



---

## Appeal Decision

Site visit made on 29 January 2018

**by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> May 2018**

---

### **Appeal Ref: APP/G5180/W/17/3186752**

### **61 The Avenue, Beckenham, BR3 5EE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Ron Terry (Howard : Faribairn : MHK) against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/17/01955/FULL1, dated 17 May 2017, was refused by notice dated 7 August 2017.
  - The development proposed is described on the application form as "Demolition of the existing house and construction of 6 no. flats".
- 

### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of the existing house and construction of 6 no. flats at 61 The Avenue, Beckenham, BR3 5EE in accordance with the terms of the application, Ref DC/17/01955/FULL1, dated 17 May 2017, subject to the conditions set out in the attached schedule.

### **Application for costs**

2. An application for costs was made by Mr Ron Terry (Howard : Faribairn : MHK) against the Council of the London Borough of Bromley. This application is the subject of a separate decision.

### **Procedural matter**

3. My determination of this appeal is against the policies of the Unitary Development Plan<sup>1</sup> and the London Plan<sup>2</sup> and in particular, those referred to in the Council's reason for refusal. Although the Council makes reference to the emerging local plan<sup>3</sup>, this document was only submitted for examination to the Secretary of State for Housing, Communities and Local Government in August 2017<sup>4</sup>. Given the uncertainties regarding the outcome of that process, I have given it limited weight.

### **Main issue**

4. The Council has raised no concerns regarding: - (a) the architectural style of the development; (b) its impact upon the living conditions of neighbouring

---

<sup>1</sup> London Borough of Bromley, Unitary Development Plan, July 2006.

<sup>2</sup> The London Plan, The Spatial Development Strategy for London Consolidated with Alterations since 2011, March 2016.

<sup>3</sup> Proposed Submission Draft Local Plan, London Borough of Bromley, Planning Division, November 2016.

<sup>4</sup> GOV.UK website, progress as of 30 April 2018.

occupiers; (c) its impact upon the local highway network; (d) its impact upon trees; and (e) its ecological impact. Accordingly, within the context of the Council's reason for refusal and the evidence in this case, the main issue is the effect of the development on the character and appearance of the area, with particular regard to the Downs Hill Conservation Area.

## **Reasons**

### *Appeal site context*

5. The appeal site contains a large detached dwelling finished in off-white render with black window surrounds and a dark concrete interlocking-tile roof. It has a simple and plain finish with no locally distinctive architectural features and is of no particular architectural merit. The appeal site is a large corner plot elevated above the nearby road junction with Downs Hill and is primarily laid to grass with a significant number of mature trees and hedges. At the time of my site inspection, the grounds of the property were overgrown, with an assortment of household waste and other debris outside the building.
6. The locale has two different character areas. The first is that of the Downs Hill Conservation Area (the 'conservation area'), which primarily consists of Downs Hill, but also includes the far eastern end of The Avenue (from No 55 up to the appeal site). My assessment of the character of this area accords with the conservation area planning guidance<sup>5</sup> which describes it as a mixture of detached houses loosely reflecting the Arts and Craft style and Garden City Movement. This document also states that these properties are unified by their common age of construction and reference to neo-Tudor and neo-vernacular elements and historic materials. Common features include bay windows, dormer windows set into the roof and timber framed rendered elevations.
7. The second character area relates to The Avenue, a wide unmade and unadopted road containing a variety of detached houses and apartment blocks, which vary in maturity, design and scale. A post-war development of small terraced houses and flats lies opposite the appeal site on West Oak, which is accessed via The Avenue.
8. Both Downs Hill and The Avenue have a sloping topography and an abundance of mature trees, hedges, grass verges and large soft-landscaped gardens. These give the locale a verdant character and strong natural landscape setting to its built form.

### *Character and appearance, with particular regard to the conservation area*

9. In accordance with Paragraphs 131 and 132 of the Framework<sup>6</sup>, I have taken account of the desirability of sustaining and enhancing the significance of the conservation area as a designated heritage asset and given great weight to its conservation.
10. The proportions, external appearance and siting of each apartment block broadly replicates that of the previously permitted scheme for the provision of 2 large detached houses<sup>7</sup>, with the exception of a new basement storey with

---

<sup>5</sup> Supplementary Planning Guidance for Downs Hill Conservation Area, London Borough of Bromley, adopted by Development Control Committee on 8 February 2000, and subsequently updated, illustrated and re-paragraphed by the Council's Heritage and Urban Design Group in February 2002.

<sup>6</sup> National Planning Policy Framework, Communities and Local Government, March 2012.

