
Appeal Decisions

Site visit made on 20 August 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2019

Appeal A Ref: APP/M5450/W/19/3232033

263 Burnt Oak Broadway, Edgware HA8 5ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by OPM Property Services Ltd against the Council of the London Borough of Harrow.
 - The application Ref P/1317/19, is dated 12 March 2019.
 - The development proposed is an outline application with all matters reserved for rear extension, loft conversion and increase in height to surrounding datum heights, of a current mixed use building to create 4 flats, retaining offices on the ground floor.
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Appeal B Ref: APP/M5450/W/19/3230277

263 Burnt Oak Broadway, Edgware HA8 5ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by OPM Property Services Ltd against the Council of the London Borough of Harrow.
 - The application Ref P/1316/19, is dated 13 March 2019.
 - The development proposed is an outline application with all matters reserved for rear extension, loft conversion and increase in height to surrounding datum heights, of a current mixed use building to create 12 luxury HMO en-suite units.
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Decision

1. Appeal A is dismissed and outline planning permission is refused for a rear extension, loft conversion and increase in height to surrounding datum heights, of a current mixed use building to create 4 flats, retaining offices on the ground floor.
2. Appeal B is dismissed and outline planning permission is refused for a rear extension, loft conversion and increase in height to surrounding datum heights, of a current mixed use building to create 12 luxury HMO en-suite units.

Procedural Matters

3. The appeals are against the Council's failure to determine applications for outline planning permission. The Council has provided reports for both appeals which state that in its opinion the proposals are unacceptable, however, these are not formal determinations of the Council as the jurisdiction to determine the applications transferred from the Council upon valid receipt of the appeals. However, from the evidence before me, it appears that the Council would have refused the applications had it been empowered to do so.

4. Despite the description of development set out above, I consider the descriptions found in the Council's Officer Reports and the Appeal Forms better reflects the schemes that are before me. However, I have omitted the words "outline application" and "all matters reserved" as these do not constitute acts of development. The development proposed in Appeal A is for "Extensions To Main Building To Create Two Additional Floors Three Storey Rear And Single Storey Rear Extensions Change Of Use Of Part Of Ground Floor From Offices (Use Class B1) To Residential (Use Class C3)." The development proposed in Appeal B is for "Extensions To Main Building To Create Two Additional Floors Three Storey Rear And Single Storey Rear Extensions; Change Of Use Of Offices (Use Class B1) To HMO (House Of Multiple Occupancy) To Provide 12 Rooms." I have therefore dealt with the appeals on this basis.
5. Full plans, including the site plan, floor plan layouts and elevation drawings, accompany the outline applications. I have dealt with the plans as indicative when considering the likely impact of the proposals on the matters I have set out in the main issues below.

Main Issues

6. The main issues are:
 - The effect of the proposals on the availability of office floor space in the Borough;
 - The effect of the proposed developments on the character and appearance of the existing building and the surrounding area;
 - Whether the proposed developments would provide suitable living conditions for future occupants, with particular regard to the internal and external living environment;
 - The effect of the proposed developments on the living conditions of occupiers of neighbouring properties; and
 - Whether the proposed developments would provide suitable accessibility to sustainable modes of transport, with particular regard to bicycles.

Reasons

The principle of the development

7. The principle of a mix of housing within the Borough is supported by Core Policy CS1 of the Harrow Core Strategy (February 2012) (CS) in order to maintain mixed and sustainable communities. The Council has not set a maximum target for new homes in the Borough. The CS therefore aligns with the aims of the strategic policies of The London Plan (March 2016) (TLP) to deliver housing, including Policy 3.8 which seeks to provide housing choice. The delivery of housing on small sites, such as the appeal site, would also accord with Policy H2 of the Draft London Plan (2017). However, as the Draft London Plan is yet to be published by the Mayor of London, Policy H2 only carries limited weight in my consideration of these appeals.
8. Given that the appeal site is not allocated for business use, the release of the site for other uses, such as housing, would meet the sequential approach as set out in Core Policy CS1 of the CS but compliance is also subject to criteria set out in Policy DM32 of the Harrow Council Development Management Policies

(July 2013) (DMP). This refers to the managed release of surplus employment land and requires buildings to have been vacant for more than 12 months and marketed for the same period. From the evidence before me, it does not appear that the property has been offered on the market. There is therefore nothing to before me to suggest that the existing office accommodation is unsuitable for continued use.

