belt, the existing more southerly vehicular access would be widened by approximately 1.4m and a passing place would be created along the loop road. These both constitute engineering operations. Whilst these works would slightly increase the amount of hardstanding, this would not impact either visually or spatially on the openness of the Green Belt nor would it conflict with any of the purposes of including land within it. In particular, it would not lead to any encroachment into the countryside as the extent of the works are so small.
9. The overall proposal would lead to an increase in the number of vehicles entering and exiting the site, but the additional traffic movements from 2 extra houses would be small and the time passing through the land in the Green Belt would be short. There would be no parking for vehicles provided on land within the Green Belt. As a result, this would not have any impact on the openness of the Green Belt either.

10. Consequently, I consider the part of the proposal within the Green Belt would not be inappropriate development and so would not be contrary to Policies G2 of the LP and 49 of the BLP, nor with the Framework.

Character and appearance – conservation area and wider area

Conservation Area and its setting

11. The front half of the site lies in Bromley, Hayes and Keston Common Conservation Area. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be had to the desirability of preserving or enhancing the character and appearance of a conservation area. The rest of the site forms part of its setting. In addition, opposite the site, No 54 Baston Road is a locally listed building.
12. The Supplementary Planning Guidance for the conservation area (April 2005) (SPG) indicates that the common lands act as the unifying feature to what is otherwise a large and dispersed conservation area with 16 sub-areas. The site forms part of the Baston Road / Five Elms sub-area.
13. Originally a clearing within the common the SPG indicates that this sub-area is now dominated by Baston House School located, in part, in what was formerly Baston Farm. The northern part of the sub-area contains residential properties on Redgate Drive and Baston Road which mark the start of Hayes village.
14. The appellant's heritage statement indicates that the significance of the conservation area relates to the special architectural and historic interest that results from the high quality of the built form and its rural landscape characteristics. This has not been disputed by the Council and from my own observations I would agree with this conclusion.
15. The part of the site within the conservation area currently consists of the in and out access road, areas of hardstanding used for parking by neighbouring properties and areas of vegetation. The hedging and other vegetation along the frontage of the site, which is clearly visible when travelling along Baston Road makes a positive contribution to the character and appearance of the conservation area. However, the expanse of hardstanding surrounding this area detracts from the character and appearance of the conservation area.
16. The remainder of the site consists of a non-descript mid-20th century house and its garden / former garden area which includes a large greenhouse. Whilst parts of this currently have a neglected appearance, this is relatively superficial and so this part of the site has a neutral impact on the setting of the conservation area. The proposed demolition of the existing house would not be detrimental to the setting of the conservation area or to its significance.
17. The locally listed building is a 2 storey, rendered, double fronted property that is a prominent feature in the street scene. The SPG indicates that dating from 1776 the house was once the home of the Bath family, giving it historic as well as architectural interest. The appellant's heritage statement indicates that although in close proximity the site does not appear to have any historic links to this dwelling. It therefore does not contribute to the significance of this non-designated heritage asset or its setting.
18. Although landscaping is a reserved matter, apart from the loss of a small area to create a passing place, the frontage landscaping would be unaffected by the

proposals. The indicative plans show replacement and additional planting would be possible on the site, including in the vicinity of the secondary vehicular access that would be reduced to a pedestrian access. As such, I am satisfied that the positive contribution the frontage landscaping makes to the character and appearance of the conservation area would be preserved.

19. The scale and appearance of the proposed dwellings are not being determined at this stage, but the indicative drawings show houses could be designed such that they would be sympathetic to the scale and appearance of existing houses in the area. Given their proposed siting there would be limited visibility of them from the public realm and the land on which they are to be sited does not make a positive contribution to the significance of the conservation area or to the ability to appreciate its significance.
20. Houses in the area generally fill the width of the plot and are set back from the road by front gardens of varying sizes. The proposed layout of the three houses which would also largely fill their plots and would be set back from the access road by front garden areas, would not appear as a denser form of development that would be detrimental to the character, appearance or significance of the conservation area.
21. It is suggested that the removal of the existing house would open up views to the common beyond. However, such views are also blocked by existing boundary treatments on land beyond the house and would also depend on the landscaping proposed.
22. Overall, I consider that the proposed development would preserve the character and appearance of Bromley, Hayes and Keston Common Conservation Area and its setting as well as the setting of the locally listed building. Accordingly, there would be no conflict with Policy HC1 of the LP and Policies 37, 41 and 42 of the BLP which require developments to conserve the character, appearance and significance of both designated and non-designated heritage assets and their setting in general, and conservation areas in particular.

