



Appeal Decision

Site visit made on 9 September 2019

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2019

Appeal Ref: APP/T5150/W/19/3232532

11 Turpins Yard, Oaklands Road, Cricklewood NW2 6TP

- 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 Theme Traders Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/0733, dated 11 February 2019, was refused by notice dated 20 May 2019.
 - The development proposed is change of use and extension of office at 11 Turpins Yard Oaklands Road to form 3x one-bedroom flats together with amenity space, bin and bike store and three car parking spaces
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Decision

1. The appeal is dismissed.

Procedural Issue

2. Within the information before me, references have been made to the draft London Plan (2018). Whilst I have had regard to these, the Plan is still under consideration which limits the weight I can accord to its Policies.

Main Issues

3. The main issues in this appeal decision are:
 - Whether there is sufficient justification for the loss of employment land;
 - Whether the proposed development would provide acceptable living conditions for future occupants, with regard to privacy; and
 - The effect of the proposed development on the living conditions of the occupants of 40, 42 and 44 Herber Road, with particular reference to outlook and light.

Reasons

Loss of Employment Land

4. The appeal site is an industrial building and is operated as a party planning business including offices for the storage and distribution of party props. It is part of a wider collection of buildings under the same employer theme. The proposed development solely relates to one of the buildings, positioned immediately to the right of the access off Oaklands Road into the yard and would convert the building into residential use of 3 flats with alterations and extensions.

5. Policy DMP14 of the London Borough of Brent Local Plan, Development Management Policies, (LBBLPDMP), 2016, allows the release of local employment sites where '*(a) continued wholly employment use is unviable; or (b) significant benefits consistent with the wider objectives of the Development Plan are achieved*'. The Council and the appellant disagree somewhat in regards to the use class, B1 or B8 of the appeal site and wider cluster of buildings, however, I must deal with the proposal on its merits on the basis of what is proposed and that the appeal site is designated as a local employment site.
6. The appellant's evidence relies to a large extent on the history of the site and previous prior approvals granted at the appeal site and wider yard area for residential use. The prior approval¹ for the site itself was granted in 2014 for a change of use from offices to residential and planning applications² for wider residential development at the site were granted in 2004, however these have never been implemented and have lapsed. There are extant prior approvals for conversion to residential use of units to the rear of the yard, but these do not form part of the appeal site and their circumstances are not comparable in terms of location, use and assessment against development plan policy. Furthermore, as was found in the Court of Appeal judgement on 3 December 2010³, the assessment of the prior approval matters has to be made in a context where the principle of the development is not, itself, an issue.
7. The appellant has referred to permitted development rights as a potential fallback position under Part 3, Schedule 2, Class O of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016, for development consisting of a change of use of office use to residential. I have sympathy that the appellant considers it would be an unnecessary administrative burden to submit a prior approval application before this appeal and I acknowledge that permission has been granted previously for the wider site. I have, however, seen nothing to suggest that the appellant would genuinely pursue this option if the appeal failed, or indeed that the Council would grant an application for prior approval. It is not the role of the Inspector, under the S78 appeal, to determine whether or not the conditions of the Order are met. As such I give the fallback position limited weight in this decision.
8. Policy DMP14 of the LBBLPDMP sets out the weight and criteria attached to retaining employment sites within the borough. The Council have confirmed that it has already passed the threshold of loss of hectares set out within the policy and the appellant accepts the scheme would not provide significant benefits. The Policy allows the release of local employment sites to non-employment uses where continued wholly employment use is unviable, the appellant has not provided evidence to justify that the employment site is wholly unviable therefore the proposed development does not meet the criteria.
9. Consequently, I find the appeal proposals to be in conflict with Policy DMP14 of the LBBLPDMP, 2016, as it has not been demonstrated that the continued wholly employment use is unviable and there would be no significant benefits consistent with the wider objectives of the development plan. It would also be inconsistent with the economic objective of the National Planning Policy

¹ 14/1030

² 03/1171 / 03/3351

³ Murrell v SSCLG [2010] EWCA Civ 1367

Framework (the Framework), 2019, to help build a strong, responsive and competitive economy.

