
Appeal Decision

Site visit made on 15 March 2016

by Siobhan Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 April 2016

Appeal Ref: APP/G5180/W/15/3136177

20 Blyth Wood Park, Blyth Road, Bromley BR1 3TN

- 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 R Pooke against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/14/03400/FULL1, dated 2 September 2014, was refused by notice dated 17 July 2015.
 - The development proposed is the change of use of ground and first floor from sports hall (use class D2) to C3 incorporating the existing residential unit in the roof space to form a single 4 bedroomed dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr R Pooke against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposed development upon (i) highway safety; (ii) the character and appearance of the area; and (iii) the living conditions of neighbours with particular regard to noise and privacy.

Background

4. Planning permission has already been granted for a flat on the second floor of the appeal building. This proposal is to extend the residential accommodation into the lower floors. The appeal building was previously used as a sports facility and manager's office for the dwellings in the adjoining Blyth Wood Park development which the appeal building used to be part of. The planning permission for the second floor flat required 2 parking spaces to be retained¹. These 2 spaces were in the Blyth Wood Park development but the appeal building has since been severed from this development cutting off the parking spaces and the vehicular and pedestrian access from Blyth Road. Therefore, as well as applying for the use of the rest of the building to become residential, the appellant seeks permission to create a parking area and access from Bracken Hill Lane.

¹ Council Ref 98/03273

5. The appellant started work on the creation of an access and parking area and the planning application originally reflected the work carried out. However, during the course of the application amended plans for a different layout were submitted and informed the Council's determination of the application. They are therefore the plans on which I have based my consideration of this appeal.

Highway Safety

6. The Manual for Streets, 2007 (MfS1) recommends that in 30mph areas sightlines should be 43m in both directions (the Y distance) from 2-2.4m behind the back of the pavement (the X distance which provides for bonnet length). No such sightlines have been demonstrated.
7. I note the appellant's Technical Note which says that the Manual for Streets 2 (MfS2) indicates that a failure to provide the values recommended in MfS1 does not necessarily lead to a significant problem. I agree that the standards should not be applied rigidly but flexibility should be exercised depending upon the circumstances of the case.
8. In this case there is no pavement in front of the proposed access (just a narrow kerbed strip) and a tall boundary wall/fence is on the site boundary so that the bonnet of the car would have to enter the carriageway before the driver would be able to see what is coming. I note the appellant's comments that there are only 13 or so dwellings along the road and that the road is a cul-de-sac. In his view this means that traffic is infrequent and vehicles tend to travel at less than the 30mph limit.
9. However, this does not justify providing no sight-lines at all. The MfS suggests sightline distances of 25m at 20 mph and 11m for 10 mph². Therefore, even if the appellant is correct that cars travel slowly along the road, the proposal would not even provide sightlines appropriate for speeds substantially lower than the 30mph limit. Moreover, I am unconvinced that the road is only used by its occupiers as it is unlikely that there would be a parking restriction between 11am and 12pm on the street if this were the case. Third party representations indicate that non-residents do indeed use the street for car parking. Therefore, the road is unlikely to be as lightly used as the appellant suggests.
10. I appreciate that the appellant's partner is registered disabled and this factor gives some weight in favour of the proposal. However, due to the solid boundary treatment and the lack of a conventional pavement or set back from the carriageway, I consider that the risk of collision with another car, cyclist or pedestrian does not outweigh the need for off street spaces. I note that the Council's Highways Officer did not object to the proposals but for the above reasons I do not concur with their findings.
11. I therefore conclude that the proposed development would harm highway safety and would be contrary to T18 of the Bromley Unitary Development Plan, 2006 (UDP) which seeks to ensure that road safety is not adversely affected.

Character and Appearance

12. There are trees around the site which are subject to a Tree Preservation Order (TPO). The proposed access point would not result in the loss of trees or

² Table 7.1 MfS 2007

significant vegetation as the boundary is generally free of planting. I note allegations from neighbours that the appellant has cut down many trees and photographic evidence has been provided showing that there were previously a lot more trees on the site than there are now. That said, I must make my decision based upon the current circumstances of the site rather than its historical condition. The Council has neither confirmed nor denied the neighbours' allegations that the appellant has removed protected trees and, in any event, this is not a matter for me to determine within the context of a S.78 appeal.