<sup>7</sup> Planning Permission 16/05164/FULL1 dated 8 March 2017.

- lightwell, the addition of balconies over 2 bay windows, 2 additional cycle stores and the removal of a dividing fence between both buildings.
11. To my mind, the proposed design of both blocks and use of materials would reflect the architectural style, finish and proportions of other large dwellings in the conservation area. Whilst I recognise that the scheme contains basements and lightwells, these would be largely obscured from the public realm by trees and hedges to the boundary, their distance from the road and existing ground levels. As a consequence, each apartment building would have the outward appearance of a 2-storey single family dwelling with additional accommodation in the roof.
  12. Although there would be 3 parking spaces in front of each block, views of these would be filtered by an existing hedge and trees that divide the site from the road (and which are to be reinforced with additional planting). I acknowledge that the conservation area planning guidance states at Paragraph 3.26 that the loss of front garden space to create additional vehicle hardstandings will normally be resisted, but in this case, I am satisfied that the scheme will not undermine the underlying purpose of this guidance which is to protect its character and avoid cars dominating the streetscene. In any event, the extent of hardstanding for parking would not be any different from that approved under the previous scheme for 2 single family dwellings.
  13. The scheme would provide private amenity space to each flat and relatively large communal gardens, with significant open gaps between each building and their neighbouring properties. A number of mature trees and hedges would be retained to the site frontage and be reinforced with additional planting. As a consequence, I am satisfied that the development would have a spacious feel and not dominate the streetscene.
  14. Although the development would result in a higher density of residential development than the surrounding area and a greater intensity of use, it would have the outward appearance of two large detached houses that complement the prevailing pattern of housing in the conservation area. I note the concerns raised by the Council and neighbours that the conservation area is predominately characterised by single family dwellings, but this in itself is not sufficient to justify dismissal of the appeal unless there are specific policy reasons to do so and it results in specific harm.
  15. I do however share the concerns of a previous inspector that apartments have the potential to give rise to a more urban character as a result of external structures. The landscaping condition therefore requires further details of bin and cycle stores as I do not consider the locations shown on the submitted plans to be acceptable given their clear visibility from the public realm and utilitarian appearance. In particular, I do not consider the use of fence panels for the bin stores to be particularly robust or visually compatible with the quality of the host buildings and conservation area. I have similar concerns in respect of the potential design of the cycle stores, and also consider it essential that they are both private and secure. However, I am nonetheless satisfied that these facilities can:
    - (a) be designed in a more cohesive way to reflect the character and appearance of the host buildings and conservation area;
    - (b) be constructed to provide a robust, secure and private cycle storage facility for each flat owner; and
    - (c) be positioned in a less publicly visible position within the site.

16. In view of the above, I conclude that the development would be of a high quality design and have a neutral impact upon the conservation area. As a consequence, it would preserve the character and appearance of the conservation area in accordance with S72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The scheme would therefore comply with Policies BE1, BE11 and H7 of the Unitary Development Plan and Policy 3.5 of the London Plan, which collectively seek, amongst other things, to ensure that development is of a high quality design that complements the form, scale and layout of adjacent buildings and preserves or enhances the character and appearance of conservation areas. I am also satisfied that the scheme would comply with the objectives of Paragraph 7.8 of the London Plan which seeks, amongst other things, to conserve the significance of heritage assets.
17. For the reasons identified above, I am also satisfied that the scheme accords with Paragraphs 56, 60, 61 and 64 of the Framework which seek, amongst other things, to ensure high quality design that reinforces local distinctiveness, and the successful integration of development into its natural, built and historic environment. Furthermore, in concluding that the development would have a neutral impact on the conservation area, I am content that it would comply with Paragraphs 131 and 132 of the Framework.

#### *Other matters*

18. My attention has been drawn to two previous planning applications<sup>8</sup> for flats at the site that were refused and subsequently dismissed at appeal<sup>9</sup>. However, whilst consistency is an important consideration in planning decisions, these were both for larger developments with substantially greater built form and are therefore materially different from the scheme before me. I have accordingly assessed the current proposal on its own merits in the light of all the evidence which is now before me.
19. Although representations have been made in respect of overlooking of neighbouring properties, I am satisfied that the flats would not result in any harmful loss of privacy as I consider there to be sufficient intervening distance between the rear elevations of both apartment blocks and the gardens of neighbouring properties they are orientated towards. Further concerns have been raised in respect of views from the rear balconies, but these would be sufficiently restricted by a brick screen wall that extends up towards the eaves. Representations have also been made that the scheme would result in 2 additional balconies when compared with the permission granted for 2 dwellings. However, these are positioned on the south and east-facing side elevations of the buildings and face out onto the public realm. Further privacy safeguards for neighbouring occupiers would be achieved through the provision of circa 1.8 metre high boundary treatment to the scheme's private rear communal garden area.
20. I recognise that there are first floor side elevation windows to both apartment blocks which would potentially overlook neighbouring properties and have accordingly imposed a condition requiring these to be faced with obscure glass. Although there are windows at ground floor level in similar positions, I am satisfied the view from these would be restricted by appropriate boundary treatment.

