



Appeal Decision

Site visit made on 11 December 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2020

Appeal Ref: APP/G5180/W/19/3233855

Phoenix Lodge, 14A Woodlands Road, Bickley, Bromley BR1 2AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Chartwell Land and New Homes (2) Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/05565/OUT, dated 12 December 2018, was refused by notice dated 28 June 2019.
 - The development proposed is demolition of existing dwelling and erection of thirteen apartments with associated access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and erection of thirteen apartments with associated access and parking at Phoenix Lodge, 14A Woodlands Road, Bickley, Bromley BR1 2AP in accordance with the terms of the application, Ref DC/18/05565/OUT, dated 12 December 2018, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was made in outline with detailed matters provided over access, appearance, layout and scale and those for landscaping reserved for later consideration. I have dealt with the appeal on this basis. A completed planning obligation was submitted after the appeal which I deal with below.

Application for costs

3. An application for costs was made by Chartwell Land and New Homes (2) Limited against the London Borough of Bromley. This application is the subject of a separate Decision.

Main Issue

4. The effect on the character and appearance of the Bickley Area of Special Residential Character (ASRC).

Reasons

5. Phoenix Lodge is situated within the Bickley ASRC which defines an area comprising spacious inter-war residential development, with large houses in substantial plots adjacent to the Conservation Areas of Chislehurst and Bickley. Within this context Phoenix Lodge is quite individual in respect of being a relatively large, detached family home set back deeply in a comparatively

spacious site fronting a corner in Woodland Road. The property is surrounded by trees and vegetation and is framed by a steep railway embankment to one side and a small river to the other.

6. The Council has already permitted a building providing nine flats¹ in place of the existing dwelling. This followed an earlier appeal decision² which, whilst dismissed for another reason, had found the proposed design for nine flats to be similar in its external appearance to a large dwelling so as not to appear out of character in this area.
7. There is no material change in this appeal proposal to the previously approved design and scale of building proposed. The changes are internal, to increase the number of flats to thirteen with the corresponding increase in car parking provision. Through the planning history it is established that there is no objection in principle to flatted development on this site and the units would meet the internal space standards set by the London Plan and provide adequate living conditions for future occupiers. Consequently, the effects upon character and appearance relate not to the design of the building but to the intensification of the use.
8. The increased number of flats would generate more activity including a greater number of vehicular movements and amount of resident activity within the grounds. However, the size of the site and its well vegetated nature would mean that this intensification of use, including the additional parking provision and other facilities, could be absorbed without material harm to the prevailing characteristics of the ASRC. There would be an increase in residential density. However, as this is accommodated without any significant alterations to the scale and external appearance of the building previously allowed, I similarly find this to cause no material harm in terms of character and appearance.
9. The development plan is the recently adopted Bromley Local Plan of January 2019 (BLP). The proposal would meet the criteria set out in BLP policies 4 and 37 and achieve the high standard of design and layout required to respect local character. BLP Policy 44 requires that proposals respect, enhance and strengthen the special and distinctive qualities of the ASRC. The proposal would still retain the outward appearance of a big house set in a large plot. The intensification of use from nine to thirteen flats, and the accompanying external changes, would not be such as to conflict with the general aims of BLP Policy 44.
10. Both internally and externally, this proposal would satisfy the objectives set out in Policy 3.5 of the London Plan in respect of the quality and design of housing developments. The appeal scheme would meet the aims of the National Planning Policy Framework (the Framework) for achieving well-designed places.

Other Matters

11. Consideration has been given to the other matters raised by interested parties at the application and appeal stages. The space for a suitable buffer between the development and the adjacent river would address any flood risk concerns. The design, scale and siting of the building would avoid any material harm to the living conditions of any neighbouring occupiers in regard to privacy and loss of trees. The proposal gives rise to no significant harm to the safety of users of

¹ Council reference 18/04199

² APP/G5180/W/18/3193128

the adjoining roads. Adequate access and parking space would be provided. Any greater degree of noise and disturbance from the additional flats, including further vehicular movements, would not be sufficient for me to find the proposal unacceptable in respect of its effect on neighbours' living conditions. The proposal provides means to mitigate for any adverse effect on biodiversity. With regard to setting a precedent for further flatted schemes on Woodlands Road, the Council would be able to assess any such proposals on individual merit.

