



Appeal Decision

Site visit made on 19 April 2021

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/G5180/W/20/3264344

121-125 Elmers End Road, Beckenham, BR3 4SY

- 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 Mr Karl Taylor against the decision of Council of London Borough of Bromley.
 - The application Ref DC/20/00177/OUT dated 14 January 2020, was refused by notice dated 9 September 2020.
 - The development proposed is demolition of existing building at 123 and 125 Upper Elmers End Road and erection of part three/part four storey building plus basement comprising 10 flats (4 x one bedroom, 2 x two bedroom and 4 x three bedroom) OUTLINE APPLICATION.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have utilised the Council's description of the development as per the decision notice as I feel it more concisely describes the development.
3. The proposal is submitted as an outline proposal with all matters reserved except for access and layout as per the application form. The Council's submissions contend that scale falls to be considered. It would appear that assessment of the application has resulted in a mixed approach as to what is, and is not, to be assessed as part of an outline application.
4. Submission of layouts or similar, whether labelled as indicative or not, are commonly utilised to demonstrate to the decision maker that the level of proposed development can be likely be accommodated within the application site with final designs requiring submission at reserved matters stage. The National Planning Practice Guidance (NPPG) states that where details have been submitted as part of an outline application, they must be treated by the Local Planning Authority as forming part of the development for which the application is being made. The Local Planning Authority cannot reserve that matter by condition for subsequent approval once submitted.
5. The exception to this is where the applicant has made it clear that the details have been submitted for illustrative purposes only. The appeal plans before me are not labelled as indicative or illustrative and have clearly been treated as details forming part of the proposal for which the application is being made by both parties within their submissions. Based upon this I have taken the submitted plans into account as part of this appeal in order to address the issues arising as a result of the reasons for refusal.

6. Since the determination of this application the London Plan 2021 (a Replacement Plan) has been published by the Mayor. This London Plan replaces all previous versions and, therefore, the London Plan 2016 policy that is referred to within one refusal reason is no longer in force. Both parties have referred to the Intend to Publish Plan within their submissions and been given further opportunity to provide additional comments upon the impact, if any, of the publication of the London Plan 2021 on this appeal.

Main Issues

7. The main issues are i) the impact of the proposal upon the character of the area, ii) the impact of the proposal upon the amenity of neighbouring occupiers with regard to overlooking, loss of privacy, outlook and light and oppressive visual impact, iii) the impact of the proposal upon the amenity of future occupiers, iv) whether the proposal provides adequate car and cycle storage facilities and v) whether the proposal provides a sufficient drainage strategy.

Reasons

8. The appeal site is located on the corner of Mackenzie Road and Elmers End Road forming part of a row of similar mixed used buildings on the Eastern side of Elmers End Road. It is currently occupied by a three storey building comprising a car shown room, associated rear garage and upper floor residential unit which occupies a smaller footprint than the proposal. The proposal seeks to demolish the existing built form and erect a part three/four storey building, with a basement, creating ten residential flats (net increase of nine units).

Character of the area

9. At the time of my site visit I parked in Mackenzie Road and walked around the surrounding area and down Elmers End Road to view the site. The area is characterised by a mix of two and three storey residential and commercial development. Development along Mackenzie Road is characterised by terraced residential dwellings. Opposite the appeal site is a relatively new block of flats which are two storey but have rooms in the roof as indicated by the dormers in the front elevation. The appeal site is on a prominent corner and, when approaching from the South, is highly visible due to the lower land levels in that direction.
10. As stated above, plans have been submitted which go beyond access and layout. They are not labelled as indicative and thus I have had regard for them within this appeal. The appellant's statement has submitted a Computer Generated Image (CGI) of the plans in the context of the street scene. It is noted that the proposal would be higher than the nearest properties on Mackenzie Road, however, proposals designed to match that along MacKenzie Road would unlikely look in keeping with the general scale along Elmers End Road and vice versa. This is a challenge often associated with corner plots which try to find common ground with differing street scenes to each side.
11. The submitted plans show a contemporary, flat roof, structure but I do not find that this results in inappropriate style for the proposal. The prevalent design of buildings in the area is noted as pitched roofed, however, I find that more modern design should not necessarily be avoided simply to match for the sake of it. Bromley Local Plan 2019 (LP) is clear that development should

complement the adjacent buildings and area, this gives scope to contribute extra or different features to improve an area and does not necessarily require it to match or mirror adjacent development in all cases. The modern design is out of character but on this occasion I find it could acceptably bridge the gap between adjacent built form and would not be detrimental to the character of the area in design terms but in proposing a more modern, eye-catching, design compared to surrounding development I find it is even more important to balance bulk and layout to avoid development which presents as visually over dominant.

