



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: 18 DECEMBER 2024

Appeal Ref: APP/G5180/D/24/3340774

36 Yester Road, London BR7 5HR

- 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 Dominic Swinfield against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/22/05080/FULL6.
 - The development proposed was originally described as: Rear Garden Works including installation of an outdoor pool with equipment shed, earthworks with associated walling, fencing, planting.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed development has commenced, and the works are substantially complete. The Council considered the application as retrospective development and so shall I.
3. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. The revisions do not have a material bearing on the disputed matters between the parties in this case. Consequently, I have not found it necessary, in the interests of natural justice, to seek further written comments on the revised Framework, and neither party would be prejudiced by my consideration of it in my determination of the appeal.
4. As the appeal site is within the Chislehurst 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 me to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA.

Main Issues

5. Although the Officer Report (OR) which considered the application found that on balance, the proposal would preserve the character and appearance of the CA, the reasons for refusal refer to Policy 43 of the Bromley Local Plan 2019 (BLP), which concerns trees in conservation areas. Having regard to all the evidence before me, and the duty under the Act, the main issues are the effects of the proposal upon:
 - the character or appearance of the Chislehurst CA, with particular regard to a protected tree; and
 - the living conditions of neighbouring occupiers, with particular regard to privacy, and noise and disturbance.

Reasons

Character or appearance of the CA

6. The Supplementary Planning Guidance for the Chislehurst CA (1999) (SPG) indicates that the significance of the CA stems in part from its topography, historic development pattern and wooded valley landscape. The CA retains a, wooded, semi-rural character, with extensive coverage by mature trees, woodland and open grassed areas. The presence of trees, gardens and open spaces maintain the impression of nature playing a major role. Furthermore, the SPG sets out that established trees, and in particular mature trees are considered to play an important contributory role to the character of the CA and should be retained wherever possible. Consequently, the presence of mature trees within the CA is a key characteristic of the CA as a whole.
7. The appeal scheme results in significant changes in level to the rear garden of the appeal property to create tiered levels connected by steps, some walling, an outdoor pool with a shed to accommodate pool equipment, and boundary treatments to include fencing and planting. The changes in level and erection of fencing to the side boundaries would appear in very limited views within the street scene and the proposal would not be out of keeping with the wider area.
8. However, the proposal is in proximity to a protected oak tree near the rear boundary of the appeal site. Due to its siting, height and spread, the tree is within view from the rear gardens of neighbouring properties, and in very limited view within gaps between properties along Yester Road, and thus makes a positive contribution to the visual amenity of the area, as recognised by its protection under Tree Preservation Order Ref:1/1963. The fact that the tree is identified as being over-mature and of moderate quality in the appellant's Tree Safety Survey (the report) does not set aside its value in terms of visual amenity, and its positive contribution to the character and appearance of the CA as a whole.
9. The report was revised during the determination phase and indicates that works have encroached within the root protection area (RPA) of the protected tree (T1), including the removal of soil that would otherwise support it. It states that root severance to T1 is likely to have been minimal but will have some impact in terms of reducing its ability to uptake water and nutrients from the soil. I find no reason to consider otherwise.
10. After taking account of pre-existing hard landscape removed from the RPA, the net encroachment by the proposal would be almost 16% of the RPA, within the 20% threshold advocated under BS 5837:2012¹. However, the RPA of T1 falls not only within the appeal site, but also beyond its boundaries. Both the initial and revised reports set out that the remaining RPA appears to be available rooting area with no other constraints on root morphology, but no mention is made of the nature of the RPA beyond the boundaries of the appeal site. It is therefore not clear whether the revised RPA calculation refers to the full RPA, or the portion within the appeal site. Consequently, I cannot be certain that the RPA encroachment has been properly assessed and would be within the 20% threshold of BS 5837:2012.

