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## Appeal Decision

Site visit made on 21 February 2022

**by Chris Couper BA (Hons) Dip TP MRTPI**

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

**Decision date: 29<sup>th</sup> March 2022**

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### **Appeal Ref: APP/G5180/W/21/3279708**

#### **8 Madeira Avenue, Bromley BR1 4AY**

- 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 P Banton against the decision of the Council of the London Borough of Bromley.
  - The application Ref DC/20/04942/FULL1, dated 3 December 2020, was refused by notice dated 9 March 2021.
  - The development proposed is the demolition of the existing house and garage, and the erection of 2 three storey five bedroom houses and a single block of replacement garages.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of the existing house and garage, and the erection of 2 three storey five bedroom houses and a single block of replacement garages at 8 Madeira Avenue, Bromley BR1 4AY, in accordance with the terms of the application, Ref DC/20/04942/FULL1, dated 3 December 2020, subject to the conditions on the attached schedule.

### **Procedural and Preliminary Matters**

2. Whilst interested parties state that the submitted drawings are inaccurate with regards the height of adjacent buildings, I have limited precise evidence of that, and on the basis of my visit, I am satisfied that I have sufficient information to assess the scheme's impact and its relationship with adjacent buildings. Additionally, the proposed slab level could be made the subject of a planning condition.
3. I have taken the description of the proposal from the application form. Although I have had regard to representations which query the number of storeys in that description, I consider it to be a reasonable summary of the proposal, which I have considered in any event on the basis of the submitted drawings.
4. The revised National Planning Policy Framework came into force on 20 July 2021 ('Framework'). In my decision I have therefore had regard to that document, rather than the now superseded 2019 version.
5. The appeal site has a fairly lengthy planning history, which includes planning permissions for flats, one of which was allowed on appeal, and a more recent refusal of a scheme for two houses. Whilst I have had regard to that history, I have considered this proposal on its planning merits.

## **Main Issues**

6. The main issues are the effect of the proposed development on:
- the character and appearance of the area; and
  - the living conditions of nearby occupiers.

## **Reasons**

### *Character and appearance*

7. The buildings along this part of Madeira Avenue are set back to varying degrees from its north-eastern side. Many are sited fairly close to one another, and the gaps to their side boundaries are inconsistent. They are finished in a palette of materials, such as brick and render, and are of varied size, design and height, including a mix of two storey detached and semi-detached dwellings, and short rows of three storey town houses at Kimberley Terrace.
8. As the buildings generally have a vertical emphasis, in the context of the area the dwelling on the appeal site, with its long flat-roofed front dormer and its horizontal proportions, has a rather incongruous squat form.
9. Other than the garages, the proposed development would be raised well above the carriageway and it would be cut into the rising ground to the rear. It would be taller than the house it would replace, its front facing gables would be sited closer to the road, and it would have wide side elevations, with sections of crown roof. Given its elevated siting, and its three storey form with additional accommodation in its gabled roof, it would be a fairly imposing and bulky structure when viewed from directly in front of the site on Madeira Avenue.
10. At its closest points the proposed building would be about 1 metre from the site's side boundaries. However, there is an access track along its north-western boundary and the site widens to the rear. Consequently, and as illustrated by drawing nos. 2002 03B and 01A, whilst it would be taller than Nos 1 to 3 Kimberley Terrace, and than 12 to 18 Madeira Avenue, it would be well separated from them.
11. Given those gaps, the curvature of the road at this point, the tall buildings at Kimberley Terrace, and the presence of trees and landscaping, the extent to which the proposed development, including its side elevations, would be seen in the context of the wider streetscene, would be limited.
12. The proposed brick and painted render would respect the facing materials elsewhere on Madeira Avenue. The existing house on the appeal site has little landscaping to the front, and as many nearby forecourts are hard surfaced, the limited planting and the presence of refuse and recycling bins here, would not appear markedly out of place.
13. Whilst concerns have been raised regarding the impact of the development on trees, some of which are protected by a Tree Preservation Order, I have no persuasive reason to disagree with the Council, based on previous advice from its Tree Officer and a Tree Survey Report, that significant trees around the boundaries of the site could not be appropriately protected by means of a planning condition.

