
Appeal Decision

Site visit made on 31 January 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 06 March 2017

Appeal Ref: APP/D5120/W/16/3162363

Land rear of 20-28 St James Way, Sidcup, Bexley DA14 5ER

- 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 Brookworth Homes Limited against the decision of the Council of the London Borough of Bexley.
 - The application Ref 16/00348/FUL, dated 12 February 2016, was refused by notice dated 7 October 2016.
 - The development proposed is demolition of existing dwelling at No. 20 St. James Way, introduction of access road and provision of six detached dwellings with associated parking and landscaping plus erection of detached garage on land to the rear of No. 28 to serve this property.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues raised by this appeal are the effect it would have on i) the character and appearance of the area, in particular its effect on a protected cedar tree and other trees on the site; ii) the living conditions of occupiers of existing residential properties with particular reference to outlook, and iii) the living conditions of future occupiers of Plot 3 with particular reference to private outdoor space.

Reasons

Character and appearance – protected cedar tree

3. The site is made up of the three plots including the house and garden of 20 St. James Way which, along with the large area of garden to the rear of No 28, have a verdant character as a result of the trees and planting within them. These are reflective of the predominantly spacious and verdant character of other rear gardens in the area. The part of the site which lies between Nos 20 and 28 has a distinct and more open character, largely devoid of trees. It includes an area of hardstanding but is dominated by a large cedar tree in the north west corner. The proposed houses would be arranged along an access road which would wrap around the gardens of Nos 22-26 and each with sizeable rear, or in the case of Plot 1 side, gardens.
 4. As a result of its height, size and appearance the cedar tree makes a very important positive contribution to the character and appearance of the area
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- and it is protected by a Tree Preservation Order¹. It can be seen over some distance above surrounding houses. Its removal or excessive pruning would have a particularly harmful effect on that character and appearance.
5. The proposed scheme would include this tree within the garden of a detached house on Plot 3. The position of the house and its plot size have been revised during the course of the application and the principle of some pruning of lower branches of the cedar tree has been agreed between the main parties. Despite its size, a large part of the garden of Plot 3 would be under the crown spread of this tree, a proportion which the Council's arboricultural adviser calculates as being 48%² of the area.
 6. There is a divergence of opinion between the main party's respective arboricultural advisers about the effect the proposed arrangement of the house and garden at Plot 3 would have on the long term protection of the cedar tree. In particular this concerns the likelihood that this relationship would lead to pressure from future occupiers to seek to prune or fell the tree as a result of actual or perceived effects on those occupiers' enjoyment and use of their house or garden.
 7. The Council's arboricultural adviser is of the view that mature cedar trees are highly unsuitable for a garden location and that the species has a "...known propensity to drop branches", circumstances in which he considers the Council may find it very difficult to resist applications to heavily prune or fell the tree. In response the appellant's arboricultural advisor³ has not directly addressed this concern of branch dropping propensity but considers that the proposal represents a satisfactory relationship, concluding that there are no arboricultural factors which she considers would justify a refusal.
 8. Guidance in the British Standard⁴ identifies that the relationship of buildings to large trees can cause apprehension to occupiers or users of nearby buildings or spaces, resulting in pressure for the removal of the trees. Given its relationship to the house and garden of Plot 3, even the potential of an unexpected branch drop from such a large tree may give rise to a level of concern or fear in future occupiers, particularly those with children.
 9. I am mindful that the Planning Practice Guidance⁵ advises that, when determining applications for work to protected trees, a council should consider whether any loss or damage is likely to arise if consent is refused and that compensation may be payable in certain circumstances. Whilst the Council might more easily resist proposals for tree works it considers unnecessary for reasons of overshadowing or effect on garden plants, where the personal safety of occupiers is concerned it may find it considerably more difficult to resist such applications even if they are motivated by a fear or perception of harm to safety.
 10. In support of her views, the appellant's arboricultural advisor points to the fact that the cedar tree is in close proximity to the rear of properties on The Grove, in particular Nos 56 and 58, and that this relationship has not given rise to any such felling or pruning proposals. However the tree would be located within

¹ Identified as T3 on The London Borough of Bexley (North Cray Road) Tree Preservation Order 1968.

² SJA Trees letter of 12 August 2016.