¹ Trees in relation to design, demolition and construction – Recommendations

11. The area around the outdoor pool would be a permeable surface. Due to its depth, the pool would be a lap pool, not suitable for diving. The water level would be about 30cms below its internal edge and around the position of filters, with coping stones laid to the border. The appellant suggests that these factors would prevent water ingress to the surrounding soil. However, water ingress could also occur through splashing from swimming, or other pool activities, including from play. Although it is not intended to use chlorine in the pool, it is not clear how this would be controlled. The appellant is willing to install a full perimeter drain between the coping stones and the surrounding permeable surface. However, no such amendment is before me, and there is no evidence to demonstrate its effect upon the degree of encroachment into the RPA of T1. Consequently, I would not be content to leave this matter to a condition.
12. The report states that the appellant has proactively engaged a contractor to carry out air spade decompaction and vertical mulching within the RPA of T1, but it is not clear whether these works have been undertaken. The report recommends a monitoring programme, which would address remedial works if required. However, I note that there is no substantive evidence before me to indicate whether the proposed planting along the rear boundary would impact upon the health of T1 or the effectiveness of any remedial works, whether already undertaken or proposed in due course.
13. Due to the siting of the pool in proximity to T1, there is likely to be an increased perception of risk from branch or tree failure, and of nuisance from debris. This could result in pressure to prune or fell the protected tree. A pool cover is intended to be deployed to retain pool temperature, and I consider such a cover could also assist in managing debris. However, there is nothing to indicate this on the submitted plans, nor whether any such installation would result in further encroachment into the RPA of T1. While there is a duty for a landowner to replace a protected tree, an application for felling on safety grounds is difficult for a Council to resist. In such circumstances, this could result in the premature loss and/or unnecessary works to a protected tree which makes a positive contribution to the CA and wider visual amenity.
14. For the reasons above, it has not been robustly demonstrated that the appeal scheme would not result in an unacceptable risk of harm or loss to the protected tree.
15. 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. Under such circumstances, the harm must be weighed against any public benefits of the proposed development.
16. The benefits of the proposal would be largely limited to an improvement in residential amenity for the occupiers of the property, by using their land more effectively to service their needs and aspirations, and to improve their health and well-being, but these are private benefits. The economic benefits arising during the construction process would be temporary and therefore limited. I consider that further permanent benefits could arise from pool servicing

and/or maintenance, but these would be limited. Such public benefits would not outweigh an unacceptable risk of harm, in conflict with the Framework.

17. BLP Policy 43 requires me to weigh the amenity value of the trees against any benefits of the development. The limited public and/or private benefits of the proposal would not outweigh an unacceptable risk of harm to a protected tree within the CA.
18. I therefore conclude that the proposal fails to demonstrate that it would preserve or enhance the character or appearance of the Chislehurst CA, with particular regard to a protected tree. It would cause less than substantial harm to the significance of a designated heritage asset, and the limited public benefits would not outweigh this harm. The proposal therefore fails to satisfy the provisions of the Act and the Framework. Furthermore, it conflicts with BLP Policies 43 and 73, which seek to ensure that development takes account of existing trees, including those on adjoining land; and does not lead to the loss of one or more significant and/or important trees within a CA, unless necessary in the interests of good arboricultural practice, or if the benefits clearly outweigh the amenity value of the trees.

Living conditions of neighbouring occupiers

19. The rear garden boundary meets the boundaries of several neighbouring rear gardens, including those along Greatwood, and it has an irregular shape, such that its rear boundary tapers to a point at its southern corner. The submitted plans and evidence before me indicate that the rear garden of the appeal property previously fell away towards the south-east. The OR indicates that as a result of the proposal, the height of fencing along the rear boundary would be 1.34-1.45m in some places. I find no reason to consider otherwise. Of itself, this would not form a barrier of sufficient height to prevent overlooking into neighbouring rear gardens.
20. The appeal scheme includes further planting along its rear boundary to provide screening. My observations indicate that the degree of overlooking above the rear boundary depends on the level of the land and the angle of view, and that such views are limited by the presence of the proposed planting and other planting within the vicinity, including that within neighbouring gardens.
21. However, there is no planting along the section of the rear boundary towards the southerly corner of the appeal site. Due to its height and siting, the proposed shed sits below the fence height at this point, and therefore of itself does not provide screening. Views above this part of the rear boundary and/or near the southern corner would therefore not be prevented or screened. Overall, due to the fence height along the rear boundary and changes in level, views into neighbouring gardens would be available, limited only by the continued presence of vegetation which would not form a permanent barrier to overlooking.
22. Of itself, an outdoor pool would generate similar levels of noise and disturbance as any other form of recreation or play within a rear garden, but the siting of associated pool equipment has potential to cause noise and disturbance to neighbouring occupiers. There is some confusion regarding the siting of such equipment, levels of operating noise and attenuation measures.