13. Whilst the proposal would not result in the felling of existing trees, the parking area would encroach a small amount into the root protection area of several mature trees which are highly visible in the street scene and are of significant amenity value. Nevertheless, it is proposed to use a "no-dig Cellweb Tree Root Protection System" for the parking area which will minimise damage to the roots. Given these measures, I am satisfied that there is no significant risk to the health of these trees.
14. I appreciate that the development would introduce a significant amount of hard surfacing but the amount would not be disproportionate to the large size of the site.
15. I therefore conclude that the proposed development would not harm the character and appearance of the area and I find no conflict with UDP Policy BE1 which indicates that development should not detract from the street scene and should respect landscape features.

Living Conditions

16. No additional dwelling is proposed although I accept that there is potential for more people to live in the enlarged accommodation. That said, given that the site is within a fairly high density residential area, I do not consider that an access and parking to a single dwelling would have any material impact upon the amount of noise and disturbance in the area. In addition, whilst the neighbours point out that trees have been removed, no new windows are proposed. Furthermore, there is a reasonable gap between the appeal building and the surrounding dwellings.
17. I therefore conclude that the proposed development would not harm residential amenity and there would be no conflict with UDP Policy BE1 which indicates that development should respect the amenity of occupiers of neighbouring buildings.

Conclusion

18. Whilst I find no harm to the character and appearance of the area and no harm to the living conditions of neighbours, these favourable findings do not outweigh the harm to highway safety and the consequent conflict with adopted Development Plan policy. I have considered all other matters raised but none outweigh the conclusions I have reached and the appeal is dismissed.

Siobhan Watson

INSPECTOR



Costs Decision

Site visit made on 15 March 2016

by **Siobhan Watson BA(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 April 2016

Costs application in relation to Appeal Ref: APP/G5180/W/15/3136177 20 Blyth Wood Park, Blyth Road, Bromley BR1 3TN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr R Pooke for a full award of costs against the Council of the London Borough of Bromley.
 - The appeal was against the refusal of planning permission for the change of use of ground and first floor from sports hall (use class D2) to C3 incorporating the existing residential unit in the roof space to form a single 4 bedroom dwelling.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG indicates that local planning authorities will be at risk of an award being made against them if they fail to produce evidence to substantiate each reason for refusal. However, the Council is not duty bound to follow the advice of its professional officers.
 4. In this case I have noted the recommendation of the Council's Officers. However, the decision in respect of highway safety is a matter of judgement and Council Members in this case were entitled not to accept the professional advice of Officers or from the applicant's highway consultant so long as a case could be made for the contrary view.
 5. The Council pointed out the lack of visibility at the access and it referred to the sightlines recommended in the Manual for Streets. Also before the Committee was evidence from neighbours in respect of vehicle speed and car parking along the road. This evidence is a material consideration to which the Committee must have regard. I agree with Council Members that there were sufficient grounds for refusing planning permission in respect of highway safety and I am satisfied that the Council has substantiated this reason for refusal.
 6. At the time of the Council's decision, Officers had not raised objections in respect of the character and appearance of the area. However, the neighbours had provided photographic evidence that the site had been cleared of trees and
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vegetation. Although, in so far as this appeal is concerned, I found in the applicant's favour with regard to trees, it was not unreasonable of the Committee to make a connection between the allegedly removed trees and the access. Furthermore, given the proximity of the proposed parking area to other trees it was necessary for the tree report to have been submitted for the application and appeal anyway. Therefore, I find no wasted expense in connection with the production of evidence in respect of trees.

7. I accept that the evidence in respect of residential amenity was scant and unconvincing but as it gave little for the applicant to respond to, the applicant has not had the necessity to provide much evidence in this respect.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG has not been demonstrated.

Siobhan Watson

INSPECTOR