³ Quaife Woodlands letter of 28 September 2016.

⁴ BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations, paragraph 5.3.4 d).

⁵ Paragraphs 090 and 108, reference ID: 36-090-20140306 and 36-108-20140306.

the garden of Plot 3 and its crown would extend over a considerably larger area than that which extends over each of the neighbouring gardens. Whilst the potential of such requests would not be eliminated in the absence of the proposed arrangement on Plot 3, they would appear to be more likely as a result of the proposal.

11. A risk consequently remains that future occupiers may seek to carry out work to the tree which the Council would find hard to resist in some circumstances than it would presently. In light of the outstanding contribution the cedar tree makes, it is appropriate to take a precautionary approach. It has not been demonstrated that an unacceptable risk of harm to the tree would be avoided and that serious harm to the area's character and appearance would not result. I have considered this harm against development plan policy below.

Character and appearance – other trees

12. The appellant's Arboricultural Survey and Planning Integration Report (ASPIR) categorises three trees (identified as T4 – Copper beech, T5 – Monterey Cypress and T6 – Deodar cedar) in the garden of No 28 as being 'desirable for retention', among others, although they are proposed to be removed to enable construction of the houses on Plots 5 and 6 and the access road.
13. Notwithstanding that they are not protected by a Tree Preservation Order, as a result of their size and appearance these trees make a positive contribution to the character of the area as part of the wider, verdant rear gardens of properties on St James Way and The Grove and are visible from the rear aspects of nearby houses. Whilst they are in the main obscured from public views as a result of intervening buildings and other trees outside the appeal site they nevertheless have more than a localised effect given their size and prominence, in part as a result of the general absence of other planting on the adjoining part of the appeal site to the north. Their removal would have a harmful effect on the character of the area.
14. The proposed removal of beech and holly trees along the west boundary of the garden of No 20 (identified in the ASPIR as G30 and T31) would have a limited effect by reducing the tree cover on this part of the site, although it would be particularly apparent from adjacent properties on The Grove. However the ASPIR categorises them of no merit (but could be retained) and their removal would have a more localised and less harmful effect on the character of the area.
15. The appellant has indicated their willingness to introduce mature or heavy standard trees as part of a landscaping scheme which indicatively would be located around the periphery of the site. This would have the potential to improve tree cover on parts of the site where it is currently limited and in time could make a positive contribution to the area's character. However, notwithstanding the proposed size of replacement trees they could take some time to approach the size of those to be removed from the garden of No 28 and their linear, perimeter location would have a more limited effect on the area's character. Consequently, replacement planting would not in itself mitigate the loss of mature trees on the site.

16. Therefore, in light of the proposal's effect on the cedar tree and other trees the proposal would be contrary to saved UDP⁶ Policies H3, H8, ENV35 and ENV39 and Core Strategy Policy CS06. Amongst other criteria, together these require residential development to be compatible with an area's character and appearance and that trees of amenity value should be retained on development sites, including on sites to the rear of existing dwellings or on gardens and that the character of areas of semi-detached and detached housing is retained.
17. The High Beeches Conservation Area lies immediately to the south of the site. Its character and appearance, and hence significance, is derived to a large degree by the distinctive and well preserved 1930's suburban architecture set along tree lined streets. Mature trees in rear gardens contribute to this character, including those adjacent to the appeal site. Trees surrounding the Conservation Area make a positive contribution to its significance by providing a verdant setting which includes trees T4, T5 and T6.
18. Their removal would harm the setting and hence significance of the Conservation Area. Given their relatively localised effect in relation to the Conservation Area this harm would be less than substantial. Nevertheless, having paid special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area, this harm, albeit less than substantial, carries considerable importance and weight.