---

<sup>8</sup> Council ref: 14/03502/FULL1 and 15/02906/FULL1.

<sup>9</sup> Planning Inspectorate ref: APP/G5180/W/14/3001656 and APP/G/5180/W/15/3135153.

21. Neighbours have also raised concerns in terms of loss of outlook, but in view of the intervening distances between the apartment buildings and neighbouring properties, I am satisfied that the development would not appear oppressive or intrusive. Furthermore, because the main rear elevation of both blocks would not project beyond the rear elevations of No 59a The Avenue and No 67 Downs Hill, it is my view that there would not be any significant loss of light to these dwellings or their garden areas.
22. Representations have also been made in respect of loss of view. However, the site is not allocated in the development plan as an important open view and I would not consider it in the public interest to protect the private views of individual properties.
23. Further representations have been made that the development would result in noise and disturbance and erode the peace and quiet enjoyed by neighbouring occupiers. However, I am satisfied that the level of noise generated by future occupants, even when taking into account a greater intensity of use of the site, would be consistent with the surrounding residential area and that any significant disturbance could be suitably controlled under other legislation.
24. I note the health concerns raised by third parties in respect of pollution and dust from vehicles. However, the Council's Environmental Health Officer has not raised any objections on this matter and I have no evidence before me to indicate that additional traffic would result in an unsafe level of pollution and dust in the area.
25. Further concerns have been raised by third parties that the development would result in the loss of trees protected by the conservation area designation. However, whilst I recognise that these trees are publicly visible, the submitted tree report has identified defects to a number of them and all have been given a C or U classification<sup>10</sup>. Of those trees scheduled for removal that are still healthy, I do not consider these to be particularly prominent and am satisfied that there will be sufficient remaining trees and new soft landscaping to maintain the verdant semi-rural character of the conservation area.
26. Concerns have also been raised that the development would result in the loss of a valuable habitat for wildlife. However, the appeal site is not designated as a Special Area of Conservation (SAC) or a Special Protection Area (SPA) and I have no evidence that European or Nationally Protected Species are present on the site. Furthermore, it does not benefit from any local designation of nature conservation importance and no rare or legally protected species of Flora and Fauna have been found on-site. In view of this and the small-scale nature of the development, I would not consider it justifiable to withhold permission on this basis. I am also satisfied that the planting of a new tree and augmenting the existing hedge to the site frontage will ensure that any impact on biodiversity is minimised.
27. Further concerns have been raised in respect of the capacity of the local sewers to accommodate the proposed development and that the scheme could result in surface water and groundwater flooding. The Council has also requested conditions for a surface water drainage system and other drainage works (to potentially incorporate a sustainable drainage system - SUDS). However, in the absence of any: - (a) evidence of professional advice from the Lead Local Flood

---

<sup>10</sup> C is defined as trees of low quality and U is very poor quality.

Authority, Environment Agency, statutory undertakers and/or drainage experts; (b) local policy justification or flood risk designation specific to the appeal site and surrounding area; and (c) other evidence that the site and wider area is at risk from flooding, I am satisfied that the matter of drainage can be adequately dealt with under the Building Regulations and through liaison with the relevant statutory undertakers and that there would not as a consequence be any significant risk of flooding. However, in the interests of highway and pedestrian safety, I do consider it necessary for details of a scheme to prevent surface water discharging onto the road and have incorporated this into the hard-landscaping condition.