Wider area

23. Whilst the majority of houses in the area front the road, the existing house on the site is set back a considerable distance to the rear of Nos 111- 131. Whilst it may have a similar alignment to Nos 93-101, most of which are served by a private access road rather than directly fronting the main road, it is not seen in the context of these houses but the terraced housing to the front of it. As such, it appears as a form of backland development – as does No 121 which is set to the rear of No 123.
24. Whilst, unlike No 121 and 133, the orientation of the proposed houses would not be towards Baston Road, visibility of the proposed houses from the public realm would be very limited - being restricted to glimpsed views from the access points. Given this, the proposed siting and orientation of the houses would not have a harmful impact on the character and appearance of the area.
25. Policy 53 of the BLP indicates that developments adjacent to the Green Belt should not have a detrimental impact on its visual amenity, character or nature conservation. The supporting text indicates that the Council wishes to see such land retained as a buffer between the built development and the

open land to ensure character and visual amenity of the Green Belt fringe is maintained.

26. Whilst the areas of hardstanding and former garden areas are largely open, the site does not have a rural character. Instead, the house and its former garden area reflect the surrounding suburban character, whilst the existing in and out access arrangement and large areas of hardstanding to the front of the site reflect their former use as part of the adjacent school site. These in particular, although relatively open, detract from the character and visual amenity of the adjacent land in the Green Belt.
27. The proposed development would increase the volume and footprint of buildings on the site. However, the character of the site would not change significantly. As such, any limited role this site has as a buffer between the other housing and the Green Belt would not fundamentally change.
28. Moreover, the surrounding land in the Green Belt, comprises playing fields for a school and a football club and a well-maintained grass area to the rear of Nos 89- 101 Baston Road. The more manicured appearance of these provide a natural transition between the suburban area and the more rural Green Belt land beyond. In my view this reduces the need for a buffer in this specific location.
29. Whilst some views of the site are possible from the school playing fields, the existing boundary treatment along the boundary with the football pitches, which indicative plans show as being retained and enhanced, means views into the site from these are limited. In what views of the site are possible, the domestic nature of the site would remain the same, with the new dwellings being seen as part of the other housing along Baston Road, as is the current dwelling.
30. In addition, the development would not project beyond the rear boundary of the gardens of Nos 89 -101 Baston Road which forms a distinct edge to the residential envelope. As a result, it would not be seen as an incongruous incursion beyond the existing residential area into the more open land or as encroachment into the countryside.
31. The application was accompanied by an Arboricultural Impact Assessment and Method Statement. Whilst a small number of trees, hedges and vegetation would need to be removed to enable the proposed development, the majority would be retained. Those being removed all have a low amenity value. Whilst landscaping is a reserved matter, the indicative plans show replacement / additional planting would be able to be accommodated on the site.
32. The Council have not disputed the findings of this report nor provided any evidence to the contrary. In the light of this I am satisfied that any loss of trees and vegetation would not have an adverse impact on the character and appearance of the area.
33. Bringing all these points together, I consider that the proposed development would not harm the character and appearance of the wider area, including the character and visual amenity of the adjacent Green Belt land. Consequently, it would not conflict with Policy 53 of the BLP outlined above, nor with BLP Policies 3, 37 or Policy D4 of the LP which require developments to have a high quality of design that, amongst other things, complements the surrounding

area, and that backland development should not, amongst other things, have an unacceptable impact on the character and appearance of the area or result in an unacceptable loss of landscaping .

Living Conditions

34. The side elevation of the proposed house on plot 1 would face the rear elevations of Nos 125-131 Baston Road. However, given the length of their rear gardens a significant distance would be maintained to the rear elevation of these houses. Along the common boundary there is a variety of vegetation including a number of trees, which helps to screen views of the site.
35. The scale of the houses is not being determined but the illustrative plans show 2 storey dwellings, and their height can be controlled at reserved matters stage. Whilst it is likely that the proposed houses would be visible from windows in the rear elevations of these adjacent houses, the distance maintained to the proposed houses mean it would not dominate the outlook from them, especially given the intervening vegetation. Furthermore, the distance of the side elevation to the common boundary together with the existing vegetation which the indicative plans show would be retained, would ensure the proposed house on plot 1 would not be an oppressive feature from their garden areas either.
36. Boundary treatments and existing vegetation would ensure there would be no overlooking from the ground floor windows or the gardens of the proposed houses. At reserved matters stage it can be ensured that any windows necessary in the first floor side elevation of the house on plot 1 were obscure glazed and top opening only. This would prevent any loss of privacy to these houses or gardens.
37. The rear elevations of all 3 proposed houses would face the rear garden of No 101 Baston Road and the rear elevation of the house on plot 1 would face the side elevation of this house. The existing mature vegetation along the boundary with this property would be sufficient to prevent overlooking from ground floor windows or the gardens of the proposed houses.
38. The orientation of No 101 relative to the proposed houses is such that the proposed houses would only be seen in angled views from this property and so they would not have an overbearing impact in views from the house. Moreover, the distance they would maintain to the common boundary means the proposed houses would not create an unneighbourly sense of enclosure to the garden of this adjacent dwelling.
39. There would be some potential for overlooking of the garden from first floor windows of the proposed houses. However, given the distance to, and the existing vegetation on the common boundary, this would be limited and would not be to the extent that it would unacceptably harm the living conditions of the occupiers of this adjacent property.
40. Consequently, I consider that the proposal would not unacceptably harm the living conditions of nearby residents with particular regard to outlook and privacy. Accordingly, there would be no conflict with Policy D3 of the LP or Policy 37 of the BLP which require a high quality of design that delivers appropriate outlook, privacy and amenity and respects the amenity of occupiers of neighbouring buildings.

Ecology / Biodiversity

41. A Preliminary Ecological Assessment, which assesses a variety of species including those mentioned in representations from local residents, was submitted with the application. This concluded that, subject to various mitigation measures that could be controlled by condition, the proposed development would not have an adverse impact on nature conservation. The findings of this were accepted by the Council's ecological advisor subject to an updated badger survey being carried out as recommended. In the absence of any substantive evidence to the contrary I see no reason to come to a different conclusion
42. An updated badger survey was submitted as part of the appeal. This concluded that the development would not have any impact on badger setts. However, as there could be some potential impact on foraging habitat and commuting routes, it proposed some mitigation measures and sensitive working methods. These can be controlled by conditions.
43. The application is not subject to the mandatory Biodiversity Net Gain requirements that came into effect earlier this year. Landscaping is not being determined at this stage, but based on the indicative plans, it is shown that it would be possible for the development to provide some biodiversity net gain.
44. Consequently, subject to conditions, I am satisfied that the proposal would not have an adverse impact on ecology or biodiversity. Therefore, it would not be contrary to Policy G6 of the LP or Policies 69 and 72 of the BLP which seek to ensure developments provide biodiversity net gain, and do not have an adverse impact on nature conservation and protected species unless adequate mitigation measures are provided.

Other Matters

45. The Daylight and Sunlight assessment submitted by the appellant shows that the proposal would not have an adverse impact on any neighbouring property or their gardens in respect of these matters. Nothing I have seen or read makes me dispute these findings. In addition, given occupiers of the nearby houses already park their vehicles on the area of hardstanding adjacent to No 131, I see no reason why the proposed provision of formal spaces for this parking, would cause any greater air pollution or noise and disturbance for occupiers of this property.
46. The increase in traffic movements associated with two additional dwellings would be minimal and the Council have indicated that the levels of parking provided for the proposed dwellings would be adequate. As a result, the proposal would not exacerbate any existing issues relating to parking in the area, particularly in relation to matches at the adjacent sports facilities.
47. A number of concerns have been raised regarding drainage. However, I note that, subject to a condition, there is no objection to the proposal from the drainage engineer. In the light of this, and the evidence before me, I am satisfied that the proposal could be carried out without having an unacceptable impact on drainage in the area.
48. Although it has been argued that the scheme would result in a reduction in property prices the Planning Practice Guidance states that "[the courts] have taken the view that planning is concerned with land use in the public interest,

so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations¹.”

49. The boundary treatments and landscaping of the site would be assessed at the reserved matters stage, and so are not matters before me. In addition, the fact that the tenure of the dwellings, and when they would be constructed is not known, are not matters that justify withholding permission.
50. It has been argued that the proposal would set a precedent for further development in the Green Belt. However, only a small part of the site is in the Green Belt, and I have concluded that this would not be inappropriate development. As a result, the proposal would not set a precedent for inappropriate development to take place elsewhere in the Green Belt.