Planning Obligation

12. The appellant has provided a certified copy of a signed and executed Section 106 planning obligation, as a Unilateral Undertaking (UU) to make the financial contributions sought by the Council in respect of affordable housing, health services, education and carbon offsetting. I have considered the UU against the advice in paragraph 56 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. Together, these require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to it. The UU satisfies these tests and therefore has been a material planning consideration in this appeal decision.

Conditions

13. I have considered the conditions suggested by the Council in the light of the advice in paragraph 55 of the Framework. This states that these should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended those found necessary, mainly for simplicity and succinctness.
14. The standard outline conditions are necessary, including the time limit imposed for the submission of the reserved matter (1-3). For certainty a condition sets out the approved plans and reports the development shall adhere to (4). To address flood risk a further specific condition is required (5). In the interests of the satisfactory appearance of the development, conditions govern built levels and external materials (6,7).
15. To ensure satisfactory arrangements are made for cycle and refuse bins storage, electric car charging point provision and external lighting, a condition addresses these details (8). Another covers access, car parking and manoeuvring areas for the same reason (9). To address suitable accessibility and tree protection conditions secure agreement over these issues (10, 11). In the interests of good neighbourliness, a condition requires any reasonably required reinstatement of Woodlands Road following the building works to be agreed with the Council (12).
16. Condition 4 addresses the specific conditions the Council has suggested over biodiversity mitigation, energy conservation, sound insulation, wheel washing and operatives parking. This is because the development must accord with the submitted reports which address these respective matters. The landscaping conditions suggested, including maintaining the buffer alongside Kyd Brook river, are more appropriately addressed through the remaining reserved matter.

Conclusion

17. For the reasons given, having taken into consideration all other matters referred to in evidence, I conclude that the appeal should be allowed subject to the conditions set out below.

Jonathan Price

INSPECTOR

Schedule of Conditions

- 1) Details of landscaping, (hereinafter called "the reserved matter") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matter shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the reserved matter to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans and reports: site location plan reference 18-462-01; existing block plan reference 18-462-02; survey plan reference 18-462-03; demo layout plan reference 18-462-04; planning layout plan reference 18-462-05; proposed ground floor plan reference 18-462-07 Rev A; proposed first floor GA plan reference 18-462-08; proposed roof space plan reference 18-462-09; proposed roof plan reference 18-462-10; proposed front elevation plan reference 18-462-11; proposed $\frac{3}{4}$ front elevation plan reference 18-462-12; proposed left side elevation plan reference 18-462-13; proposed right side elevation plan reference 18-462-14; proposed rear elevation plan reference 18-462-15; proposed rear $\frac{3}{4}$ plan reference 18-462-16; Plot 1 – detail layout plan reference 18-462-21; Highway overview Technical Note (1) by Motion dated 11 December 2018; Energy statement by Bryenergy Services dated December 2018; CEMP prepared by Chartwell dated 14 December 2018; accommodation schedule prepared by Chartwell; Bat Building assessment & Emergence Survey by Arbeco dated 31 August 2018; Preliminary Ecological Appraisal by Arbeco dated 8 December 2016; Noise report by Falcon Energy Limited dated 1 February 2017; Tree report by Broad Oak Tree Consultants Ltd dated 19 December 2016; Design and Access statement prepared by Addo Designs Ltd; Planning statement prepared by RE Planning; Flood risk assessment Development in Flood Zones 2 & 3 (ref 218171) prepared by Forge Engineering Design Solutions; Flood risk assessment letter from Forge Engineering Design Solutions dated 14 December 2018.
- 5) None of the apartments hereby permitted shall be occupied until the Council has confirmed in writing that the approved surface water drainage scheme has been satisfactorily implemented. The agreed surface drainage arrangements shall thereafter be maintained for the lifetime of the development.

- 6) Apart from demolition and site clearance the development hereby allowed shall not commence until details of the proposed slab levels of the building and the existing site levels shall have been submitted to and approved in writing by the local planning authority. The development shall thereafter be completed in accordance with these approved details.
- 7) Prior to commencement above slab level of the development hereby allowed, details of the materials to be used for the external surfaces of the building, which shall include roof cladding, wall facing materials and cladding, window glass, door and window frames, decorative features, rainwater goods and paving, 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.
- 8) None of the flats hereby allowed shall be occupied until cycle and refuse bins storage, electric car charging points and external lighting have been provided in accordance with details that shall have had the prior written agreement of the local planning authority. The cycle and refuse bins storage, electric car charging points and external lighting shall thereafter be retained as agreed.
- 9) None of the apartments hereby permitted shall be occupied until the Council has confirmed in writing that the approved access, car parking and manoeuvring areas have been satisfactorily implemented. These access, car parking and manoeuvring areas shall thereafter be retained and kept available for these purposes for the lifetime of the development.
- 10) Prior to commencement above slab level of the development hereby allowed, details of the criteria set out in Building Regulations M4(2) *accessible and adaptable dwellings* for the units identified in the application as non-wheelchair units and in Building Regulations M4(3) *wheelchair user dwellings* for the unit identified in the application as a wheelchair unit, 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.
- 11) No site clearance, preparatory work or demolition shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: *Trees in relation to design, demolition and construction – Recommendations* (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 12) None of the apartments hereby permitted shall be occupied until reasonable measures have been taken to repair any damage to Woodlands Road from construction traffic associated with the development hereby allowed, in accordance with terms that shall have had the prior written agreement of the local planning authority.



Costs Decision

Site visit made on 11 December 2019

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2020

Costs application in relation to Appeal Ref: APP/G5180/W/19/3233855 Phoenix Lodge, 14A Woodlands Road, Bickley, Bromley BR1 2AP

- 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 Chartwell Land and New Homes (2) Limited 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 demolition of existing dwelling and erection of thirteen apartments with associated access and parking.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. Unreasonable behaviour in this context may be procedural, relating to the appeal process, or substantive, relating to issues arising from the merits of the appeal. The application is made principally in respect of the latter.
3. Paragraph 50 of the PPG advises where a local planning authority might not be liable for an award of appeal costs. This is where the duty to determine the planning application had been exercised in a reasonable manner and where the proposal was not in accordance with development plan policy with no material considerations including national policy indicating permission should have been granted.
4. Policy 44 of the Bromley Local Plan of January 2019 deals specifically with Areas of Special Residential Character (ASRC) whereby the proposal was required to respect, enhance and strengthen the special and distinctive qualities of such localities. The building proposed for thirteen flats was essentially of the same scale, design and siting as that allowed previously for eight units. I give significant weight to the conclusions of the Inspector in the earlier appeal¹ that such a development would not be harmful to the character of the area. That decision was based on an earlier development plan which, broadly the same as the current one, had policies requiring a high standard of design, taking account of local character and appearance with particular regard to density, design and ASRC.

¹ APP/G5180/W/18/3193128

5. The Council were entitled to decide contrary to officer recommendation and take into account the views of local residents. However, the building was much the same as one allowed previously and, because the internal space standards had not been found to provide future occupiers unacceptable living conditions, I find little to substantiate the refusal reason that the scheme would be either cramped or offer a reduced quality of accommodation.
6. The Council's appeal evidence and costs rebuttal stress that the Council's ground of refusal had been misconstrued and was essentially based on the intensification of the use of the site and its effect on local character. In my decision on the appeal I had concluded the size of the site and its well vegetated nature would mean that this intensification of use, including the additional parking provision and other facilities, could be absorbed without material harm to the prevailing characteristics of the ASRC. I found that whilst there would be an increase in residential density that, as this was accommodated without any significant alterations to the scale and external appearance of the building previously allowed, there would be no material harm in terms of character and appearance.
7. That I had found in favour of the appellant's case would not be grounds for an award of costs. However, I have had regard to paragraph 49 of the PPG which gives examples of behaviour that may give rise to a substantive award against a local planning authority. On the evidence before me there is a reasonable case made that the Council had prevented a development that should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, I consider the Council had failed to adequately substantiate its reason for refusal on appeal, providing what I find to be rather vague, generalised assertions about the proposal's impact that were unsupported by objective analysis.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Council of the London Borough of Bromley shall pay to Chartwell Land and New Homes (2) Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to the London Borough of Bromley, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Price

INSPECTOR