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## Appeal Decision

Site visit made on 8 April 2021

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27<sup>th</sup> May 2021

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Appeal Ref: APP/G5180/W/20/3257740

The Chalet, 2 Kirkstone Way, Shortlands, Bromley BR1 4JB

- 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 Burrell and Mistry against the decision of the London Borough of Bromley Council.
  - The application Ref DC/20/00557/FULL1, dated 18 December 2019, was refused by notice dated 5 May 2020.
  - The development proposed is the Demolition of existing chalet and construction of 2 semi-detached 4 bedroom homes.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Following their consideration of points raised by the appellant in their Statement of case, with regard to on-site parking, Bromley Council (the Council) they have confirmed that they no longer contest this ground of the appeal, and I have determined this appeal accordingly.
3. **Since Bromley Council's (the Council) refusal of the application Ref DC/20/00557/FULL1**, the Mayor of London has adopted a new London Plan. In line with Planning Practice Guidance, my consideration of the issues of this appeal has, therefore, been on the basis of the National Planning Policy Framework (the Framework), the Bromley Local Plan 2019 (the Local Plan) and the London Plan 2021 (the London Plan). The appellant and the Council have confirmed that this is not prejudicial to their cases.
4. The appellant has submitted a Tree Survey & Preliminary Arboricultural Impact Assessment dated 13 August 2020 with the appeal, which was not available at the time of the application. Given that the Council and other interested parties have had opportunity to comment on this, I have accepted this material for the purposes of this appeal accordingly.
5. Due to warning signs indicating a dangerous structure on the site and its overgrown condition, I was unable to safely access the site on the day of my site visit. However, I am satisfied that I have seen everything I need to determine the appeal.

## Main Issues

6. The main issues of the appeal are the effect of the proposed development on:
  - the character and appearance of the local area;
  - the living conditions of occupiers of nearby residential dwellings, with reference to privacy and outlook.
  - trees on the site.

## Reasons

### *Character and Appearance*

7. The existing detached chalet style bungalow with attached garage is one of three detached dwellings located on this side of Kirkstone Way, an unmade road in a quiet and leafy part of Bromley. The local area is defined by predominantly detached houses and bungalows with relatively generous garden spaces, with significant numbers of trees, including many of significant size and apparent maturity. This gives the area a spacious and verdant character and appearance.
8. The existing bungalow is located towards the front of the plot that forms the appeal site, before the land falls away to create a steep rear garden, which backs on to the rear gardens of the detached dwellings that front Elstree Hill. The proposed 2 semi-detached 4 bedroom houses that would replace the existing bungalow, would maintain a similar distance to the front and side boundaries of the appeal site, but would project further back on the appeal site, allowing for a terrace that would be accessed from the proposed lower ground floors.
9. The proposed semi-detached pair would be approximately the same terminal height of the existing chalet bungalow. However, given the additional area and volume of the proposal, particularly the massing of the jettied first floor level and its culmination in a shallow pitched roof, the proposal would appear as squat and bulky. This would result in the proposal being unduly prominent in views along Kirkstone Way, and the wider area, particularly Elstree Hill, from where the steep slope of the appeal site and significant change in level would result in the 3 storey rear elevation appearing as overbearing and unduly prominent within the local townscape, when viewed from both the public and private realms. This proposal would, therefore, appear as an incongruous intervention that that would be out of keeping with the character and appearance of the local area that I have identified above.
10. In combination with maintaining a similar side space to the boundary as the smaller existing bungalow, the bulk and massing of the proposed semi-detached pair would result in the proposal appearing to be too close to its boundaries with neighbouring properties to either side. Particularly to the boundary that with 'Chestnut' bungalow, which reflects a similar side space to the boundary as the existing bungalow on the appeal site. This would result in the proposed semi-detached pair appearing as a cramped form of development, which would be out of keeping with the spatial characteristic of the local area.
11. The appellant has argued that by keeping the proposed side spaces similar to that of the existing, the proposal would provide significantly in excess of the

normally required side space of 1M, as set out in Policy 8 of the Local Plan. The appellant has also provided me with examples and photographs of nearby housing that demonstrate this 1m minimum gap, both to boundaries and between houses.