9. I acknowledge that the HMO proposed in Appeal B could help to provide short-term accommodation for key workers of the nearby hospital. However, I have not been provided with any substantive evidence to demonstrate that there is a shortage of accommodation for key workers or the extent to which the proposed HMO would contribute towards this. I have therefore afforded this matter limited weight in the determination of that appeal.
10. At the time of my visit, I saw nothing to suggest that the office floor space within the building was not operational so the site would not appear to be underused. Appeal A would retain some independent office floorspace and there would be ancillary office space in connection with Appeal B, for the management of the proposed HMO. However, both appeal schemes would reduce the current provision of office floor space.
11. In light of all of the above, both appeal schemes would lead to an unacceptable reduction in the availability of office floor space in the Borough. Accordingly, I conclude that the principle of both of the proposed developments would not accord with Policy DM32 of the DMP.

Character and appearance

12. The site lies at the southeastern end of a near identical group of three separate terraces of residential properties, each formed of four two-storey properties. The appeal building is the only commercial use in the group of terraces, which step up Burnt Oak Broadway with the topography of the street. The front roof slope of each terrace is split at each property by upstands which run over the ridge to the rear or meet chimney stacks on the ridge. Unlike the properties to either end of the other terraces, the roof of the appeal building incorporates a gable rather than a hipped roof. This is visible above the lower roof slope of 259-261 Burnt Oak Broadway.
13. Aside from the appeal building, each terraced property incorporates rear projections of a consistent depth and height, that do not extend above the eaves line and the roofscape remains largely unaltered. The existing two-storey gabled projection to the rear of the appeal building is therefore a noticeable exception. The gardens to the rear of the terraces are also of a consistent depth and provide space between the terraces and the dwellings in Mayna Court.
14. Although matters of layout, scale and appearance are reserved for subsequent consideration, both appeal schemes encompass additional height. Whilst existing development rises to three storeys at the corner with Columbia Avenue, the majority of other buildings are two storeys in height, including the group of terraces. In principle, from the indicative drawings, both appeal schemes would therefore result in substantial increases to the roof of the appeal building that would rise uncomfortably above the eaves and ridgelines of the terrace and even further above the building at Nos 259-261. This would be at odds with the balance and coherent appearance of the group of terraces.

15. The proposals to the rear of the appeal building would also be visible from Burnt Oak Broadway and through the gap between buildings on Columbia Avenue. Furthermore, the proposals would be very evident from the properties and gardens in Burnt Oak Broadway and Mayna Court. The length, width, height and resultant scale of the proposed extensions to the rear, as shown on the indicative plans, in my judgement would be extensive and appear inharmonious with neighbouring buildings. In particular, the extensions would be disproportionate with the existing terrace and result in a dominant building that would occupy the majority of its curtilage and close the space between existing buildings.
16. I have been referred to several approved developments to the roofs of buildings nearby and it has been suggested that recommendations in TLP could lead to additional height being added to buildings within the street, including to Nos 259-261. However, the circumstances behind these decisions and proposals are either not before me or are theoretical and this reduces the weight I can give to this consideration. In any event, I have determined the appeals before me on their own individual merits. I am also referred to an appeal at 3 Barkston Gardens in the Royal Borough of Kensington and Chelsea. Whilst the circumstances behind that decision are also not before me, the Inspector did not find harm to the character and appearance of the area. Therefore, that decision is not directly comparable to the proposals before me, as I have found there to be harm resulting from both appeal schemes.
17. Both illustrative schemes before me indicate that the shopfront would remain in the front façade. Whilst there would not be a significant change to the ground floor of the street frontage, the illustrative schemes do not demonstrate that the site could be developed in a manner that would respect the prevailing pattern of development in the surrounding area. Accordingly, I conclude that both appeal schemes would unacceptably harm the character and appearance of the existing building and the surrounding area. Hence, the proposals would not accord with Policies 7.4 and 7.6 of TLP, Core Policy CS1 of the CS, Policy DM1 of the DMP. The proposals would also not accord with the guidance in the Council's Local Development Framework Supplementary Planning Document Residential Design Guide (Adopted 15 December 2010), to which I have had regard, and Paragraph 130 of the National Planning Policy Framework 2019 (the Framework).
18. Together these policies and guidance expect development to be to a high standard of design and layout, responding positively to local character and appearance and the pattern of development, including the siting of buildings; the grain and provision of space around buildings; the scale, height, orientation and roof form of buildings. Extensions, in particular, should also respect their host building.
19. Although I have been referred to the general design principles outlined in Policies 7.1-7.12 of TLP, I have found that both appeal schemes would offend policies of the London Plan which seek to protect the character and appearance of the area. Therefore, the appeal schemes would not accord with the TLP in respect of this matter. In addition, wording in relation to architectural styles in Paragraph 60 of the 2012 version of the Framework, has not been carried forward to the 2019 version of the Framework. I have therefore afforded it little weight in my consideration of both appeal schemes before me, particularly as the appearance of the development is indicative.

