



Appeal Decision

Site visit made on 25 October 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2022

Appeal Ref: APP/T5150/W/21/3276490

Willesden Green Garage, St Pauls Avenue, London NW2 5TG

- 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 Healey Development Solutions (Willesden) Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/3149, dated 25 September 2020, was refused by notice dated 21 May 2021.
 - The development proposed is the demolition of MOT garage and erection of a part eight storey and part four storey building with basement level to provide 86 self-contained flats with ground, third and fourth floor amenity space, provision of basement car parking, cycle and refuse storage, alterations to vehicular accesses and associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form and planning decision notice. The description was amended from that on the planning application form to remove the proposed dwelling mix.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Both main parties were given the opportunity to comment on the relevance of changes to the appeal proposal.
4. The Council originally refused to grant planning permission for four reasons. Reason 3 related to a failure to provide affordable rented housing to meet local housing need, while Reason 4 related to the absence of a legal agreement to address various matters including energy and sustainability measures, job and training opportunities, highway improvement works, traffic safety assessment, the provision of car club membership and the removal of parking permit rights for future residents of the development, as well as the provision of affordable housing. A signed Unilateral Undertaking ("UU") dated 14 October 2021 was submitted by the appellant addressing these various matters. The Council confirmed by e-mail to the Planning Inspectorate on 22 October 2021 that it was satisfied with the submitted UU and wished to withdraw Reasons 3 and 4. I therefore consider that the third and fourth reasons for refusal are resolved.

Background and Main Issues

5. The appeal site is a former MOT and car sales garage, at the corner of St Paul's Avenue and Park Avenue, on which the appellant wishes to construct a new residential block. This would be a part eight- and part four-storey building, with a basement level accommodating various plant, as well as providing car parking and cycle storage. The building would accommodate 86 self-contained flats (43x 1-bedroom, 28x 2-bedroom and 15x 3-bedroom). Ground floor flats would have a private garden at ground floor level, and flats on the seventh floor – which would be recessed behind the floors below – would have rooftop gardens; flats on other levels would have private balconies or "winter gardens". Communal external amenity space would be provided at ground floor level, and on terraces at third and fourth floor levels.
6. A planning application for the redevelopment of the site was refused in 2019¹ but subsequently allowed on appeal² in December that year ("the 2019 permission"). This permitted a part seven- and part four-storey building which would provide 70 flats (35x 1-bedroom, 22x 2-bedroom, and 13x 3-bedroom). A section 73 "minor material amendment" application was submitted in July 2020, seeking to vary the 2019 permission by providing an additional six residential units, changing the mix of units, making internal and external alterations to the previously approved scheme – this was approved in August 2021³ ("the 2021 permission").
7. The appellant's final appeal comments stated that the 2019 permission had been implemented on 25 June 2021, and the 2021 permission on 6 September 2021. I return to the matter of these permissions as fallback positions for the appellant below. At the time of my site visit, the appeal site was closed off by hoardings, the garage building which previously stood on the site had been demolished, and construction work – or, at least, site preparation work – was underway.
8. Based on all of the evidence before me, including the Council's withdrawal of its third and fourth reasons for refusal, I consider that the main issues are whether or not the proposed development would provide:
 - Adequate external amenity space for future occupiers; and
 - Sufficient family housing.

Reasons

Amenity space

9. Policy D6 of the London Plan 2021 states that "where there are no higher local standards in the borough Development Plan Documents, a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings and an extra 1m² should be provided for each additional occupant", while the Mayor of London's 2016 Housing Supplementary Planning Guidance advises that "where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional

¹ LPA Ref: 17/5291

² PINS Ref: APP/T5150/W/19/3226345

³ LPA Ref: 20/1873

internal living space equivalent to the area of the private open space requirement”.

10. The development plan in Brent sets a higher standard for development in the borough; Policy DMP19 of the 2016 Brent Local Plan Development Management Policies Plan (“the DMPP”) states that “all new dwellings will be required to have external private amenity space of a sufficient size and type to satisfy its proposed residents’ needs”, and that this is normally expected to be 20m² per flat and 50m² for family housing (including ground floor flats)”.
11. Draft Policy BH13 of the emerging Brent Local Plan (“the BLP”) sets the same standard, while noting that in some cases “other requirements such as renewable energy sources may compete for areas that might otherwise accommodate amenity areas, such as roof space. As such, flexibility could be allowed where it can be shown that all reasonable options for provision have been considered. In these cases, the quality of any communal space will need to be particularly high to show it can meet residents’ needs”.
12. As set out in the appellant’s statement, the required provision of amenity space within the development with reference to the standard set out in DMP19 (i.e. 20m² per 1- or 2-bedroom unit, and 50m² per 3-bedroom unit) would be 2,170m². The proposed provision of amenity space is 1,768.6m², comprising 1,163.9m² of private amenity space and 604.7m² of communal amenity space. There would therefore be a shortfall of 401.4m² of amenity space, representing 18.5% of the target. The submitted Accommodation Schedule⁴ also shows that only 11 of the flats within the development would have private amenity space exceeding the minimum requirement set out in DMP19; these would mostly be units on the ground floor (with gardens) or on the seventh floor (with rooftop terraces).
13. I acknowledge that, as set out in the Design and Access Statement, the three proposed communal areas would be designed to a reasonably high standard, with areas of planting, seating and play space. However, by their very nature these spaces would be shared between all occupiers of the development, and would be likely to be in particular demand by occupiers of the 75 flats within the development whose own private amenity space was smaller than required by the DMP19. In this light, I consider that the shortfall in the quantity of amenity space – both private and communal – would not provide future occupiers of this relatively dense development with the living conditions which in my view they could reasonably expect.
14. The appellant has pointed out that Gladstone Park, which has a range of leisure facilities including playgrounds, sports pitches, a pond and a café, is around 650m away from the appeal site. At the time of my site visit I found it to be a walk of 7 or 8 minutes between the two sites along Park Avenue; while Gladstone Park is therefore near enough to the appeal site that it would meet some of the leisure and amenity needs of future residents, it would obviously not be as convenient as on-site provision, especially for young children or people with limited mobility. I accept the appellant’s argument that the appeal scheme would be unlikely in itself to lead to Gladstone Park becoming overused or saturated. However, public spaces such as parks also do not meet occupiers’ needs for private, or semi-private, amenity space in the same way. I do not

⁴ Accommodation Schedule Sheet 2 (Rev SK14)

therefore consider that the presence of Gladstone Park would overcome the deficiency in amenity space within the appeal development.

15. The appellant has also drawn my attention to several other developments within Brent which have been granted planning permission despite having shortfalls, in some cases significant ones, in their amenity space provision. I do not know the precise circumstances of each case, although the appellant has provided a summary of them, and I shall consider as examples the two other sites with the greatest shortfall. I note that the Council considered the "Ealing Road" scheme⁵ (shortfall of 54%) to be acceptable in part because of the proximity of One Tree Hill Recreation Ground which, at around 240m from that site, is rather closer than Gladstone Park is in this case. In respect of "Edwards Yard"⁶, where the shortfall was 45.3%, the Council's report referred to the proximity of nearby open spaces [plural], although no specific details are before me. In that case, the Council also considered that the lack of amenity space was outweighed by other benefits, a matter which I address below. While I therefore note these other cases, they do not in themselves justify allowing unacceptable development in this case.
16. The appellant has referred to the 2019 and 2021 permissions for the site and their amenity space provision. I entirely accept that these are legitimate fallback positions for the appellant and, given that development work was already underway on the appeal site there is every likelihood that one of permitted schemes will be taken through to completion if the appeal scheme is not permitted. The appellant's statement indicates that the total shortfall in amenity space under the 2019 permission would be 8.9%, while under the 2021 permission it would be 12.4%. The appellant argues that the difference in shortfall between the appeal scheme and the 2021 permission is therefore marginal. However, the difference in 6.1 percentage points between the two means that the shortfall in this scheme would be nearly half as much again than that allowed by the 2021 permission; this is not, in my view, a marginal difference.
17. I note also the appellant's comment that the roof space is required to provide solar panels in order to meet energy and sustainability policy standards and so could not be utilised for the provision of amenity space. However, while draft Policy BH13 of the emerging BLP acknowledges that some flexibility may be appropriate in this respect, in my view such flexibility have already been taken advantage of by the earlier permissions; none of the arguments put forward by the appellant in my view amount to a substantive justification for allowing a further shortfall. Accordingly, I do not consider that the fallback position represented by the 2019 and 2021 permissions carries significant weight in favour of the appeal proposal, and it does not justify allowing a further reduction in the provision of external amenity space.
18. I therefore conclude that the proposed development would not provide adequate external amenity space for future occupiers, and as a consequence it would conflict with Policies DMP1 and DMP19 of the DMPP. Among other things these policies require development to provide high levels of amenity, including external private amenity space of a sufficient size and type to satisfy future residents' needs.

⁵ LPA Ref: 20/3914

⁶ LPA Ref: 20/3156

19. For the same reason, I also find that the proposal would conflict with Policy BH13 of the emerging BLP. The BLP is at an advanced stage of preparation, and although it has not yet been adopted I consequently afford conflict with that policy significant weight in my decision. The emerging status of the BLP does not alter my overall conclusion.