28. Neighbours have also raised concerns in respect of the amount of off-road parking provided. However, I note that the local highway authority and Council have not objected in respect of this and I see no reason to take a different view given that the development complies with the maximum parking standards of the London Plan. Furthermore, I consider one parking space and one cycle store to be adequate provision for a 2 bedroom flat in a built-up urban area within reasonable walking and cycling distance of public transport (bus and train), local shopping facilities and a primary school. I am as a consequence satisfied that the scheme is sustainably located and would not result in a significant increase in on-road parking congestion.
29. Neighbour concerns have also been raised that the basement works would increase the likelihood of subsidence for surrounding properties. However, there is no evidence that the proposal would incur structural damage to neighbouring properties and in any event, this would be a private civil matter. Similar concerns have been raised about damage to the public highway during construction. However, this would also be a private civil matter between the appellants and local highway authority/relevant land owner.
30. Representations have been made that the vehicular access point would not meet highway visibility standards. However, the local highway authority and Council have not raised concerns in respect of this and I see no reason to take a different view as I found visibility to be of a good standard in both directions when surveyed from the access points at my site inspection. Furthermore, the poor condition of the unmade road would in my opinion result in drivers proceeding more cautiously and at lower speeds than would be the case on a smooth surfaced highway with good onward visibility. As a consequence, I am satisfied that the scheme would not give rise to highway and pedestrian danger.
31. Further concerns have been raised by residents over noise and disturbance from construction activities. However, the construction works would only be temporary and any significant noise and disturbance could be suitably controlled under environmental health legislation.
32. Other concerns have been raised as to whether there would be sufficient space for new school children. However, the local education authority has not raised any objections and I have no evidence before me to demonstrate a deficiency in local school places.
33. Representations have also been made that living accommodation in the basement is an unwelcome precedent, but this in itself is not sufficient to justify dismissal of the appeal unless it results in specific harm. Other representations have been made that Beckenham needs larger family homes

and not flats. However, there is no evidence or policy justification to support dismissal on these grounds.

34. Other representations have been made that the scheme would establish an undesirable precedent if allowed. However, each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.
35. Further representations were also made to the effect that the rights of neighbouring occupiers under the Human Rights Act 1998, Article 1 of the First Protocol, would be violated if the appeal were allowed. However, I do not consider this argument to be well-founded because I have found that the proposed development would not cause unacceptable harm to the living conditions of neighbouring occupiers. The degree of interference that would be caused would therefore be insufficient to give rise to a violation of rights under Article 1 of the First Protocol.

#### *Conditions*

36. The Council has suggested conditions which I have considered in the light of the comments made by the appellant, the Framework and Planning Practice Guidance. I have made some small amendments to:- (a) ensure the development is acceptable; (b) protect the character and appearance of the conservation area and wider locale; (c) clarify certain details; (d) avoid the need for information to be submitted to the Council for approval; (e) amend trigger points; and (f) in the interests of good practice. In addition to the conditions referred to above, a condition requiring development to be commenced within 3 years is needed for the avoidance of doubt and in the interests of proper planning, as is a condition to ensure the scheme is carried out in accordance with the submitted plans.
37. To ensure that the development retains a faithful adherence to its traditional design and does not result in an unconvincing pastiche that would be harmful to the character and appearance of the conservation area and wider locale, I have imposed conditions requiring the use of authentic high quality materials and a Flemish brick bond in its construction. I have also imposed a condition requiring the approval of detailed window and door drawings as the submitted plans are unclear and I consider this design element to be critical in ensuring a high standard of development.
38. The submitted soft-landscaping and tree protection details are considered to be acceptable and include proposals to augment the existing hedgerow at the front of the site. I have accordingly imposed a condition requiring the development to be carried out in accordance with these details and an implementation scheme to be approved by the Council.
39. A condition for hard-landscaping details is necessary to ensure the provision of high quality hard surfacing materials appropriate to the scheme's conservation area location and because the details are not clear on the submitted plans. The condition of the existing boundary treatment that divides the site from neighbouring gardens is also not clear and insufficient details have been provided in respect of other boundary treatments to the front of the site and lightwells. As a consequence, this condition also requires the provision of boundary treatment details to protect the privacy of neighbouring occupiers and to ensure an appropriate form of enclosure to the front garden that is

compatible with the traditional design of the scheme and its location with a conservation area.

40. In the event that the appellant wishes to provide external lighting, I have imposed a requirement for details of this to be provided in connection with the landscaping scheme, so as to ensure that it does not cause unnecessary light pollution to neighbours. However, given the limited size of the scheme, I do not consider it necessary for external lighting to be provided to the driveway and parking areas.
41. It is not necessary to impose a separate condition requiring the new parking and turning area to be constructed before the use of the land commences as matters relating to surfacing can be satisfactorily addressed by the landscaping condition. I also consider it unnecessary to ensure that these parking spaces are retained for the parking of vehicles as I do not consider there to be any reasonable prospect of them being used for alternative purposes. Furthermore, I have not imposed a condition requiring a road condition survey as any damage to the highway during construction is a private civil matter between the appellant and local highway authority/relevant parties.
42. Given the topography of the area, prominent position of the site, the height of the development and its proximity to neighbouring dwellings, I have imposed a site levels condition to ensure that it does not dominate the area.
43. In view of the appeal site being located within an Air Quality Management Area and Policy 7.14 of the London Plan, I consider it appropriate to impose a condition requiring any boilers used in the development to meet an appropriate nitric oxide (NOx) demission standard.