Living conditions within the proposed developments

20. In order to provide good quality homes, alongside Paragraph 127(f) of the Framework, the Council's development plan policies and supplementary planning documents¹ specify minimum space standards for different types of residential accommodation, including for bedrooms, which should be exceeded where possible; and appropriate external space to serve that accommodation. External spaces should be functional, usable and of high quality.
21. Whilst the external space to the appeal building is not currently in use for the offices occupying the building, external space is required to serve the developments proposed in both appeal schemes. Whilst the proposed external space would be accessible to all occupants of the HMO and is more likely to be used by the occupants of the ground floor flat, this would be alongside a bedroom to the ground floor flat, so its use by occupants of the other flats would be inappropriate. In addition, there is no dedicated external space for each flat, including through suitable alternative arrangements such as balconies. Although the space may technically be of a sufficient size to serve the occupants of the proposed HMO it would, for the most part, be narrow and overshadowed by the proposed developments.
22. The proposed green wall to the rear façade of each appeal scheme would be visible from the external space and windows within the proposed developments. However, it would not be functional so would not address the deficiencies in the nature and extent of the proposed external space, which would not be fit for purpose for the future occupiers of either appeal scheme.
23. I am not aware of the full circumstances that led to the reduction of external space to the rear of 259-261 Burnt Oak Broadway to provide parking at Mayna Court. Nonetheless, I have considered the individual merits of the appeal schemes before me and found that the indicative proposed external spaces would not be functional for either proposed development.
24. The indicative Gross Internal Area of each of the proposed flats within Appeal A, excluding circulation spaces on each floor, would be short of the required standards for flats occupied by four persons. Be that as it may, as the proposals are indicative, the number of occupants is not fixed so the occupancy of each of the flats could be adjusted to meet the space standards required for accommodation. Similarly, the number of occupants within each Unit of the proposed HMO, could also be restricted depending on the available floorspace, through the Council's licenced HMO scheme.
25. Notwithstanding the above, the illustrative layouts for both appeal schemes do not include general purpose storage, secure spaces and storage for bicycles, or arrangements to facilitate the storage and collection of communal refuse bins. Given the deficiencies in the internal and external space available for the future occupiers of the proposed developments in both appeal schemes, the absence of storage would further prejudice future occupiers, as this would be likely to impact on the spaces proposed within the developments. Moreover, the proposed illustrative layouts would not be conducive to the manoeuvring and storage of bicycles due to the amount of space available and the narrow nature of communal corridors. It is also unclear how refuse would be stored or

¹ Policy 3.5 of TLP; Policy DM27 of the DMP; and guidance in the Council's Residential Design Guide SPD and The London Plan Housing Supplementary Planning Guidance (March 2016)

- collected from the rear of the proposed developments, which could result in odour and pollution causing a nuisance to future occupiers.
26. Although the layout for both appeal schemes is illustrative, both schemes abut neighbouring land to the southeast. The outlook from most of the windows in the ground floor of each appeal scheme would be across a narrow strip of planting and the parking area for Mayna Court. The accommodation proposed would not therefore protect the privacy of the future occupiers of either of the proposed developments.
27. In terms of the outlook from other proposed accommodation, Unit Nos 2, 6 and 11 within the proposed HMO would not be served by any windows. Similarly, the living/kitchen within Flat 4 and Unit Nos 9 and 10 in the proposed HMO would be served by rooflights positioned in the ceiling. Whilst rooflights would address privacy elsewhere, the outlook and daylight and sunlight available would be deficient for this accommodation. It would be likely to be dark and gloomy, leading to a claustrophobic environment. Furthermore, Unit Nos 2/3, 6/7, and 10/11 would be served by shared ensuite bathrooms between the rooms. These would need to be locked to either side to ensure privacy and security for occupants. As these facilities would not be available at all times this would be an inconvenience for future occupiers.
28. I have no reason to doubt that the HMO could be finished to a high specification internally and well-managed by the appellants or the health benefits that could be offered to occupants. However, these matters would not outweigh the harm that would be caused to the future occupants of both proposed developments. Moreover, the layout and configuration of the accommodation within the appeal schemes is poor and indicative of the confined and substandard nature of the accommodation.
29. Despite my favourable consideration of the proposed developments in respect of the available internal floor space and occupancy of the proposed developments, I conclude that the illustrative schemes before me do not demonstrate that the site could be developed for either appeal scheme in a manner that would provide satisfactory living conditions for future occupiers and good quality homes. Hence, the proposed developments would not therefore accord with Policies 3.5 and 7.6 of TLP; Policies DM1, DM27 and DM45 of the DMP; and the guidance in the Council's Residential Design Guide SPD and The London Plan Housing Supplementary Planning Guidance (March 2016). As well as space standards, the policies and guidance also seek to ensure that new development does not cause unacceptable harm in relation to privacy, outlook and overshadowing having regard to, amongst other things, the siting, scale, height and orientation of development in relation to neighbouring buildings. Developments should also incorporate secure, integrated and accessible bicycle spaces and storage; and satisfactory arrangements on-site for the storage and collection of refuse that avoids nuisance to future occupiers.
30. The proposals would also not accord with Paragraph 127 of the Framework which requires that development creates places with a high standard of amenity for existing and future users.

Living conditions of neighbouring occupiers

31. The existing rear projection to the appeal building already has some impact upon the properties to either side. The appellants have therefore suggested that the proposals would not further impinge the Council's 45-degree code². However, the additional height and length to the development proposed in the appeal schemes would be in close proximity of the rear facing windows of 261 and 265 Burnt Oak Broadway. Part of the upper floors would be stepped inward from the boundary with No 265 but the scale of the proposals would remain substantial and a blank façade is illustrated in both schemes which would face toward that property. The proposals would therefore have a significant enclosing effect on the outlook from the gardens and rear windows of those properties. There would also likely be a similar effect further along the terrace to the northwest and to the properties in Mayna Court, albeit it to a lesser extent. Given the orientation of the site, both appeal schemes would also be likely to substantially reduce the amount of daylight and sunlight reaching the properties and their rear gardens immediately to the northwest, for a large part of the day.
32. Whilst most windows in both appeal schemes would not be likely to affect the privacy of neighbouring occupiers, the rear facing windows within Flats 2, 3 and 4; and Units 4, 8 and 12 within the HMO are indicatively proposed to be angled with the rear elevation of the proposed extensions. However, this would not restrict direct visibility between the appeal schemes and Mayna Court to the rear. The proximity of the windows would therefore be likely to lead to a direct loss of privacy in either direction between facing windows.
33. From the evidence before me, there is nothing to suggest that the proposed developments would be exceptionally different from other residential accommodation in the locality in respect of the noise and community safety issues relevant to the occupation of the proposed developments. There would not therefore be unacceptable harm caused to neighbouring occupiers through noise and disturbance from future occupiers of the developments proposed by both appeal schemes. Similarly, with suitable security measures and management of the proposals, there is nothing before me to suggest that future occupiers would be a risk to neighbouring occupiers.
34. I have been referred to an appeal for the neighbouring development at Mayna Court³, due to the relationship of that development with neighbouring occupiers. Whilst the full circumstances behind that decision are not before me, it is not comparable with the appeal schemes before me in terms of their form, scale or layout. Nonetheless, I have had regard to the relationship of the appeal schemes with Mayna Court and other neighbouring properties and I have found that harm would be caused to the occupiers of those properties.
35. Despite my favourable consideration of the proposed developments in respect of noise and disturbance, I conclude that the proposed development would cause unacceptable harm to the living conditions of the occupiers of neighbouring properties in Burnt Oak Broadway and Mayna Court, in respect of privacy and daylight and sunlight reaching the properties and their rear gardens. Hence, the proposals would not accord with Policy 7.6 of TLP, Policy DM1 of the DMP, the guidance within the Council's Residential Design Guide

² Policy DM1 of the DMP and the Council's Residential Design Guide SPD.

³ Appeal Reference APP/M5450/A/02/1092395

SPD and Paragraph 127 of the Framework. Together these policies seek to ensure that developments do not cause unacceptable harm through their scale, height and relationship with neighbouring properties, including the adequacy of light to and outlook from buildings and outdoor spaces and privacy between facing windows.