Conclusion and Conditions

51. I consider that the proposed development would accord with the development plan and there are no other reasons which justify refusal of the proposal. Consequently, I conclude that the appeal should be allowed.
52. I have considered the Council’s suggested conditions in the light of paragraph 56 of the Framework. In the interests of clarity, preciseness and enforceability I have altered the wording of a number of them.
53. In addition to the standard implementation and reserved matters conditions (conditions 1, 2 and 3), to provide certainty it is necessary to define the plans with which the scheme should accord (condition 4). Condition 5 is required in the interests of the character and appearance of the area and to accord with BLP Policy 37. For the same reason, and also to ensure adequate living conditions for future occupiers, conditions 13 and 15 are necessary.
54. Condition 6 is necessary for highways safety, to ensure the living conditions of nearby residents and to comply with BLP Policies 30-32 and 119. As this incorporates the requirements of suggested conditions 4 and 14 these other conditions are not necessary. Also for highway safety and to accord with BLP Policy 32 condition 7 is required.
55. To ensure the site is satisfactorily drained and to comply with BLP Policies 115-117 and LP Policy 5.13 conditions 8 and 9 are imposed. In the interests of safeguarding biodiversity and to accord with BLP Policies 70, 72, 73 and 79 conditions 10, 11 and 12 are required. In the interest of promoting sustainable travel, and to accord with LP Policy 6.9 condition 23 is necessary. Condition 16 is imposed for air quality reasons and to comply with Policy SI1 of the LP. I have not imposed suggested condition 16 as it relates to the scale and appearance of the dwellings which are not being determined at this stage.

Alison Partington

INSPECTOR

¹ Paragraph Reference ID 21b-008-20140306

Annex A

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 the following approved plans: Location Plan Reference PP-12487066v1; Site Location Plan Drawing Number 134-SL10; and Proposed Site Layout Drawing Number 134-S10.
- 5) No development shall take place until full details of the slab levels of the proposed building(s), and the existing ground levels have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved levels.
- 6) No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The Statement shall as a minimum provide details of:
 - i) the parking and turning of construction vehicles, and vehicles for site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) access and egress arrangements during the construction period;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) measures to reduce demolition and construction noise;
 - viii) delivery, demolition and construction working hours;
 - ix) details of the routing of construction traffic; and
 - x) full contact details of the site and project manager responsible for the day to day management of the works.

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

- 7) Before any part of the development hereby permitted is first occupied the main access shall be provided with 43m x 2.4m x 43m sightlines and 3.3 x 2.4m x 3.3m visibility splays. Thereafter, the visibility splays shall be kept free of obstructions in excess of 1m in height (except for trees selected by the local planning authority), for the lifetime of the development hereby permitted.

- 8) a) No development (excluding any demolition and ground clearance) shall take place until a detailed scheme for the provision of surface water drainage has been submitted to, 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 the 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 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 (21/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 permitted.
- 9) The development hereby permitted shall be carried out in accordance with measures and details set out in the Drainage Strategy Report (by Monson Engineering Ltd Job No. 23172A Issue A dated 29/09/2023).
- 10) No demolition or works to trees and shrubs, or vegetation clearance shall occur between 1st March and 31st August in any year unless, immediately prior to any clearance/works, a detailed bird nest survey, undertaken by a suitably experienced ecologist has been carried out and has been submitted to, and approved in writing by, the local planning authority demonstrating that no active bird nests are present.
- 11) The development hereby permitted shall be undertaken in accordance with the recommendations outlined within the Preliminary Ecological Appraisal, and the suggested biodiversity enhancements, bat boxes and swift bricks, shall be incorporated into the permission hereby permitted.
- Prior to commencement of above ground works, details of biodiversity enhancements shall be submitted to, and approved in writing by, the local planning authority and shall be included within construction works and permanently retained at the site thereafter.
- 12) Construction works that are required to be carried out within 30m of an active badger sett shall only be undertaken between the months of July and November, thus avoiding the badger breeding season.
- 13) No development above ground level shall take place until details of arrangements for storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) have been submitted to, and approved in writing by, the local planning authority. The arrangements as approved shall be completed before any part of the development hereby permitted is first occupied, and permanently retained as such thereafter.
- 14) No development above ground level shall take place until details of arrangements for bicycle parking (including covered storage facilities

where appropriate) have been submitted to, and approved in writing by, the local planning authority. The arrangements as approved shall be completed before any part of the development hereby permitted is first occupied, and permanently retained as such thereafter.

- 15) No development (excluding any demolition and ground clearance) shall take place until an acoustic assessment has been submitted to, and approved in writing by, the local planning authority. A scheme of mitigation, as necessary in light of the results of the assessment, [covering façade, glazing and ventilation specifications] shall achieve levels not exceeding 30dB LAeq (night) and 45dB LAm_{ax} (measured with F time weighting) for bedrooms, 35dB LAeq (day) for other habitable rooms, with window shut and other means of ventilation provided. External amenity areas shall be designed to meet the requirements of BS8233:2014 and where necessary the evaluation of human exposure to vibration within the building shall not exceed the Vibration dose values criteria 'Low probability of adverse comment' as defined BS6472. Once approved the mitigation shall be installed in accordance with the approved scheme and permanently retained as such thereafter.
- 16) 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.