12. The plans demonstrate an eaves height which would match the adjacent property and the overall ridge height would be lower than the ridge height of 121 Elmers End Road. The street elevation from Mackenzie Road shows a step down in built form, and bulk, to the rear of the proposal. This would assist the proposal to integrate and maintain visual separation in the street scene. The upper level is formed by a full storey of development but this is not for the full width of the proposal which I find assists in maintaining spacing and integration between the existing pitched and hipped roof patterns.
13. Despite this the proposal shows a building line forward of the existing building line on Mackenzie Road and takes the proposal right up to the boundary with the pavement. Examples of other sites with similar building lines are noted but I do not consider them to be of comparable style or scale to the appeal proposal. It is noted the existing built form on the site is forward of the adjacent properties on Mackenzie Road, however, the height and depth of built form are not comparable. The proposed layout would bring built form forward towards Mackenzie Road which, combined with overall height, depth and layout, I find would make the proposal appear overly dominant within the street scene of Mackenzie Road and in the immediate area, particularly when viewed and/or approached from the South. This would result in it presenting as cramped over development as a result of layout, height and scale which would be detrimental to the character of the area.
14. The proposal would be contrary to Bromley Local Plan 2019 (LP) Policy 4 which requires site layouts, buildings and space around buildings to be designed to a high quality and LP Policy 37 which expects developments to be imaginative and attractive to look at, of a good architectural quality and should complement the scale, proportion, form and layout of adjacent buildings and areas.

Amenity of neighbouring occupiers

15. The Council's second refusal reason relates to impact on residential amenity with specific regard to 244 Mackenzie Road (no. 244) other (unspecified) properties to the rear of the site and 121A Elmers End Road (no. 121A). The issues raised are with regard to overlooking, loss of privacy, oppressive visual impact, loss of light and outlook.
16. A proposal of this nature will, of course, always increase potential activity as a result of additional future residents. In terms of no. 244 it is acknowledged there is some potential for overlooking into the far end of the rear garden, however, given the site context and orientation of the proposal and the property I do not find this would result in impact sufficient to warrant refusal. No. 244 is back from the building line of the proposal which would mean the built form of no. 244 would maintain an area of private amenity space behind

its rear elevation and views would be limited of both this garden and those beyond. I consider the proposal would have less potential for overlooking than the existing rear windows at no. 121 and no. 119 Elmers End Road. I do not find the proposal would result in loss of privacy of overlooking for no. 244 or the properties beyond to the rear. I have no evidence to support that noise, from use of the balconies, would be sufficient to warrant refusal within a mixed use busy area close to a main road.

17. The submitted layout would stagger the footprint along the Northern side. The appellant has submitted a revised daylight, sunlight and overshadowing report (November 2020). In relation to no. 121A it confirms that, in accordance with the relevant BRE 209 Guidance no windows would be adversely impacted by the proposed development and in terms of daylight the proposed scheme is considered acceptable. The Council acknowledge this, and do not dispute this, confirming that the concern raised is in relation to the outdoor amenity area as a result of loss of light and visual impact.
18. At the time of my site visit I saw that the entrance to no. 121A is via external stairs and that there is area by the entrance which could be used to sit out on but it would be a stretch to refer to this as an amenity area. I find it presents as a walkway providing access to the property. Given the evidence before me, that there would be no loss of daylight to habitable rooms of no. 121A, it is difficult conclude that there would thus be a loss of daylight to the relatively narrow walkway (referred to as an amenity area by the Council) as presumably loss of light to the walkway would result in loss of light to the windows off it. As a result of this I do not find there is evidence to support that the scheme would result in a loss of light for no. 121A.
19. The proposal shows a side elevation wall away from the boundary by 2.4m immediately adjacent to the boundary of no. 121A resulting in a two storey building within 1.4m and 2.4m of the front elevation of no. 121A. Whilst there may be no loss of light, as outlined above, I find that the proposal's layout would result in oppressive visual impact from within the property for the occupiers of no. 121A considering their unobstructed and view across the rear of the site.
20. The proposal would be contrary to LP Policy 37 which requires development to respect the amenity of occupiers of neighbouring buildings. The Council state LP Policy 4 with their refusal reason, however, the policy makes no reference to neighbouring amenity.

Amenity of future occupiers

21. The refusal reason states that one unit is of inadequate size, however, it would appear that this is an error and that proposed unit 4 is of sufficient size when taking into account the Technical housing standards – nationally described space standard 2015 (NDSS). Based on the evidence before me all units could meet the requirements of NDSS.
22. The Council's submission states, numerically, that private amenity requirements are met but that the quality of amenity space for three units is poor. The amenity space for units 1 and 2 would be underground and facing a brick wall and enclosed by much taller structures respectively. As a result of this I find that the proposal would result in future occupiers having absolutely no outlook from the units, which I find would fail to provide a good standard of

living accommodation for future residents with specific regard to outlook for the units in question. Unit 3 would have an external terrace on the corner of Elmers End Road and Mackenzie Road, facing a wall. By comparison to units 1 and 2 this would not be enclosed by taller structures but it would still provide limited outlook as a result of being a basement unit with boundary treatment at ground (street) level.

23. Surplus internal amenity space is acknowledged, however, the use of such space as a contribution to private open space is noted as being an approach in the Mayor's Housing Supplementary Planning Guidance 2016 (SPG) in exceptional circumstances. I do not find this is the case for this appeal site given that, as a new build proposal, such matters should be taken into account in design when determining the level of development suitable for a site whilst meeting such requirements. Regardless, therefore, of whether the required square meterage is theoretically met on paper I do not find that the proposal provides good quality useable private amenity space for the three units in question.
24. It is noted that the appellant contends window detailing can be secured as part of appearance within reserved matters, however, as outlined within procedural matters at the start of this decision letter the NPPG states that where details have been submitted as part of an outline application, they must be treated by the Local Planning Authority as forming part of the development for which the application is being made. Even if I had concluded that the approach, to consider window detailing as appearance in reserved matters, was appropriate I still am not convinced that the proposal would be able to provide all habitable rooms in unit 1 and 2 with adequate light regardless of window sizes. Good design is a key element of sustainable development.
25. Based on the plans before me, which are not labelled as indicative, units 1 and 2 would take light from the sunken terrace and garden respectively. I have no evidence before me to support that all habitable rooms in these units would be adequately lit given they are at basement level. This is a particular issue with unit 2 which shows light to the living area being via a void. I do not find an issue with the bedrooms of unit 6 and 9 respectively taking light from the external terrace as proposed.
26. The proposal would be contrary to LP Policy 4 which requires provision of external, private, amenity space that is accessible and practical and LP Policy 37 which requires development to respect the amenity of future occupants by providing healthy environments. The proposal would also fail to meet the objective of the SPG which is to provide good quality private amenity space which is usable and proportionate.

Car Parking and Cycle Storage

27. The London Plan 2021 is part of the statutory development plan for London, its policies should inform decisions on planning applications across the capital. S38(5) of the Planning and Compulsory Purchase Act 2004 confirms that policy conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.
28. Both parties confirm that the appeal site stands within an area which has a Public Transport Accessibility Level (PTAL) of 5. London Plan 2021 Policy T6 states that car-free development should be the starting point for all

development that are (or are planned to be) well-connected by public transport. It states that new residential development should not exceed the maximum parking standards set out in table 10.3 which, for all areas of PTAL 5-6, is car free with the exception of disabled persons parking.