Family housing

20. Policy CP2 of the 2010 Brent Core Strategy ("the BCS") states that "at least 25% of new homes should be family sized (3 bedrooms or more)". Draft Policy BH6 of the emerging BLP sets the same target in percentage terms, although it requires that that proportion of family sized dwellings "must" be provided, and it states that exceptions will only be allowed where "the applicant can show that: a) the location or characteristics of the development are such that it would not provide a high quality environment for families; or b) its inclusion would fundamentally undermine the development's delivery of other Local Plan policies".
21. For the appeal proposal, there would be 15 3-bedroom units within the total of 86, making 17.4%. The appellant argues that the shortfall of family units within the appeal scheme should in particular be balanced against the benefits of providing additional housing, and additional affordable housing, compared to that allowed by the 2019 and 2021 permissions.
22. Across all sizes and tenures, the appeal scheme would provide 16 more units than the 2019 permission, and 10 more units than the 2021 permission; it would provide 2 more family-sized units than the 2019 permission, and one more than the 2021 permission. Of the 15 three-bedroom flats in the appeal scheme, 11 would be private, 3 would be for affordable rent, and 1 would be for shared ownership. Across all sizes, there would be a total of 16 affordable units, meaning that the appeal scheme would provide 3 more affordable units than either the 2019 permission or the 2021 permission.
23. The existing planning permissions on the site provide for 18.6% (2019) and 18.4% (2021) family-sized flats; the appeal proposal would therefore represent a worse provision measured against the policy requirement than the appellant's fallback position. Compared to the 2021 permission, the net overall increase of 10 dwellings (one of which would be affordable) would make only a modest contribution to increasing the supply of housing, and affordable housing, in the area. While there is a pressing need for housing within Brent and across London, and the Government is of course seeking to significantly boost the supply of housing nationally, none of the evidence before me indicates that the Council is falling short in this matter. The Framework seeks to ensure that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies, and there is nothing before me to indicate that the Council's policies in respect of the need to provide family housing in Brent do not do this. I do not consider that the fallback position represented by either the 2019 or 2021 permissions justifies the greater shortfall of family housing in this case, and again the existence of that fallback position does not carry significant weight in support of the appeal proposal.
24. The appellant has drawn my attention to other cases within Brent where the Council has granted planning permission for schemes where the provision of family homes would be less than 25%. Again, I do not know the full details of

each case. However in the “Access Storage” example⁷, which had the lowest proposed provision of family-sized housing at only 9%, I note that the Council considered that the very high proportion of 3-bedroom units being offered as affordable housing justified accepting a lower overall provision of family units. In the example with the second lowest proportion of family housing, Kenton Road⁸, the Council noted that “the same mix of units (apart from [a] new 2-bed) was accepted in [a] previously approved scheme”, and that there was therefore no material change from a fallback position. For the reasons I have set out above, these are not considerations which apply in this instance. That the Council has reached different decisions in different cases primarily illustrates the need to consider each scheme on its own merits, as I have done here.

25. Taking all of these points together, I conclude that the proposed development would not provide sufficient family housing, and this deficiency is would not be justified either by reference to the fallback position on the appeal site, or to other schemes elsewhere in Brent. As such, the proposal would conflict with Policy CP2 of the BCS, which seeks to ensure that development provides an adequate supply of family housing.
26. For the same reason, I also find that the proposal would conflict with Draft Policy BH6 of the emerging BLP. As with the preceding main issue, while the BLP has not yet been adopted it is at a very advanced stage of preparation, and I afford conflict with that policy significant weight in my decision. In any case, the emerging status of the BLP does not alter my overall conclusion.
27. The Council’s decision notice also indicated that the proposal conflicted with Policy DMP15 of the DMPP. However, that policy relates to the provision of affordable housing rather than family housing, and I therefore do not find conflict in that respect with DMP15.

Other matters

28. The Council considered that the proposed development would be acceptable in terms of its design, scale and massing, and notwithstanding the representations of some interested parties on these points none of the evidence before me leads me to a different view on these matters. The appeal site is also close to Kingsley Court, a Grade II Listed Building on the western side of Park Avenue. The Council did not identify any harm in respect of the setting of that building; again, based on the evidence before me and my observations on site I see no reason to disagree. However, these are neutral factors which do not weigh in favour of the proposal.
29. The proposed development was refused planning permission by the Council’s planning committee against the recommendation of its officers. I recognise that this would be likely to have been greatly frustrating for the appellant. However, I have considered the appeal scheme on its own merits, as well as with reference to the fallback position, and have found harm as described above.
30. The UU submitted by the appellant contains obligations in respect of the commencement of development operations on the site, the provision of a travel plan and car club membership, affordable housing, sustainability, car-parking permits, highway works, a servicing plan, a code of practice for construction

⁷ LPA Ref: 18/4759

⁸ LPA Ref: 20/2164

contractors, and employment and training, all of which are contingent on the granting of planning permission. However, the contributions secured by the UU are intended to mitigate the effects of the proposed development. As I am dismissing the appeal for other reasons it has not been necessary for me to consider the UU in further detail.

Conclusion

31. The appeal proposal would provide 86 dwellings in a location which is close to a range of shops and services in Willesden Green town centre. Given that there is already permission for 76 units on the site under the 2021 permission, I consider that this net increase in housing provision is a benefit which carries moderate weight in favour of the scheme. However, the development would not provide sufficient family housing to meet the identified need and demand in the area, nor would it provide an adequate amount of amenity space for future occupiers. These are matters which carry considerable weight, and which in my view the harm arising would outweigh the benefits associated with the scheme.
32. As a result, the proposal would conflict with the development plan taken as a whole, and there are no other considerations, including the Framework, that outweigh this conflict.
33. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector