



Appeal Decision

Site visit made on 31 August 2021

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref: APP/D5120/W/21/3267503

63A Maidstone Road, Sidcup, DA14 5HB

- 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 D Webb against the decision of the London Borough of Bexley Council.
 - The application Ref 20/02593/FUL dated 11 October 2020, was refused by notice dated 10 December 2020.
 - The development proposed is alterations and formation of a first floor to existing detached garage to provide a one bed live work unit.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have utilised the Council's description of the proposal as per the decision notice as I feel it more concisely describes the development than that on the original application form.
3. Since the determination of this application and submission of this appeal a new National Planning Policy Framework 2021 (the Framework) has been adopted. The appellant has been given opportunity to comment upon this in relation to this appeal.
4. Since the determination of this application the London Plan 2021 (a Replacement Plan) has been published by the Mayor. Given the issues raised as a result of the refusal reasons, and the Local Plan policies referred to (which did not include reference to the London Plan), it is not considered on this occasion that the publication of the London Plan directly changes the assessment of this appeal which deals with issues relating to Local Plan policies.

Main Issues

5. The main issues are i) the impact of the proposal upon the living conditions of future occupiers and ii) the impact of the proposal upon the residential amenity of 65a Maidstone Road.

Reasons

6. There are two elements to the appeal proposal due to it being a live work proposal. The Council confirm that the appeal building falls within Use Class E(g) which consists of uses which can be carried out in the residential area without detriment to its amenity. The work element of the proposal is

considered to already exist so the Council raise no objection to this part of the proposal. I have no evidence before me to conclude differently so, in that regard, this appeal will focus on the refusal reason relating to the live (residential) element of the proposal only.

Living Conditions

7. The appeal site is a detached building located to the rear of properties along Maidstone Road with access proposed to be shared via an access road which runs along the rear of the row of the properties. At the time of my site visit I noted that the appeal site is located in an area where a combination of residential and other commercial uses was relatively prevalent. Despite this it would appear, from my site visit, that the residential uses above 65-77 Maidstone Road are better separated given than the appeal proposal would be as the appeal proposal would be surrounded by commercial use.
8. The proposal would be located on an access road used by the commercial units, those within the flats as well as the garages adjacent. Commercial units, even at 20m away, I find to be too close to the proposal. There is also a car park to the Northwest and an industrial estate to the North. This would result in heightened noise and disturbance from all sides of the proposal. The combination of location, potential opening hours, and surrounding use I find would result in an environment which would be unsatisfactory for future occupiers with regard to external noise and general disturbance. It would also result in an unreasonable outlook with windows and views looking directly to a car park, industrial areas of buildings and rear service areas of commercial units. At the time of my site visit the areas adjacent to the appeal site were very busy with delivery vans and small lorries delivering to units adjacent. Whilst my visit is only a snapshot in time, I found it to present as an active commercial environment.
9. Regardless of whether the outlook may, or may not, be poor for existing residential units, the living conditions of previous and/or existing developments are not the benchmark for new development. This is the same with regard to noise. The wording "normally" indicates a requirement for assessment as to actual impact on a case-by-case basis rather than application of a blanket restriction. Taking this into account I have no evidence before me, such as a noise survey, which would support that the future occupants would not be subjected to unacceptable or excessive levels of noise as a result of the appeal site's location.
10. I find that the proposed amenity space for the appeal proposal is both away from the appeal building, adjacent to bins and a right of way. It would also be in relatively close proximity to extractor fans from the adjacent food premises. It is not adequately spaced from other dwellings. I do not find this would provide a high-quality amenity space for future occupants and I do not find that the proposal not being targeted at a family would result in substandard amenity space being acceptable. The closest open spaces to the appeal site are in excess of half a mile away and I do not find these are in close enough proximity to be acceptable in lieu of appropriate, quality, on-site private amenity provision.
11. The proposal would be contrary to Bexley Council Unitary Development Plan 2004 (UDP) Policy ENV39 and UDP Policy H3 which require that proposals are compatible with the character of the surrounding area and not be permitted in

areas which are, or are expected to become, subject to excessive noise. The proposal would also be contrary to UDP Policy H6 which requires proposals to provide an adequate amount of amenity space to protect the amenity of future occupiers. The proposal would also be contrary to UDP Policy H7 which aims to provide a reasonable outlook and UDP Policy H8 which requires proposed dwellings to be adequately spaced from other dwellings in terms of their amenities and garden space.

Residential Amenity of 63A

12. The live element of the proposal would be in close proximity to the first-floor flats of no. 65A Maidstone Road in that the facing distance between them would be approximately 6.4m. This would be substantially below the Council's guidance for separation distance of 22m between facing windows. Given that there is currently no direct overlooking, and such a close facing distance, I find that the proposal would result in unacceptable overlooking and loss of privacy for the occupants of no. 65A. The fact that the height of the proposal would not exceed the level to the first-floor windows of no. 65A and there is stated to be a mutual sense of overlooking does not change my findings. I did not find, based on my site visit, that the topography of the appeal site was at a lower level and have no evidence (such as a survey) to support this.
13. I note that the appellant has suggested a condition requiring windows on the front elevation to be obscured glazed and fixed shut. Despite this I find that obscuring such windows, into habitable rooms, would result in further impact to the outlook from the proposed units further contributing to poor living conditions for future occupants of the proposal. There would also be an unacceptable impact upon daylight which further supports that obscure glazing, whilst it may resolve potential issues with regard to privacy and overlooking, would exacerbate the first refusal reason with regard to the amenity of future occupiers of the proposal.
14. The proposal would be contrary to UDP Policy H7 which aims to protect privacy and UDP Policy H8 which requires proposed dwellings to be adequately spaced from other dwellings in terms of privacy. The proposal would also be contrary to Local Development Framework Supplementary Planning Document Design for Living Bexley's residential design guide 2006 which requires developments, where distances between facing habitable windows are less than 22m, how privacy has been incorporated into the design proposals. With regard to the SPD, I do acknowledge this is guidance but to be so substantially below this guidance I find is not acceptable.

Other Matters

15. The National Planning Policy Framework 2021 (the Framework) is a material consideration and its purpose is to deliver sustainable development as noted by the appellant. This has not changed between the 2019 Framework and the revised Framework. Notwithstanding this, high quality design is a key component of sustainable development and paragraph 130 of the Framework is clear that developments should create places that have a high standard of amenity for existing and future users.
16. The Framework does not change the starting point for determination which is the Local Plan in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004.

17. I note that the Council's refusal reason refers to paragraph 11 of the Framework (albeit the previous (2019) Framework which has been replaced as outlined in procedural matters at the start of this decision letter). I have no evidence before me, from either party, as to why the proposal has been considered in the context of the tilted balance (that is granting permission 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).
18. Even if the proposal had been evidenced to fall into the scope of consideration against the tilted balance, I find that the impacts with regard to amenity for both the future occupiers of the proposal and occupiers of no. 65A Maidstone Road would significantly and demonstrably outweigh the benefit of the live element which would provide the equivalent of a one bed/two-person unit. This would be a limited contribution to housing supply, the benefit of which would not outweigh the issues found or justify substandard living conditions.

Conclusion

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

Eleni Randle

INSPECTOR