Living conditions for future occupiers

10. The proposed development for three residential flats would meet the Council's minimum space guidelines and are acceptable in terms of their layout, room size and storage. The Council argue that because of the location of the development within a business park/industrial estate any potential future occupier of the ground floor flat 'Unit 1' would suffer with loss of privacy from footfall of local workers/employers.
11. There would be alterations to the front of the building to facilitate new openings. Those windows would be made larger than the existing. The windows serving 'Unit 1' along the front elevation include the living area, bedroom and bathroom. The evidence before me indicates that only the windows on the rear elevation would be obscured glazing. Therefore, the location of habitable rooms, large windows and little screening provides unacceptable levels of privacy for future occupiers of the ground floor unit given the proximity to passers-by.
12. I acknowledge the appellants comments in relation to Cricklewood Broadway and traffic noise/disturbance, however this is within a different location to the appeal site and the Council has no concerns regarding traffic generation noise, as neither do I, and it would not justify the harm I have found in regard to the loss of privacy.
13. For the reasons given above, the proposed development would be contrary to Policy DMP1 of the LBBLPDMP, 2016, which seeks development is acceptable, including its location, siting, layout, scale, type, density, materials, detailing and design provides high levels of internal and external amenity and complements the locality. It would also be at odds with the guidance 5.1 contained in the Brent Design Guide (BDG), SPD1, 2018.

Living conditions for existing occupants

14. The rear of the appeal site building directly faces residential gardens belonging to the properties No. 40, 42 and 44 Herber Road. This building is substantial and is of an imposing scale. The height and mass of this building dominates these rear gardens. Although the residential properties have deep gardens the proposed development would add a third floor to this building, substantially altering its height, mass and bulkiness, this would exacerbate the existing situation resulting in a bleak and overpowering outlook when viewed from the gardens, whilst increasing the sense of enclosure, and due to the height increase would reduce some natural light within the garden areas to the detriment of existing living conditions for those occupiers.
15. The appellant has referred to distances and heights on nearby properties on Anson Road, the adjoining 'corner' building in the yard and Oaklands Road. However, these residential properties on Anson Road do not directly face the rear of the appeal building, and the 'corner building' is positioned at a different angle. It would not be as high as the development proposed, whilst similar distances may be a typical characteristic of the area this does not outweigh the harm that I have identified. Furthermore, the overall mass of the building

combined with the additional height is not comparable with the design of individual residential dwellings along Oaklands Road.

16. In terms of privacy new windows would be inserted on all three rear elevations serving each of the flats, these would be obscured and the proposed balconies to the side elevation would be small and enclosed by balustrades, this could be secured by condition to ensure they were maintained. Therefore, the proposed development would not cause any privacy issues for existing occupiers of residential properties along Herber Road or Oaklands Road. However, this does not outweigh the harm I have found above.
17. I conclude that the proposed development would harm the living conditions of existing occupiers of 40, 42 and 44 Herber Road and would be contrary to Policy DMP1 of the LBBLPDMP, 2016, which seeks development is acceptable, including its siting, layout, scale, type, density, materials, detailing and design provides high levels of internal and external amenity and complements the locality. It would also be at odds with the guidance 5.1 contained in the BDG, SPD1, 2018.

Other Matters

18. The appellant refers to the Framework and that it is supportive of positive planning and sustainable development. Whilst this may be the case, it is not without caveats, including that developments provide a high standard of amenity for existing and future users. Although there would be some social and economic benefits to providing three residential units, this does not outweigh the significant harm I have found.
19. I have also been referred to an appeal⁴ and costs decision and have had regard to these. However, the circumstances it relates to is for prior approval consent and not with the wider planning considerations. Therefore, it is not directly comparable with those which apply to this appeal and that appeal decision has had little bearing on my findings.

Planning Balance

20. The proposals would lead to the loss of employment land without justification, and I have found significant harm to the living conditions of future and existing occupants to be unacceptable. For these reasons I find the proposal to be contrary to the development plan, read as a whole. Against this must be weighed the factors in favour of the proposed development.
21. The provision of three additional residential units would make a positive contribution to the Borough's housing land supply when weighed in the overall planning balance, albeit that the contribution would be limited due to the quantum of development proposed. There would be a small social benefit in providing the housing units. Economic advantages would also arise from the construction and occupation of new flats and the development is within a good location with access to local services and shops. These matters, however, do not outweigh my findings above in respect of the main issues and the conflict with the development plan.

⁴ APP/T5150/W/17/3181861

Conclusion

22. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR