



Appeal Decisions

Site visit made on 19 June 2018

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2018

Appeal A - Ref: APP/G5180/W/18/3193817 238 Main Road, Biggin Hill, Westerham TN16 3BD

- 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 Mrs J Cox against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/17/02110/FULL1, dated 7 May 2017, was refused by notice dated 19 July 2017.
 - The development proposed is described as demolition of existing outbuildings; sub-division of existing curtilage and erection of detached single storey dwelling and cycle store, formation of refuse recycling collection area, access onto Lyne Gardens, new landscaping and associated works.
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Appeal B - Ref: APP/G5180/W/18/3193818 238 Main Road, Biggin Hill, Westerham TN16 3BD

- 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 Mrs J Cox against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/17/04411/FULL1, dated 24 September 2017, was refused by notice dated 24th November 2017.
 - The development proposed is demolition of existing outbuildings and erection of detached single storey one bedroom dwelling with associated parking, access from Lyne Gardens, cycle and refuse stores and landscaping on land to the rear of 238 Main Road.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for demolition of existing outbuildings and erection of a detached single storey one bedroom dwelling with associated parking, access from Lyne Gardens, cycle and refuse stores and landscaping at 238 Main Road, Biggin Hill, Westerham TN16 3BD in accordance with the terms of the application, Ref DC/17/04411/FULL1, dated 24 September 2017, subject to the conditions set out in the schedule below.

Preliminary Matters

3. In appeal A, I have taken the description of the development from the planning application form, but in appeal B it is taken from the Council's decision notice as this more succinctly describes the proposal.

4. The appeals are similar in that they both propose a detached 'L' shaped single storey dwelling of about 63 square metres located within the back garden. However, Appeal A relates to a two bedroom dwelling sited close to the rear boundary whilst in Appeal B, the dwelling would have only one bedroom and be positioned more centrally within a larger plot.

Main Issue

5. The main issue in both appeals is the effect of the development on the character and appearance of the surrounding area.

Reasons

6. The host building, 238 Main Road is a detached two storey house with a long back garden the rearmost part of which contains outbuildings that would be removed. To the west of the building is a gated access linking Main Road with two semi-detached bungalows, nos. 1 and 2 Lyne Gardens, a backland development permitted in 2004. To the east there is a long back garden to 240 Main Road whilst to the rear there is a large 'L' shaped back garden to 4 Edward Road. The surrounding area is residential in character but diverse in form. There are mainly two storey dwellings fronting Main Road and Edward Road but there are several other dwellings located in backland positions, such as 10 and 12 Edward Road. The size and design of the dwellings and the size and shape of their plots vary considerably but they have in common a spacious quality in relation to the garden areas.
7. There is disagreement between the parties on whether or not the Council has a 5 year supply of housing land, but regardless of this there is a recognised need for additional housing in local and national planning policies. Policy 3.3 of the London Plan (2011) (LP) recognises that there is a pressing need for more homes across London, and the National Planning Policy Framework (The Framework) at paragraph 47 sets out measure by which local planning authorities should "*boost significantly the supply of housing*". However, the Framework at paragraph 53 also encourages local planning authorities to "*consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area*".
8. The parties have drawn my attention to a recent appeal decision at 2 Lyne Gardens for an extension to and conversion of a detached garage into habitable rooms¹. The Inspector resolved that the proposal would only be acceptable as ancillary accommodation rather than as a separate dwelling due to the impact on living conditions at 1 and 2 Lyne Gardens. But nonetheless he commented that the proposal would be unlikely to be widely conspicuous to an extent that "*it would appear as an incongruous, jarring or cramped feature whether as a separate dwelling or as an annexe*". He concluded that "*the proposed development would not cause unacceptable harm to the character and appearance of the surrounding area*". Notwithstanding this, the current appeal proposals need to be considered on their individual planning merits.
9. The proposal in both appeals A and B would be similar to the bungalows at 1 and 2 Lyne Gardens in that they would involve tandem development and share the same vehicular access. The bungalows at 1 and 2 Lyne Gardens would be

¹ APP/G5180/W/16/3155656

significantly larger buildings than either appeal proposal, but they are set within larger plots. Nonetheless, the rear garden to 238 Main Road is of substantial length and its subdivision for provision of a separate dwelling would be not be out of keeping with the mixed character and appearance of the area subject to satisfactory detailed proposals.

10. In appeal A, the dwelling would be positioned close to the rear boundary and both side boundaries. The main garden would be to the front and whilst it would satisfy the minimum of 5 square metres for private outdoor space for a 1-2 person dwelling set out in the Mayor of London's Housing Supplementary Planning Guidance (HSPG) (2012), its size would be relatively small compared to other gardens in the surrounding area. Moreover, it would offer a relatively poor standard of privacy, the whole garden being open to view from the rear windows to the two storey houses fronting Main Road. There would also be a relatively poor outlook from bedroom 2 on to the rear boundary fence, only some 1.8m away. These factors would not result in such an adverse effect on the living conditions of future occupiers to warrant refusal of planning permission on this issue, but they are indicative of a relatively cramped form of development compared with other backland sites nearby.
11. The appellant points out that the development would not be very visible in the street scene as it would be set back from Main Road and largely screened by a boundary hedge. The proposal would nevertheless be visible from Lyne Gardens and some adjacent dwellings. The appellant has also likened the proposal in appeal A to a large outbuilding, also located close to the rear boundary, in the rear garden to 240a Main Road. The footprint and mass of the two buildings would be similar but the functional requirements of a dwelling are different to those of an ancillary outbuilding in relation to the need for adequate independent space around the dwelling.
12. My findings in relation to appeal A are that the proposal would be out of keeping with and detrimental to the spacious character and appearance of development in the surrounding area. Moreover, the benefits of this one additional dwelling, even if there is a shortfall in housing land supply as suggested by the appellant, would be significantly and demonstrably outweighed by the harm identified. The proposal would thereby be contrary to policies BE1 and H7 of the Bromley Unitary Development Plan (saved policies) (2006) (UDP) that require development to be of a high standard of design and layout with the space about buildings being complementary to the qualities of surrounding areas.
13. In appeal B, the dwelling would be sited some 10m from the rear boundary enabling provision of a larger and more private rear garden area. The plot size would also be about 5m longer than on appeal A, resulting in a more spacious development. This would reduce the garden depth to some 12m for the house at 238 Main Road. Whilst this would be shorter than that at adjacent frontage houses, its width would also be about 12m. In my opinion, there would be adequate garden space remaining for the needs of future occupiers of the host building and its reduced length would not have a materially adverse effect on the character and appearance of the area.
14. The proposed dwelling would have a satisfactory internal layout with the outlook from all habitable rooms on to either the front or rear garden areas. There would be a hard standing area to the front of the dwelling to provide two