14. Summing up, there is no clearly established pattern or consistent form to the local urban grain. For the above reasons, whilst the scheme would have a fairly dominant form, it would cause only limited harm to the character and appearance of the area. There would thus be a slight conflict with those parts of Bromley Local Plan 2019 ('BLP') Policies 4 and 37, and London Plan 2021 ('LP') Policy D3 which in general terms require development to complement the scale, proportion, form, layout and materials of the area, and to positively contribute to local distinctiveness and to the streetscene.
15. There would also be a slight conflict with the similar approach in the Council's Supplementary Planning Guidance No. 1 and No. 2, and with the broadly similar stance to good design and creating attractive places with a strong sense of place, and development which is sympathetic to local character, at Section 12 of the Framework, and in the National Design Guide 2019.
16. However, as standards of separation appropriate to the context would be maintained, there would be no conflict with BLP Policy 8.

*Living conditions*

17. The main part of the wedge-shaped garden at 1 Kimberley Terrace is to the side adjacent to the appeal site. However, the outlook from the proposed houses would be principally over the road to the front, and over their respective gardens to the rear, with only windows serving non-habitable rooms above ground floor in the side elevations. Consequently, and given the long distance to the much lower properties in Farnaby Road, the scheme including its patios above the garages, would not result in significant overlooking of nearby residents.
18. I have found that the scheme would maintain a reasonable separation to the buildings either side, and having regard to the sun's trajectory and the existing sylvan context with properties set into rising ground, I am satisfied that the proposed building would not cause significant overshadowing or loss of natural light.
19. Consequently, on this issue the scheme would not conflict with those parts of BLP Policies 4, 8 and 37, or LP Policy D3 which require high quality design, adequate separation between buildings, and respect for neighbouring amenities with regards matters such as daylight, sunlight, outlook, privacy and overshadowing. Nor would it conflict with the Framework's requirement at paragraph 130 to create places with a high standard of amenity for existing and future users.

*Other matters*

20. Although each house could be occupied by more than seven people, as a total of only two units are proposed in this reasonably accessible location, I agree with the Highway Authority that four parking spaces would be satisfactory and, with appropriate cycle storage provision, would be sufficient to prevent a harmful impact on roadside parking. I have no cogent evidence that this modest scheme would have a significant impact on highway safety on this residential road.
21. It is alleged that allowing the scheme could set an undesirable precedent, but I have found that it would cause only limited harm and I have not been directed to other similar sites nearby.

22. I have considered the advice of Thames Water, and I have no evidence to conclude that the site's excavation would adversely impact ground water levels. Concerns have been raised that the proposed building could be turned into flats or a House in Multiple Occupation, and examples of development elsewhere in the borough have also been referred to. However, I have dealt with the scheme before me, in this location, on its own planning merits.
23. In its favour, the proposal would make an effective use of previously developed land to add one unit to the supply of housing. In those regards it finds support from the development plan and the Framework. Whilst it would make a very modest contribution to housing supply, that is nonetheless a significant benefit given that the Council cannot demonstrate a five year housing land supply as required by the Framework.

### **Planning Balance, Conditions and Conclusion**

24. I have found that the scheme would cause only limited harm to the character and appearance of the area, and that it would not impact nearby occupiers' living conditions to a harmful degree. In its favour, it would make a small contribution to housing supply using previously developed land. That is a significant benefit.
25. Having regard to Framework paragraph 11 d) the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against its policies taken as a whole. The appeal will therefore be allowed.
26. The Council has proposed a number of conditions, which I have considered against the relevant tests in the Framework, making amendments where necessary to improve precision, clarity and enforceability. I have imposed the standard time limit condition and, in the interests of certainty, a condition requiring that the development be carried out in accordance with the approved plans.
27. Some pre-commencement conditions are clearly justified and necessary to ensure appropriate control over issues that may arise from the outset of the development. My condition no. 3 is necessary in the interests of the character and appearance of the area and to protect adjacent occupiers' living conditions. For the latter reason, a Construction Management Plan is also necessary although, given the limited quantum of development proposed, details of construction traffic movements are unnecessary.
28. As retained landscaping, and trees, some of which are subject to a Tree Preservation Order, could be damaged from the outset of development, in the interests of the character and appearance of the area, my condition no. 5 is necessary. This also broadly addresses the requirements of the Council's suggested condition no. 11, with the details to be agreed between the parties.
29. For the same reason, my condition no. 6 is necessary, as is condition no. 7, which also seeks to protect adjacent occupiers' living conditions. My condition no. 8 is necessary to reduce flood risks in accordance with the development plan.
30. Whilst I understand that cycle parking will be provided within the proposed houses, that is not entirely clear on the drawings, and in the interests of promoting sustainable travel, condition no. 9 is therefore necessary. Whilst

