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# Appeal Decision

Site visit made on 14 September 2021

**by J Bell-Williamson MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 October 2021**

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## **Appeal Ref: APP/D5120/W/21/3268780**

### **81 Barnehurst Road, Bexleyheath DA7 6HD**

- 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 Edeki against the decision of the Council of the London Borough of Bexley.
  - The application Ref 20/02391/FUL, dated 24 September 2020, was refused by notice dated 11 January 2021.
  - The development proposed is change of use of first floor from a 2 bedroom flat (class C3) to a nursery (class E).
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### **Decision**

1. The appeal is allowed and planning permission is granted for change of use of first floor from a 2 bedroom flat (class C3) to a nursery (class E) at 81 Barnehurst Road, Bexleyheath DA7 6HD. The permission is granted in accordance with the terms of the application Ref 20/02391/FUL, dated 24 September 2020, subject to the conditions included in the Schedule at Annex A.

### **Preliminary Matters**

2. The Council's decision notice refers to a policy from The London Plan 2016 and one from the then draft replacement plan. However, since the decision was made the new London Plan has been published, in March 2021. I have, therefore, had regard to the relevant policy from the new plan.
3. The appellant provides two plans which were not considered by the Council in making its decision. The first is a revised site plan showing a different parking arrangement with four spaces to the front of the appeal property and No 83<sup>1</sup>. The original site plan shows three spaces to serve No 81 in accordance with the application form. As this matter would be clarified by a condition suggested by the Highway Authority, which seeks submission of parking details, I have taken account of the original site plan only. The other revised plan shows the garden to the rear of Nos 81 and 83<sup>2</sup>. However, as the garden area to No 81 is included in the red line area in the original site plan, and No 83 does not form part of that area, I have not had regard to this revised plan.

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<sup>1</sup> Site Plan 06001-P3.

<sup>2</sup> Garden Plan 06003-P1.

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4. A revised version of the National Planning Policy Framework (the Framework) was issued in July 2021. The parties were given the opportunity to comment on any implications.

### **Main Issue**

5. The main issue is the effect of the proposed change of use on the borough's housing stock.

### **Reasons**

6. The appeal property is a two storey end-of-terrace building with an established nursery use on the ground floor and a flat at first floor. It is located in a neighbourhood centre. The adjoining property, No 83, is also a nursery.
7. Policy H8 of The London Plan 2021 says that the loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. Policy H2 of the Bexley Unitary Development Plan 2004 (UDP) says that development will normally be resisted where it would result in the loss of all or part of a dwelling to non-residential development. Policy CS01 of the Bexley Core Strategy 2012 includes the principle of ensuring that housing provision meets the needs of Bexley's current and future population. Policy CS02 of the Core Strategy, referred to by the Council, is less directly relevant in my reading as it refers to the retention of areas characterised by mainly semi-detached and detached family housing.
8. Therefore, as the relevant policies do not allow for a change of the established use of the first floor of the appeal building in the circumstances proposed here, the proposal is contrary to these strategic and local development plan policies.
9. Both main parties refer to Policy S3 of The London Plan 2021, which concerns education and childcare facilities. I note that if the proposal had otherwise been acceptable and subject to further details, the Council would support the principle of an expanded nursery in this location, especially as its location in a neighbourhood centre with good transport links accords with Policy S3.
10. The nursery opened in 2017 and soon reached its maximum capacity of 50 children<sup>3</sup>, of which seven of these places are allocated for Special Educational Needs and Disability (SEND). This existing provision includes 20 children using the ground floor of No 81; the proposal would enable another 20 to use the upper floor, including additional SEND places, and provide two full-time staff.
11. The appellant further explains that the nursery has consistently operated at full capacity since opening, has had to turn away prospective attendees and has operated a waiting list for places. In addition, the opening hours of 07:00 to 19:00 provide flexibility to parents who may not work regular hours and evidence is provided that other nurseries operating in the surrounding area offer more limited hours and therefore less flexibility.
12. The proposal would result in the loss of a two bedroom flat and so is contrary to strategic and local policies, which seek to retain residential uses. Conversely, it would enable the expansion of an established nursery in a

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<sup>3</sup> I assume that this relates to the combined use of the ground floor of No 81 and No 83, both of which are operated under the same name.

sustainable location where there is an existing demand for places. Moreover, it would offer greater flexibility to working parents than similar facilities in the surrounding area and has external play space. As such, it complies with the requirements of Policy S3, which actively encourages the provision of childcare facilities such as proposed here to meet local needs.

13. In these circumstances, there would be positive benefits arising from the proposal. I note also that Policy H2 includes some flexibility in that it says proposals involving the loss of a residential use will *normally* be resisted. It seems to me that such flexibility can appropriately and reasonably be applied in this case where, despite the conflict with housing policies, the proposed use has the support of another development plan policy.
14. Accordingly, while the proposed change of use results in conflict with Policy H8 of The London Plan 2021, Policy H2 of the UDP and Policy CS01 of the Core Strategy, such conflict is outweighed by the considerations set out above for the reasons given.

### **Other Matters**

15. The Highway Authority raises matters concerning the levels and type of travel to the appeal building, as well as clarification of the parking arrangements, as noted above. The Authority indicates, however, that its concerns can be addressed by conditions requiring a travel plan and parking details to be provided and approved. Although the parking area is outside the site red line area, I have no reason to doubt based on the Highway Authority's understanding and suggested conditions that the parking arrangements can be addressed satisfactorily. Therefore, I agree that these conditions are necessary to address the matters raised and I note that the appellant accepts such conditions requiring further details. With regard to access to the parking area in front of the property, I observed at the inspection that this is possible via the access point to the side of No 81.

### **Conclusion and Conditions**

16. I have found in the appellant's favour with regard to the main issue; other matters raised by the Highway Authority can be addressed by conditions. Therefore, for the reasons given, the appeal should succeed.
17. I am not aware that the Council has suggested any conditions in the event that the appeal succeeds. I have, therefore, imposed the standard time condition and, to ensure the proper implementation of development in accordance with the submitted details, one requiring development to be carried out in accordance with the approved plans.
18. In addition to the conditions already referred to, I agree that a condition limiting the attendance at the appeal property to 40 children in accordance with the proposal is necessary in the interests of neighbouring living conditions.

*J Bell-Williamson*

INSPECTOR

Annexe A

**Schedule – conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: (06)001 site location plan, 06002-P2 site plan and 07002-P1 plans and elevations.
- 3) Prior to commencement of the use hereby approved, a travel plan shall be submitted to and approved in writing by the local planning authority. The travel plan shall set out measures to discourage the use of private cars and to encourage the use of sustainable modes of transport and shall include a timetable for implementation of the measures as well as details of mechanisms for delivery, monitoring and review. It should incorporate detailed surveys of how parents, staff and children travel to and from the site, information on staggered or phased timings of picking up and dropping off children, and acceptable targets to reduce travel by private motor car. The premises shall not be used for the use hereby approved other than in accordance with the approved Travel Plan.
- 4) Notwithstanding the approved plans, details of the parking spaces for the use hereby permitted, including their allocation and management, shall be submitted to and approved in writing by the local planning authority. The agreed parking spaces shall be provided before commencement of the nursery use hereby permitted and shall thereafter be kept available for such use at all times and managed in accordance with the approved details.
- 5) No more than 40 children shall attend the site (ground and first floor combined) at any one time, unless otherwise agreed in writing by the local planning authority.

[End of Schedule]