



Appeal Decision

Site visit made on 1 December 2020

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

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/G5180/W/20/3251271

146 Charterhouse Road, Orpington BR6 9EU

- 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 RAA Ventures Ltd against the decision of The London Borough of Bromley Council.
 - The application Ref DC/19/01345/FULL1, dated 5 April 2019, was refused by notice dated 2 March 2020.
 - The development proposed is demolition of five existing dwellings and associated structures and erection of 28 dwellings comprising of 20 flats and 8 terraced houses, with provision of new vehicular accesses from Saltwood Close and Winchester Road and associated Works.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues of this appeal are:
 - the character and appearance of the local area;
 - the living conditions of the residential occupiers of neighbouring properties, with particular reference to privacy and noise disturbance; and
 - the lack of a signed and completed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (As Amended) (the TCPA)

Reasons

Character and Appearance

3. The appeal site is a corner property defined by the junctions of Saltwood Close and Winchester Road with Charterhouse Road. Currently occupied by 5 dwellings comprising a pair of semi-detached houses at 146 Charterhouse Road and 1 Winchester Road, a detached chalet bungalow with roof extension at 1A Winchester Road and a semi-detached pair of bungalows at 3 and 5 Winchester Road. These existing dwellings reflect the grain and form of development found in this part of the residential area set away from the busy main road A224 Orpington Bypass (the A224). However, at this point the A224 is fronted by a

- flatted development, with some shops below, that backs onto Saltwood Close, across from the rear gardens of the existing dwellings on the appeal site.
4. The proposed development would provide an increase in the number of dwellings on the site from 5 to 28, with the majority of these being smaller units, which would be a useful addition to the housing stock of the borough. Whilst the appeal site consists of a significant proportion of existing garden space, which would be reduced by the development, this garden space is within the curtilage of the dwellings that would be required to be demolished to allow for the development as proposed. Therefore, I consider that the appeal site constitutes previously developed land and I have considered the proposal accordingly.
 5. The proposed development would be constructed in of brick in two tones, predominantly red but with grey for vertical pairing of windows. In combination with similar colours used for the architectural detailing, this choice of materials and colour of finishes reflects this aspect of local character and appearance.
 6. The proposal includes a block of 20 flats that would be located on that part of the appeal site that wraps around the corner half of the site defined by the junctions of Saltwood Close and Winchester Road with Charterhouse Road. On the Charterhouse Road frontage, the roof design of this proposed block alludes to a mansard roof, however, given the corner location, the proposal would read in the round as a 3 storey block of flats and not 2.5 storeys as indicated by the appellant. This proposed height does, however, respond, to the scale of the taller flatted development fronting the A224, thereby providing some transition to the lower scale of houses and bungalows that front Winchester and Charterhouse Roads and the general scale of the housing development in the wider area.
 7. The proposal for the rest of the appeal site is for 8 houses, with a terrace of 5 houses on the appeal site's frontage with Saltwood Close and 3 houses on its frontage with Winchester Road. The proposed houses would be separated from the proposed block of flats on Winchester Road by a communal amenity space and on Saltwood Close by the access route to the proposals underground parking and service area.
 8. On Saltwood Close, 4 of the proposed houses nearest to the proposed parking access would read as 3 storeys, despite their design allusion to a mansard type roof, with the remaining proposed house sited adjacent to the boundary fence with the existing house at 7 Winchester Road (No 7) appearing as 2 storeys. This proposed terrace of houses would provide an appropriately scaled transition between the taller flatted development fronting the A224 and lower forms of existing residential development that front Winchester and Charterhouse Roads.
 9. The proposed terrace of houses on Winchester Road would be set back behind small front gardens, with a side space between the end of the terrace and No 7. These would appear as 2 storeys and not the 1.5 indicated by the appellant, despite the roof detail alluding to a mansard type of roof. Although these houses are a storey less than those proposed for Saltwood Close, they are taller than their nearest bungalow neighbours, but do match the 2 storey houses in the local area. This lessening in height of the proposal across the appeal site does provide an appropriate visual transition between the taller and shorter

parts of the proposal and also between the taller flatted development fronting the A224 and lower housing in the rest of the local area.

10. The density of the proposed development is above the density range set out in the London Plan (2016) for development in an area with a public transport accessibility level (PTAL) of 1b, as set by Transport for London's PTAL model. Whilst this is a method sometimes used in transport planning to assess the access level of geographical areas to public transport, the appropriate density of a site should be arrived at through a design-led approach, taking account of the site context and infrastructure capacity. The appropriate density of a site is therefore an output of a process of assessment, rather than an input. With this in mind, I regard the density of the proposed development to be acceptable, when considered in relation to local social, commercial, natural and transport infrastructure etc. and with regard to the variety of density demonstrated by development in its immediate surroundings.
11. Although the density of the proposed development does not fully reflect the very open grain of housing development in the local area away from the A224, the private garden spaces to the proposed houses, the side space nearest to No 7 and the shared amenity space at the centre of the proposed development would result in it appearing more open than the flatted development between the appeal site and the A224. Given the modest height of the proposal and the spaces between and around buildings on the site, the proposal would not appear as a cramped form of development. It would, however, provide a transition between the density and scale of the existing flatted development and the apparent lower density and open grain of the houses and bungalows beyond.
12. As set out above, the proposal would present itself as taller and of greater density than the existing housing on the site, this would result in an apparent visual change to the area when viewed in the context of the detached and semi-detached houses and bungalows that face onto it. However, the proposal does provide for a transition between these single dwellings and the density and scale of the flatted development on the A224, which currently sits in stark contrast to the lower level and scale of development in the wider local area. For these reasons, the proposal would not, therefore, appear as so visually intrusive and dominant as to be discordant in the street scene of the local area when viewed in the round.
13. Based on the foregoing, I am satisfied that, as the proposed development would be on previously developed land, it would not conflict with Policy 3 of the Bromley Local Plan (2019) (the Local Plan), which seeks to protect Garden Land from inappropriate development. I further find that the proposal is in accordance with Policy 4 of the Local Plan, which seeks to ensure that all new housing development achieves a high standard of design and layout whilst enhancing the quality of local places.

Living Conditions

14. The boundary between the appeal site and No 7 is currently a garden boundary between No 7 and a similar sized dwelling and its garden at 5 Winchester Road. The proposal would alter this relationship by locating 2 houses near to this boundary, one on Winchester Road and one on Saltbox Close, with a rear garden space between the two. In terms of No 7 and its relationship with the proposal, the most significant change to overlooking would be the location of

- the proposed house on Saltbox Close, on what is currently the garden space of No 5. However, given the relatively modest scale of the proposed house and the distances involved, the degree of overlooking of the dwelling at No 7 or its garden would not be greater than that to be expected in a residential area of this type.
15. Although small balconies are included in the proposal for the upper floor flats fronting Winchester Road, this is a wide street and the houses on the opposite side of the road are set back behind good sized front gardens. Given the distances involved, I do not find that the degree of overlooking across the street would be greater from these balconies than from the upper floor windows of the proposal. I find, therefore, that this degree of overlooking would not be greater than that to be expected in a residential street of this type.
 16. For these reasons, I find that the degree of overlooking provided by the proposed development would not cause a substantial loss of privacy to the degree that it would result in significant harm to the living condition of neighbouring residential occupiers.
 17. Although the proposal would result in an increase in general activity, much of this would be associated with vehicle movements associated with the entrance to the proposed parking access on Saltbox Close, which is an area already used predominantly for garage and parking access associated with the neighbouring flatted development between saltbox Close and the A224. There would also be an increase in activity related to access to the proposed block of flats fronting Charterhouse Road, and the use of the proposed shared amenity space at the centre of the proposed development.
 18. The scale of additional activity resulting from the normal use of the proposed 28 dwellings instead of 5 on the site, and the proposed location of these points of additional activity would not, however, result in a material increase in noise and disturbance to a degree that would be significantly harmful to the living conditions of neighbouring residential occupiers.
 19. Consequently, I find that the proposal complies with policy 37 of the Local Plan which seeks to ensure that development respects the amenity of occupiers of neighbouring buildings, ensuring they are not harmed by noise and disturbance inadequate daylight, sunlight, privacy or by overshadowing.

Planning Obligations

20. The National Planning Policy Framework (2019) (the Framework) sets out that a local planning authority should use planning obligations only where it is not possible to address unacceptable impacts of a development through a planning condition and only where they are necessary to make it acceptable, directly related to it and fairly and reasonably related in scale and kind.
21. The appellant has provided a draft Unilateral Undertaking (UU) in accordance with Section 106 of the TCPA, indicating their agreement to the payment of a £99,000 contribution for affordable housing in accordance with policy 2 of the Local Plan, which makes provision for payments in lieu, for offsite works where a development is not able to provide on-site affordable housing. This sum was arrived at through the assessment of the appellant's Viability Assessment Report and was agreed with the Council. In accordance with policy 125 of the Local Plan, the draft UU also makes provision for payment of £32,078 for

Health, £127,469.91 for Education, £38,148 for Carbon Offset and £10,000 towards the Orpington to Green Street Green Cycle Route. The provisions of the draft UU, pursuant to Section 106 of the TCPA, meet the tests set out in Framework paragraph 56 and I attach significant weight to them in my considerations.

22. Although the appellant has provided me with a draft UU, they have confirmed that they are not in a position to provide a signed and completed UU. Accordingly, I conclude that, in its absence, the proposal fails to secure appropriate affordable housing provision as part of the development and other provisions required in accordance with the Council's adopted policies, which renders the proposal in significant conflict with the requirements of policies 2 and 125 of the Local Plan.

Other Matters

23. I have received comments relating to the Council's approach to dealing with the planning application and national planning practice, however, these are not matters material to my determination of this appeal as other mechanisms exist to resolve such issues and I have considered the development on its own merits.
24. The Council have drawn my attention to a Planning Appeal in the borough relating to a proposal for new housing¹ that was dismissed. However, although this relates to a housing scheme with some similarities to the proposal, it is a significantly larger scheme than the proposal and would have been determined on the basis of the individual circumstances and considerations, and, likewise, I must determine the proposal before me on its own merits.

Planning Balance and Conclusion

25. Paragraph 11d, footnote 7 of the Framework (2019) 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 five 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.
26. 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. The Local Plan Policies 2, 3, 4, 37 and 125 of the Local Plan, which amongst other matters, seek to ensure the provision of affordable housing, protect garden land, ensure a high standard of housing design and layout, promote a high standard of amenity for existing and future users and require development to provide for the infrastructure, facilities, amenities and other planning benefits that are necessary to support and serve it, are consistent with the Framework.

¹ Appeal Ref: APP/G5180/W/19/3234515

27. According to the most up to date statistical projections available to me² the Council has a projected housing shortfall on that required by the London Plan (2016) and can only demonstrate a 3.31 year housing land supply which represents a significant shortfall of that required.
28. I have also noted that the Council's projected housing shortfall is significantly below that identified in the Publication London Plan (2020). Given the consultation this has undergone, and the stage it has reached in the process of adoption, it can reasonably be expected that the policies in the Publication London Plan will ultimately be adopted. I have, therefore, given it moderate weight in the particular circumstances of this appeal in so far as it is relevant.
29. As I have identified above, the proposal would not result in significant harm to the character and appearance of the local area or to the living conditions of the occupiers of No 7 and other neighbouring properties, and would not be contrary to policies 3, 4 and 37 of the Local Plan. However, the proposal fails to secure appropriate affordable housing provision as part of the development and other provisions required, which renders the proposal in significant conflict with the requirements of policies 2 and 125 of the Local Plan.
30. 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. The Framework recognises that developments should be of good design, create a high standard of amenity for existing and future users and that, where appropriate provide for affordable housing and infrastructure related to the development. Taking account of the objective of significantly boosting the supply of homes and the Council's supply position and, as there is conflict between the proposal and the relevant parts of Local Plan policies, I have given this significant weight in my consideration of this appeal.
31. 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 small site not previously identified in the Bromley Development Plan and presents an opportunity for 5 units to be replaced by 28 units in a mix of unit sizes that would meet family and smaller household needs. This is a relatively small but also welcome contribution to the overall housing target for the London Borough of Bromley. Smaller housing schemes do make an important contribution to the number of new residential units and I have given this significant weight in my considerations. The proposal would also generate employment opportunities during construction, and through the employment of local services for its upkeep and maintenance when occupied. Furthermore, the proposed housing would be designed so as to be energy efficient. In connection with the 28 dwellings proposed, these benefits attract modest weight in favour of the proposed development.
32. The slight harm identified to the character and appearance of the local area and to the living conditions of the occupiers of No 7, would not on their own significantly and demonstrably outweigh the benefits of the proposal. However, when set alongside the lack of a completed UU concerning the provision for affordable housing and other provisions, the proposal conflicts significantly with policies 2 and 125 of the local plan. The harmful impact of the development

² London Borough of Bromley Housing Trajectory (September 2020)

would, therefore, significantly and demonstrably outweigh the 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.

33. 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