Neighbours' living conditions

19. The appeal site is situated at a higher level than adjoining houses on The Grove. Although in the main set well back from the boundary, the proposed houses would be visible from the existing ones. However they would be distanced by generous separation distances created by the combination of existing and proposed back gardens. The height, mass and bulk of those new dwellings would not appear so extensive in views as to have an overbearing, oppressive or intrusive effect on the outlook from rear windows of existing houses or from their gardens, including those in The Grove which are closer to the appeal site than others.
20. Removal of trees along parts of the boundary would in the short term reduce the verdant setting some of the houses on The Grove currently enjoy. However, proposed landscaping along the boundary would, when established, provide a green backdrop to their gardens and further reduce any visual effects the new houses would have. Care in the landscape design and choice of tree species should avoid any new landscaping itself creating an overbearing or harmfully enclosing effect on adjoining occupiers whilst providing a degree of softening and screening. The new houses have been designed to avoid first floor habitable rooms overlooking properties on The Grove which, along with suitable landscaping, could be ensured by way of planning conditions.
21. The living conditions of existing occupiers would not, therefore, be materially harmed as a result. I have considered the views of interested parties who have raised concerns in this regard, however they do not lead me to a different conclusion. As such the proposal would avoid conflict with saved UDP Policies H7, H8 and ENV39 which together seek to avoid prejudicing the environment of adjacent occupiers by providing adequate separation and a reasonable degree of privacy and outlook. These accord with the National Planning Policy

⁶ Bexley Council Unitary Development Plan, 2004 (UDP).

Framework's (the Framework) core planning principle of always seeking to secure a good standard of amenity for all existing and future occupants.

Future occupiers' living conditions

22. Plot 3 would have a large garden, although a substantial part would be under the crown spread of the aforementioned Cedar Tree. This could limit the amount of useable garden space as a result of overshadowing or apprehension about safety. Notwithstanding my concerns about the negative effects of post development pressure on that tree, even if the area beneath the tree were not used, the remaining garden space would not be so small that it would prevent future occupiers being able to relax or carry out domestic tasks in the garden.
23. This unaffected area would not be significantly smaller than the gardens of other proposed houses in the development. The situation of the majority of the garden to the south east of the tree would mean that it would have a limited effect on sunlight reaching that part of the garden not beneath the tree. This part of the proposed garden would be unlikely to receive any less sunlight than gardens to adjacent Plots 4, 5 and 6.
24. As such the living conditions of future occupiers of the house on Plot 3 would not be materially harmed and the proposal would accord with the Framework's core planning principle in this respect. There would be no conflict with saved UDP Policies H7 and ENV39 in this regard, concerned as they are with privacy and outlook and ensuring a high standard of design and layout.

Other Matters

25. No 20 is bounded to the north by a listed wall and although the proposal's effect on the significance of this designated heritage asset is not a matter of dispute between the main parties I am required to address this matter. The red brick wall derives some of its significance from its historic construction, appearance and associations with the former North Cray Place estate and the nearby Parish Church.
26. An outbuilding in front of No 20 appears to be attached to the wall and No 20 itself is situated close to it. The removal of the outbuilding has the potential to better reveal the wall. I have considered the concerns of interested parties about the proximity of new development but the proposed houses and car port on Plots 1 and 2 would be set away from the wall, preserving the building and its setting. Provided the existing buildings are dismantled, and new ones constructed, with care and adherence to an agreed methodology, damage to the wall should be avoided, which could be controlled by way of a condition.
27. Having had special regard to the desirability of preserving the listed building and its setting I consider that the significance of the heritage asset would be unharmed by the proposal. In reaching this conclusion I note that this corresponds with the views of the Council in this respect.

Overall Balance

28. The absence of harm to existing and future occupiers' living conditions and the listed wall do not amount to positive considerations. I acknowledge that the Council consider that the development of the site need not be unacceptable in principle, that the appellant sought and took on board pre-application advice and revised the scheme in an attempt to address the Council's concerns.

However, these matters would not override the harmful effects of detailed aspects of the proposal.

29. The scheme would make a contribution to delivering five additional houses in the Borough and support the Framework's aim to boost significantly the supply of housing and the associated social and economic benefits that this would bring with it. The Framework, states that the less than substantial harm I have found to the Conservation Area's significance should be weighed against the public benefits of the proposal. Important though these benefits are, I consider that they would not outweigh the harm to the Conservation Area nor to the area's character and appearance which would arise as a result of a loss of trees on the site and a failure to demonstrate that an unacceptable risk of harm to the protected cedar tree would be avoided, contrary to development plan policies.

Conclusion

30. For the above reasons, and having had regard to all other matters raised, the appeal is dismissed.

Geoff Underwood

INSPECTOR