23. The Rear Garden Plan² shows a heat pump to be mounted on the side of the proposed shed in the southern corner of the appeal site, but the annotations state that the shed would house the pool pump and heat pump. At my visit, there was no equipment attached to the side of the shed and the model identified in the appellant's submissions appeared to have been installed inside it. It is therefore not clear whether noise attenuation would be delivered by the construction properties of the shed, and/or by other means, including planting and fencing, even if it were mounted externally.
24. The data sheet for the installed heat pump details noise output levels as a range at both 1m and 10m distance. At 10m, the range would be 22-32dB, above the maximum of 19dB at a 21m distance indicated on the submitted plan, which appears to be considered as the distance to the nearest neighbouring windows. The appellant advises that patio spaces for neighbouring properties on Greatwood are over 20m away, but this is not robustly demonstrated.
25. Overall, the appellant's assessment of noise (attenuated or otherwise) in relation to distances to all potential receptors is not sufficiently clear, and as such I cannot be certain that the proposal would not result in unacceptable levels of noise for neighbouring occupiers, even if maximum operating noise levels are considered as moderate by the Hearing Health Foundation. The absence of a noise impact assessment does not assist me in this regard.
26. I therefore conclude that the proposal would harm the living conditions of neighbouring occupiers with particular regard to privacy; and it fails to robustly demonstrate that levels of noise and disturbance arising from pool equipment would not unacceptably harm the living conditions of nearby occupiers. Consequently, the appeal scheme conflicts with BLP Policy 37, which seeks to ensure that development is of a high standard of design and respects the amenity of occupiers of neighbouring buildings.
27. The Council's reason for refusal identifies conflict with Policy D6 (Housing Quality and Standards) of the London Plan 2021 (LP) and BLP Policy 6 (Residential Extensions). However, LP Policy D6 seeks to ensure that housing development is fit for purpose, and addresses standards for internal and external space for housing development, and reference to surrounding housing is made within that context. BLP Policy 6 seeks to ensure that proposals for the alteration or enlargement of properties respect or complement the style or materials of the main building and the surrounding area. Although criterion b) refers to the space/gaps between buildings, this is in relation to the character of the area. For these reasons, I do not consider that these two policies are relevant to this main issue.

Other Matters

28. The appellant suggests that the proposal would fall within the parameters of permitted development rights, based on an assessment that as a result of the works, the total area of ground covered by buildings within the curtilage of the dwelling house (other than the original dwelling house) would not exceed 50% of its curtilage. However, I have not been provided with clear and compelling evidence that the proposal as a whole would meet all of the

² Drawing ref: LNDS-1 dated 20.12.2022, with revision stamp: Dec 2023 – Ground Levels added.

limitations as set out in the GPDO³. On this basis, and in the absence of any prior approval consent or lawful development certificate, this matter attracts no weight either for or against the proposal.

29. The appellant's evidence indicates outdoor pools are not uncommon within the wider area. However, the detailed circumstances which led to their construction are not before me, and each outdoor pool will have its own context. I cannot therefore be certain that the examples shown are directly comparable to the appeal scheme before me.
30. I have had regard to representations made at the determination stage, which include comments of support, which were considered where relevant by the Council when it determined the planning application. Many of the matters raised are addressed within the main issues. The recycling/reusing of excavated material to create changes in level is not robustly demonstrated. Even if it were, it would not overcome the harm that I have found.

Conclusion

31. For the reasons 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

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).