12. However, Policy 8 further sets out that where higher standards of separation already exist within residential areas, proposals will be expected to provide a more generous side space, and, given the scale of the proposal and the local spatial characteristics that I have identified, it is this part of the policy that applies in this instance.
13. I find, therefore, that the proposal would result in an unduly prominent, bulky, and cramped form of development that would be incongruous within the local street scene and townscape and, thereby, detrimental to the established spacious and verdant character and appearance of the area.
14. For the reasons given above, the proposal would cause unacceptable harm to the character and appearance of the local area. As such it would be contrary to Policies 4,8 and 37 of the Local Plan and Policies D3 of the London Plan, which seeks to ensure that housing development is of a high standard of design, respects local character, spatial standards and compliment the qualities of the surrounding areas, contributing positively to the existing street scene.

#### *Living Conditions*

15. The proposed semi-detached pair would be similar in height to the existing chalet bungalow and have similar side spaces, of similar extent to the **boundaries with 'Chestnut' bungalow and the house at 'Billingford'**. However, along these boundaries the proposal would have flank walls that would be two storeys, rather than the single storey of the existing chalet bungalow. Similarly, the rear elevation of the proposed semi-detached pair, which would be further rearward into the plot than the existing chalet bungalow, would appear as 3 stories rather than the single storey as existing.
16. This proposed bulk and its massing would result in the proposal having a domineering and overbearing effect by the occupiers of neighbouring residential properties. Particularly those properties that front Elstree Hill, where the extent of the rear relatively windowless gable, combined with the steep slope in ground level, would result in the proposed semi-detached pair being experienced as an oppressive presence from their rear rooms and gardens.
17. Whilst the relatively windowless rear elevation of the proposal would not result in overlooking, the concomitant placement of the necessary windows in the first-floor level of the flank elevations would allow for significant additional overlooking of the properties at **'Chestnut' and 'Billingford'**.
18. Additional overlooking would also result from the proposed first floor balconies on the rear elevation and the rear terraces adjacent to the rear of the proposed semi-detached pair, which, despite being at a lower level than the existing terrace, would be significant closer to neighbouring properties. Both the proposed balconies and terraces would look down and into the rear rooms and onto the rear gardens of the Elstree Hill properties that back on to the appeal site.

19. I find, therefore, that the degree of overlooking afforded by the proposal would be experienced as intrusive by the occupiers of neighbouring dwellings, leading to a loss of privacy that would cause significant harm to their living conditions.
20. The appellant has drawn my attention to the visual screen that has been **installed at the rear of 'Billingsford'**, between it and the appeal site. It would appear that this has been installed to screen the currently overgrown appeal site from view from this neighbouring property. This screen could be removed by the occupier of this property at any time and cannot be relied on to protect the occupiers of this property from the overbearing effect and overlooking that would be caused by the proposal. Further, there is no guarantee that the existing planting near the boundary between the appeal property will be retained in the long-term and cannot, therefore, be relied on to provide year-round screening. I have therefore only given limited weight to these in my considerations.
21. For the reasons given above, the proposed development would be contrary to Policy 37 of the Local Plan and Policy D3 of the London Plan, which seek to ensure that developments respect the amenity of occupiers of neighbouring buildings and deliver appropriate outlook and privacy.

#### *Effect on Trees*

22. The appeal site contains a number of trees that are the subject of a Tree Preservation Order (TPO). Whilst the Tree Survey & Preliminary Arboricultural Impact Assessment dated 13 August 2020 (the Assessment), submitted by the appellant with the appeal, does set out those trees it is proposed to retain and remove, it does not set out how those trees that are to be retained could be adequately protected. However, this could be made the subject of a suitable condition attached to a permission.
23. A number of **other trees categorised as 'C's, indicating smaller trees or ones** considered to be of low quality, which may have a limited life expectancy or contribute very little to the amenity of the locality and shown for removal in the Assessment. However, in the absence of a landscaping plan, it is not established that there would be sufficient remaining space on the site to replace an appropriate number of suitable replacement trees. However, I find that the area of land that would be available for tree planting is generally apparent from the submitted plans and the submission of a landscaping plan which could be made the subject of a suitable condition.
24. One of the trees that the Assessment proposes to be removed to facilitate the proposed development, is a large oak of significant age and habitat potential that is covered by the TPO. This is **labelled as T3 and categorised as a 'U'**, indicating a tree of limited quality and value that could not be retained as living for longer than 10 years, in the context of the current land use. However, despite the apparent significance of this tree, the Assessment does not, however, adequately consider alternatives to removal of this tree, including measures that could extend its life and, therefore, prolong its significant contribution to the townscape and biodiversity of the local area.
25. For this reason, I find that the proposal would cause significant harm to the natural environment by prejudicing the retention of a tree of significant age and habitat potential on the site, which it would be desirable to retain for its townscape and biodiversity significance and potential. The proposal would

therefore be contrary to Policy 73 of the Local Plan and Policy G7 of the London Plan, which require that proposals for new development will take particular account of existing trees on the site and ensure that, wherever possible and in the interests of visual amenity and/or wildlife habitat, existing trees of value are retained.

#### Other Matters

26. I acknowledge that the appellant has sought to respond to a previously refused outline planning application for a similar proposal for a semi-detached pair of dwellings on the site, however, I have considered the development as proposed on its own merits, which is a fundamental principle that underpins the planning system.
27. Whilst I sympathise with the view expressed by a neighbouring residential occupier that the construction of the proposal would bring the site, which on my site visit exhibited evidence of neglect, fly-tipping and anti-social behaviour, into positive use and condition, this is, however, possible to achieve without the harm I have identified above.

#### Planning Balance and Conclusion

28. Paragraph 11d, footnote 7 of the Framework states that where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the LPA cannot demonstrate a 5-year supply of deliverable housing sites), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
29. When this is the case, and as this appeal relates to the provision of housing, the need for the proposal to be considered against paragraph 11d is triggered. However, although the proposal must be determined within the context of paragraph 11d, I consider the Local Plan policies are a material consideration within this decision, which carry full weight in so far as they conform to the Framework, along with the relevant policies of the London Plan. The Local Plan Policies 4,8,37 and 73 and Policies D3 and G7 of the London Plan which are most relevant to this appeal, are consistent with the Framework, specifically Sections 12 and 15, which seek to achieve well designed places and the Conservation and enhancement of the natural environment.
30. **According to the Government's Housing Delivery Test: 2020 the Council has a significant projected housing shortfall on that required. The Council's projected housing shortfall is also below that identified in the London Plan (2021).**
31. As I have identified above, the proposal would result in significant harm to the character and appearance of the local area the living conditions of neighbouring residential occupiers and to the natural environment, contrary to Local Plan Policies 4,8,37 and 73 and Policies D3 and G7 of the London Plan. **In light of the Council's housing land supply position, paragraph 213 of the Framework** makes it clear that weight should be given to existing development policies according to their degree of consistency with the Framework. Section 12 and 15 of the Framework recognise that developments should seek to achieve well designed places and the Conservation and enhancement of the natural environment.

32. Even taking account of the objective of significantly boosting the supply of **homes and the Council's supply position, the conflict between the proposal and** the relevant parts of Policies 4,8,37 and 73 of the Local Plan and Policies D3 and G7 of the London Plan should be given significant weight in this appeal.
33. Set against the harm identified there would be social and economic benefits **associated with the development. The appeal site is a 'windfall' site in terms of** housing, in so far as it is a site not previously identified in the Bromley Development Plan and presents an opportunity for 2 larger dwellings, suitable for family occupation, to replace the existing smaller dwelling on the site. Although a small contribution to the overall housing target for the London Borough of Bromley, smaller housing schemes do collectively make a major contribution to the number of new residential units, as further recognised in Policies H2 and H3 of the London Plan, which seek to increase the supply of housing on small sites, and I have given this significant weight in my considerations.
34. The proposal would also generate employment opportunities during construction, and through the employment of local services for its upkeep and maintenance when occupied, as well as generating spending and revenue benefits in the local area. In connection with the increase in number and larger dwellings proposed, these benefits attract modest weight in favour of the proposed development.
35. Consequently, I conclude that the significant harm to the character and appearance of the local area, the living conditions of neighbouring residential occupiers and the natural environment that I have identified, would significantly and demonstrably outweigh the public benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
36. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*Victor Callister*

INSPECTOR