refuse storage areas are depicted on the drawings, my condition no. 10 is imposed to ensure that these are provided and that they have a satisfactory visual impact. Condition no. 11 is necessary to limit the impact of the development on the Air Quality Management Area, in accordance with the development plan.

31. In accordance with Framework paragraph 180 d) and the development plan, and in the interests of biodiversity, a condition requiring the installation of swift nest boxes, as suggested by the RSPB, is also necessary.
32. Finally, the Planning Practice Guidance sets out that conditions restricting the future use of permitted development rights, may not pass the tests of reasonableness or necessity. The Council has not set out clearly why such rights should be withdrawn here, and given the size of these plots and the varied context of the area, I am not persuaded that such a condition would meet those tests. I have not therefore imposed its suggested condition no. 10.
33. For the above reasons, having regard to all other matters raised, including representations by interested parties, the appeal is allowed.

*Chris Couper*

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: 2002 01 Revision A, 2002 101 Revision A, 2002 02 Revision B, and 2002 03 Revision B.
- 3) Prior to the commencement of the development, details of the proposed slab level of the building and the existing site levels shall be submitted to and approved in writing by the local planning authority. The development shall be completed strictly in accordance with the approved levels.
- 4) Prior to the commencement of the development (including any works of demolition), a Construction and Environmental Management Plan shall be submitted to, and approved in writing by the local planning authority. The Plan shall provide for (a) dust mitigation and management measures; (b) the location and operation of plant and wheel washing facilities; (c) measures to reduce demolition and construction noise; (d) hours of operation; and (e) parking for operatives during the construction period. The approved Construction and Environmental Management Plan shall be adhered to throughout the construction period for the development.
- 5) Prior to the commencement of the development, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the location of all existing trees and hedgerows affected by the proposed development, and details of those to be retained, together with a scheme detailing measures for their protection during the course of development. All hard landscaping works required by the approved scheme shall be carried out and completed prior to the first occupation of the development hereby permitted. All soft landscaping works required by the approved scheme shall be carried out in accordance with a programme to be agreed before development commences, and shall be maintained including the replacement of any trees or plants which die, are removed, or become seriously damaged or diseased, in the next planting season with others of a similar size or species, for a period for five years from the date the approved scheme was completed.
- 6) Prior to the commencement of above ground works, details (including samples) of the materials to be used for the external surfaces of the building shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to the commencement of above ground works, details of proposed boundary treatment, including any gates, walls or fences shall be submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be implemented prior to the first occupation of the houses and shall be retained thereafter.
- 8) The building hereby permitted shall not be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local

planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. 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 and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters.

- 9) Prior to the construction of any above ground works, details of bicycle parking shall be submitted to and approved in writing by the local planning authority. The details as approved shall be completed before any part of the development hereby permitted is first occupied, and shall be permanently retained thereafter.
- 10) Prior to the construction of any above ground works, details of arrangements for the storage of refuse and recyclable materials shall be submitted to and approved in writing by the local planning authority. The details as approved shall be completed before any part of the development hereby permitted is first occupied, and shall be permanently retained thereafter.
- 11) Details of the NO<sub>x</sub> emission rate of any gas boilers to be fitted within the houses shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the houses.
- 12) Prior to the first occupation of the houses at least 2 integral swift nest bricks shall be installed on one of the houses, and shall thereafter be retained.

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