### **Conclusion**

44. I have found that the proposal would not cause harm to the character and appearance of the conservation area and wider locale. In view of this and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*Robert Fallon*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and details: - Drawing nos. 6383 PL 001, 6383 PL 101, 6383 PL 102 (Rev A), 6383 PL 103 (Rev B), 6383 PL 104 (Rev B), 6383 PL 105 (Materials Schedule), 6383 PL 106, 6383 PL 107, the Design, Access and Planning Statement, the Landscape Design Proposals dated September 2016 and the planting schedule.
- 3) Notwithstanding condition 2, no development shall take place above damp proof course level until details of all external facing materials and finishes have been



submitted to and approved in writing by the local planning authority. These details shall include:

- a) the provision of a sample of the stock brick and details of mortar colour to be used in the construction of the walls of the buildings (Block A and Block B). For the avoidance of doubt, all brickwork on the buildings (aside from that for the Herringbone infill on Block B) shall be laid in a Flemish bond unless otherwise agreed in writing by the local planning authority;
- b) the provision of a sample and colours of the render and timber frame to be used in the construction of the walls of Block B;
- c) the provision of a sample of the tiles to be used in the construction of the roof of the buildings and walls on Block A. For the avoidance of doubt, these shall be single plain tiles (and not duo-plain tiles);
- d) samples and specifications of the facing material to the gables and cheeks of the dormer windows;
- e) drawings of all balcony railings, and specifications of material and colour.

The relevant works shall thereafter be carried out in accordance with the approved details.

- 4) For the avoidance of doubt, and unless otherwise agreed in writing by the local planning authority, all:
  - a) rooflights shall be of a black conservation style and fitted flush with the plane of the roof;
  - b) gutters and downpipes shall be of the round type and finished in black;
  - c) bargeboards shall be black painted or stained timber.
- 5) Notwithstanding condition 2, no development shall take place above damp proof course level until detailed drawings (to include cross-sections) of the windows, dormer windows and doors have been submitted to and approved in writing by the local planning authority. For the avoidance of doubt, the drawings should show the method of opening, glazing bars, leaded lights, cills, arches, lintels, depth of window/door reveal, window/door surrounds, material and colour. The relevant works shall thereafter be carried out in accordance with the approved details.
- 6) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved levels.
- 7) The development and all tree protection measures shall be carried out in accordance with the ACS (Trees) Consulting Arboricultural Implications Report dated 30 August 2016. No site clearance, preparatory work or development shall take place until the approved tree protection measures have been installed and these shall remain in place until completion of the development and all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels

within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 8) The development shall not be occupied until an implementation programme for all soft landscaping works shown on the Landscape Design Proposals dated September 2016 and the planting schedule has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 9) Aside from those specified to be removed, any trees, hedges and plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. No new tree or hedgerow planted in accordance with the above landscaping condition shall be pruned or cut in any manner within 5 years from the date of the occupation of the final dwelling to be occupied, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.
- 10) No hard landscaping works shall take place until the following details have been submitted to and approved in writing by the local planning authority. These details shall include:
  - a) hard surfacing materials for all parking, vehicle, pedestrian circulation areas and hardstandings (to include the new means of access, vehicle turning area, patio areas and pathways);
  - b) boundary treatments and gates, to include design, materials, colours and finishes;
  - c) lightwell enclosure and boundary treatments, to include design, materials, colours, coping stone, and finishes;
  - d) the colour, material, design and finish of the bin storage enclosures;
  - e) the colour, material, design and finish of the cycle storage enclosures and how any cycle stands will be affixed to the ground;
  - f) where proposed, an external lighting scheme;
  - g) a scheme to prevent the discharge of surface water onto the highway.

No flat shall be occupied until the above works have been carried out in accordance with the approved details.

- 11) Flats 1 and 5 shall not be occupied until the first floor windows to the west-facing elevation of Block A and North-facing elevation of Block B have been fitted with obscured glazing to a minimum privacy level of 3, and no part of any window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
- 12) In the event that any gas boilers are to be used in the development, and unless otherwise agreed in writing by the local planning authority, these shall be designed and constructed to meet a dry NO<sub>x</sub> demission rate of <40mg/kWh.

**End of schedule**