Accessibility

36. The appeal site is close to local facilities and services and there are opportunities to travel by means other than private vehicle, as bus services and the London Underground are available nearby. Nonetheless, residents are concerned the appeal schemes could lead to additional on-street parking, as from the indicative plans no on-site vehicular parking is intended to be provided. Except for some sections of streets nearby, which also incorporate pay and display parking, on-street parking is controlled through a permitting scheme regulated by the Council.
37. Whilst the current office use of the appeal building would be likely to generate some parking demand, Core Policy CS1 of the CS suggests that parking for new development will be managed to contribute to the delivery of a modal shift from the private car to more sustainable modes of travel. Similarly, Policies DM1 and DM42 of the DMP require that proposals make on-site provision for parking, including for bicycles.
38. Whilst I note that the appeal schemes would include an electric bike share scheme, the illustrative proposals do not satisfactorily demonstrate that bicycle spaces or storage could be accommodated within the site. This significantly reduces the potential for the success of the proposed sharing scheme and the options for conventional bicycle use. The proposed developments would therefore restrict the choice of sustainable modes of travel available to future occupants.
39. For the above reasons, I conclude that the both appeal schemes would not provide suitable accessibility to sustainable modes of transport, particularly in respect of the provision of spaces and storage for bicycles. Hence, both appeal schemes would not accord with Core Policy CS1 of the CS and Policies DM1 and DM42 of the DMP. The appeal schemes would also not accord with Policy 6.9 of TLP, which also requires bicycle spaces and storage to be provided within developments.

Other Matters

40. I have been referred to the conduct of the Council in the validation and consideration of the planning applications, including the nature of the advice given and the timeframe for its decision-making, as well as the quantity of applications refused permission by the Council. However, these are not matters for me to consider as part of these appeals.

Planning Balance

41. Whilst the Framework introduces a presumption in favour of sustainable development, this does not change the status of the development plan. Moreover, Paragraph 47 of the Framework states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.

42. The appellants have suggested that the presumption in favour of sustainable development, as required by paragraph 11(d) of the Framework should be applied to the proposed developments and referred to caselaw⁴ regarding the application of the presumption. However, the main parties have not identified an under-supply of housing in the Borough, nor have they raised that the policies of the development plan are out-of-date with the Framework. I have not identified any conflict between the Framework and the development plan policies most important for the determination of the appeal schemes before me. Therefore, I have afforded the policies of the development plan full weight and applied the normal planning balance to both appeal schemes.
43. The site is located within Flood Zone 1 so the risks of flooding to the site are low in probability. Whilst the construction process is likely to be disruptive and access to the site may require careful management, this is not a reason to withhold permission. Similarly, whilst there are trees adjacent to the site boundary, from the evidence before me there is nothing to suggest that it would not be possible to incorporate protection of trees during the course of development within the site. Concerns have also been raised regarding the impact on highway safety of the appeal schemes. Whilst Burnt Oak Broadway is a busy road, there is no compelling evidence before me to suggest that the appeal schemes would be likely to result in the highway safety of other users being compromised.
44. Notwithstanding the above, the appellants have suggested that the Council's Residential Design Guide SPD is out of date as it predates the Framework, it also predates the Council's development plan policies. Whilst this does not necessarily mean that the guidance is not consistent with the aims of those policies, given that the document has not been updated to reflect more recent policies, I have afforded it only limited weight in my consideration of the merits of the appeals.
45. The appellants have referred to the use of brownfield land and roof space for housing. Although a valuable contribution to the delivery of housing can be made through the re-use of previously developed land in these ways, this must not be at all costs. Moreover, the Framework is clear at Paragraph 122 that making efficient use of land should include taking into account of the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive and healthy places. In the case of the appeal schemes before me, I have considered the individual planning merits of each appeal and I have found there to be harm to the character and appearance of the existing building and the surrounding area. I therefore afford these benefits limited weight.
46. The appellants' Design and Access Statement suggests how the proposed developments could incorporate sustainable design and construction techniques, including climate change measures. However, as full details on how this might be achieved are not before me, I have therefore afforded these matters limited weight in my consideration of the merits of the appeals.
47. The proposed development would not comply with development plan policy in respect of all the issues relevant to the appeal schemes before me. The harm that would result from allowing the proposed development and the conflict with the development plan would outweigh the benefits of the proposed

⁴ Cheshire East BC v SSCLG & Renew [2016] EWHC 571 (Admin)

developments outlined above. Even if I were to conclude there is a shortfall in the supply of the housing and that the most important policies for determining the proposal should be considered out-of-date, the adverse impacts of granting permission would significantly and demonstrably outweigh these benefits.

Conclusion

48. The proposed development would be contrary to the development plan and there are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I dismiss both appeals and outline planning permission is therefore refused for both appeal schemes.

Paul Thompson

INSPECTOR