29. Notwithstanding this the general principles outlined in paragraphs 10.6.4 to 10.6.6 of the London Plan 2021 are stated to apply to the parking standards set for residential uses under Policy T6.1 Residential parking. 10.6.4 states that when calculating general parking provision within the relevant standards, the starting point should be the highest existing or planned PTAL at the site although consideration should be given to local circumstances. Local highway conditions are, therefore, a still material consideration in application of the London Plan policy.
30. The London Plan 2021 is clear in its intention to make car-free the starting point for new development but this is unlikely to be intended to be the detriment of local safety or creation of parking stress. Taking into account local circumstances the submissions by the Council demonstrate that the site is surrounded by PTAL 3 and 4 and there is notable disparity between levels in the vicinity. In addition, third party comments are noted regarding existing parking conditions, as are the Council submissions regarding car ownership and census data. At the time of my site visit on a Monday afternoon, which I appreciate is only a snapshot in time, I found the general area busy and had to drive around before finding somewhere I was able to park.
31. Based on the evidence I have before me, with regard to local circumstances around the appeal site and with no parking stress survey, I find the proposal would not provide adequate car parking which would likely lead to increased parking stress on the surrounding highway network. The proposal would be contrary to LP Policy 30 which requires off-street parking to be provided in accordance with residential parking standards, LP Policy 32 which requires development not to have significant adverse impact upon road safety and London Plan 2021 Policy T6 which, whilst car-free is the starting point, still takes into consideration local circumstances to ensure appropriate parking facilities.
32. I have no evidence before to conclude that the development is not capable of providing appropriate cycle storage facilities within the development. The provision of cycle storage facilities to serve the development could therefore be secured by condition as acknowledged by the Council.

Drainage

33. The appellant's appeal statement is accompanied by an updated drainage strategy (by SYNETGRA Consulting with Ref No. 18-4853 dated November 2020). The Council have stated that they are satisfied that there is sufficient information for drainage matters to be addressed by means of condition. It is not usually the place of an appeal to introduce new information, however, I do not find that acceptance of updated drainage information would prejudice interested parties on this occasion.
34. I therefore conclude that the fifth reason for refusal has been sufficiently overcome and the proposal would be consistent with LP Policy 116 which requires that all developments to seek Sustainable Urban Drainage Systems or

demonstrate alternative sustainable approaches to the management of surface water as far as possible.

Other Matters

35. The Council's refusal reasons do not raise the lack of a Unilateral Undertaking (UU) in relation to contributions to Health, Education and Carbon Offset but it is raised within the Council's appeal statement along with justification. I note the appellant has offered to submit a signed UU, however, no completed UU has been received during the appeal process. There is therefore no legally binding mechanism as would be required to secure the required contributions but, in any case, the Council have failed to include this within their refusal reasons.
36. There are a number of objections to the proposal, however, I have dealt with most of the matters raised within this decision letter. The Council have not raised refusal reasons based upon affordable housing or children's play space and I have no evidence before me to conclude differently. A lack of community engagement or neighbour notification is a procedural matter outside the scope of this appeal which falls to consider the proposal on its own merits against the Local Plan taking into account relevant material considerations. Matters such as noise and disturbance from construction works could be controlled through conditioning a Construction Management Plan upon any consent granted. I have no evidence to support that structural damage would be caused by construction works or excavation and, in any case, the construction of any proposal approved would be subject to Building Regulation approval to ensure the development was safe and met the relevant standards.

Planning Balance

37. To summarise against the main issues I have found that the proposal would present as overdevelopment and dominate the appeal site which would be detrimental to the character of the area. I have found that the proposal would have a detrimental impact upon the residential amenity of no. 121A due to being visually oppressive and that the proposal fails to provide suitable usable amenity space and adequate light for some units. The evidence before me also fails to demonstrate that the proposal could adequately provide car parking facilities or would not result in parking stress on the surrounding highway network.
38. The Council's submissions state that they cannot demonstrate a five year housing land supply and that, in accordance with the National Planning Policy Framework 2019 (the Framework), the Local Plan policies for the supply of housing are considered out of date. As a result of this paragraph 11 d) of the Framework is engaged which means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when, when assessed against the policies in the Framework taken as a whole.
39. The proposal would provide social benefits, in terms of delivering housing, in a Borough where the Council accepts it cannot demonstrate a five year housing land supply. It would also help to support local services and facilities and provide investment in terms of its construction. It would result in an uplift of nine properties which would be a moderate contribution to the supply of housing, however, taking into account my findings I consider that the adverse impacts of granting permission would significantly and demonstrably outweigh the

benefits, when assessed against the policies in the Framework as a whole, including its presumption in favour of sustainable development.

Conclusion

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

Eleni Randle

INSPECTOR