parking spaces, a turning area and a cycle store. The hardstanding area would not be of excessive size and its layout would provide sufficient space for vehicles to turn within the site. The space around the building including the size and location of the rear garden area would be satisfactory. The proposal in appeal B overcomes the concerns raised above in relation to appeal A. It would not result in an overdevelopment of the site but would be in keeping with the character and appearance of the surrounding area.

15. The proposal in appeal B would thereby accord with the provisions of policies BE1 and H7 of the UDP. It would also comply with the policies of the London Plan and with the provisions of the Framework taken as a whole. The Council's decision notice to refuse permission to this proposal also refers to draft policies 3, 4 and 37 of the emerging Bromley Local Plan relating to backland and garden land development, housing design and the general design of development. The new Local Plan is at an early stage with policies subject to possible revision. As such, very limited weight can be attached to these policies.
16. Local residents have objected to the proposal in appeal B on grounds other than those considered above, particularly in relation to unsatisfactory access arrangements for the dwelling and during the construction phase. Lyne Gardens is wide enough for two cars to pass and the proposed single dwelling would be unlikely to result in a significant increase in traffic or in levels of noise or disturbance to materially impact on the living conditions of the nearest adjoining occupiers. Moreover, I note that the local highway authority has not objected to the proposal subject to the imposition of appropriate planning conditions. A condition requiring approval of a construction method statement should also mitigate potential nuisance issues during building operations.

Conditions

17. The Council has suggested several planning conditions that I have considered against the advice in Planning Practice Guidance (PPG). In addition to the standard condition setting a 3 year time limitation for commencement I have included a standard plans condition requiring the development to be carried out in accordance with the approved plans for certainty. I consider this more suitably phrased than the alternative condition suggested by the Council.
18. To ensure a satisfactory appearance to the development, a condition is necessary to approve external materials before the development proceeds above ground level. A condition to secure a construction method statement is necessary to ensure there are no significant adverse impacts upon the living conditions of local residents or upon the highway. However, I have not included the suggested clause on the route construction traffic shall follow for arriving at and leaving the site as it is not enforceable to restrict use of the public highway. A condition relating to provision of the parking spaces and the turning area is necessary to ensure the efficient operation of the site. The Council's Highway Engineer has raised concerns about the adequacy of the present sight line at the junction of Lyne Gardens with Main Road due to the position of the front wall to 238 Main Road; a condition is necessary to establish a satisfactory sight line. Conditions are also necessary to ensure the satisfactory provision of foul and surface water drainage, including the potential inclusion of a sustainable drainage system in relation to surface water.

19. I have included the Council's suggested condition relating to approval of boundary enclosures in the interest of visual amenity and the privacy of adjoining occupiers; but the suggested condition to control additional windows or doors in the flanks of the building would not be necessary with the provision of appropriate enclosures. I have not included the suggested condition to remove permitted development allowances. PPG states "*Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances*"². Furthermore, that the "*removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity*". The Council has not detailed any exceptional circumstances. The dwelling would be only single storey and any alterations under permitted development allowances would be unlikely to materially impact on the character of the area or on the living conditions of the nearest occupiers.

Conclusion

20. For the reasons given, and having regard to all other matters raised, I conclude that appeal A should be dismissed but appeal B allowed.

Rory MacLeod

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: site plan, CJ1702-01A and CJ1702-03.
- 3) No development shall commence above ground level until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) storage of plant and materials used in constructing the development; and
 - iii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

² Paragraph: 017 Reference ID: 21a-017-20140306

- 5) The dwelling shall not be occupied until space has been laid out within the site in accordance with drawing no. CJ1702-01A for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear, and thereafter these spaces shall be kept available at all times for the specified purposes.
- 6) The dwelling hereby permitted shall not be occupied until boundary enclosures of a height and type to be approved in writing by the Local Planning Authority shall be erected in such positions along the boundaries of the site as shall be approved and shall be permanently retained thereafter.
- 7) The dwelling hereby permitted shall not be occupied until that part of a sight line of 2.4m x 43m which can be accommodated within the site shall be provided in front of 238 Main Road at the junction of Lyne Gardens and Main Road and no obstruction to visibility shall exceed 1m in height in advance of this sight line, which shall be permanently retained as such.
- 8) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.
- 9) The dwelling hereby permitted shall not be occupied until surface water drainage works shall 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:
 - i) 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;
 - ii) specify the responsibilities of each party for the implementation of the SuDS scheme together with a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.