



Appeal Decision

Site visit made on 7 June 2022

by Katherine Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/T5150/W/22/3290359

9 Forty Lane, Wembley HA9 9EA

- 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 Ali against the decision of London Borough of Brent.
 - The application Ref 21/1702, dated 9 May 2021, was refused by notice dated 9 July 2021.
 - The development proposed is the demolition of existing dwelling and erection of a new 4 storey building with a basement to provide 7 self-contained flats with associated car and cycle parking space, bin stores and amenity space.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Brent Local Plan (BLP) was adopted by the Council on 24 February 2022. It now forms part of the statutory development plan and I have therefore had regard to this in my decision. The reasons for refusal referred to policies DMP1, DMP11, DMP12 and DMP19 of Brent Development Management Policies Document (2016) (DMPD). This document has been superseded by the BLP. The parties were subsequently invited to comment on these local policy changes in relation to the appeal.
3. In addition, since the Council issued their decision, the London Plan 2021 (LP) has been published, superseding the previous iteration. I have taken the same approach as above with reference to policies in the LP.
4. As part of the appeal submission, the appellant has put forward revised plans which show amended balconies which are intended to overcome are intended to overcome the shortfall in amenity space provision. However, I am mindful that 'The Procedural Guide to Planning Appeals – England' states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles¹ and the interests of fairness. Whilst, in certain circumstances, a proposal can be amended through revised plans during an appeal, it is my view in this case that the appeal must be determined on the basis of the plans as originally submitted to the Council and upon which it based its decision. To do otherwise would prejudice the interests of the Council, interested third parties and consultees, who have not been consulted on the revised scheme and who may have observations to make. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Main Issues

5. The main issues are:

- The effect of the proposed development on the character and appearance of the appeal site and the surrounding area;
- The effect of the proposed development on the living conditions of the occupiers of 7 Forty Lane with regard to outlook;
- Whether the proposed development would provide adequate living conditions for future occupiers with regard to outlook for the occupiers of the ground floor units and the provision of external amenity space; and
- Whether the proposal would provide appropriate vehicle parking and the effect on highway safety.

Reasons

Character and Appearance

6. The appeal site is located on Forty Lane (A4088) close to its junction with Tudor Gardens. The site is currently occupied by a substantial two-storey detached house which is the mid property of a group of three brick-built houses similar in style. They are distinctly different from those on the opposite side of the lane, but there is a sense of uniformity to this group of houses, which gives a localised character to the area around them and contributes positively to its appearance. Generally, houses on the lane are set back from the road by front gardens. The lane rises from the junction and as a result, houses step up on the incline.
7. The existing house would be demolished and replaced by a five-storey block of flats including accommodation at a semi-basement level. The proposed building would be significantly higher than the houses on either side of it. It would be stepped marginally forward of the houses either side at the front and would extend considerably beyond the existing building line to the rear.
8. Forty Lane is a busy main thoroughfare and is designated as an 'intensification corridor' in the BLP where there is potential for redevelopment with taller buildings (up to 15m or 5 storeys)². Whilst the principle for the potential redevelopment of plots with taller buildings along these corridors and consequential change to the area over the plan period is accepted, compliance with other development plan policies is also required. This specifically includes Policy BD1 of the BLP which is concerned with high quality design.
9. The proposal would be much larger both in height and mass than the building it would replace. The result would be a form of development which would appear bulky and incongruous in its surroundings. The impact would be further exacerbated by the proposed materials and modern design which would be in stark contrast to the properties either side. The open aspect of the front elevation, rising topography and prominent location close to the junction would serve to exacerbate the adverse impact of the proposal.
10. The proposal would not result in a greater proportion of hardstanding to the front of the appeal property. Notwithstanding the appellant's suggestion that a

² BLP policy BD2

reduction in car parking could increase the amount of landscaping provided, the nature of the proposed use would, nevertheless, formalise and intensify the use of the frontage of the property for parking in a manner which would further cause harm to the character and appearance of the site and its surroundings.

11. For the above reasons I conclude that the proposal would cause unacceptable harm to the character and appearance of the site and the surrounding area in conflict with BLP Policies BD1 and DMP1's aims of requiring development to be of high quality design.

Living Conditions – existing

12. As I have described above, the proposed building would be significantly larger in terms of both its height and its depth within the plot than those buildings on either side of it. The combination of these factors would mean that it would have a significant presence when viewed from the rear of the properties on either side of it.
13. There would be insets at each corner of the main part of the building and the further rearward projection would be limited to ground floor level. However, the main part of the building would present a substantial 4 storey elevation close to the boundary with 7 Forty Lane. No. 7 has a first-floor bedroom window close to the boundary with the appeal site, closer than those which are obscure glazed on the rear elevation. The bedroom window closest the appeal site is heavily recessed from the main rear wall first-floor from the main rear elevation, thereby exacerbating the overbearing impact of the proposal on the occupiers of that property. The substantial flank elevation of the building would extend beyond the rear elevation of No. 7 by a considerable margin resulting in an overbearing and visually intrusive effect on the outlook for occupiers of that property. The result being an unacceptable harm to the living conditions of the occupiers of No. 7.
14. I acknowledge that efforts have been made in an attempt to limit the scale of the proposal. However, this does not satisfactorily resolve the relationship between the proposal and the outlook from the habitable rooms closest to the appeal site at No. 7, particularly at first floor level.
15. The appellant has utilised the 2:1 rule as set out in the Brent Design Guide Supplementary Planning Document 1 (2018) (SPD) in an attempt to demonstrate that the proposal would not adversely impact the neighbouring properties and whilst the proposal may not breach this rule of thumb when measured from the closest ground floor window of No. 7, the form of this building would nevertheless result in the harm that I have described above.
16. For these reasons, the proposal would conflict with BLP Policy DMP1 and the guidance set out in the SPD. Together these seek to ensure that new development does not adversely affect the living conditions of existing occupiers and responds positively to context by successfully addressing massing, scale and visual impact and fitting in with the human scale.

Living Conditions – future

17. Bedrooms at the front of the lower ground floor of Units 1 and 2 would have high level windows which would look directly onto the car parking area on the forecourt of the site at ground level. The occupiers of these rooms would, as a result, have cars parking and manoeuvring at eye level directly in front of the

windows. The resultant poor outlook combined with low levels of natural light from the north facing outlook would create an unduly gloomy and oppressive form of accommodation for their occupiers. The provision of small lightwell style terraces on the corners of these rooms would provide little in the way of light and would not contribute significantly to the overall provision of amenity space for the units.

18. The refusal reason also refers to poor outlook for occupiers of rooms at the ground floor level. However, as rooms within this floor are slightly elevated relative to external levels, the outlook from these rooms would be acceptable and there would be no harm in this respect. This does not outweigh the harm that I have found to the occupiers of the bedrooms at the front of the lower ground floor.
19. The flats would all be provided with either private balconies or terraces and would have access to further communal garden space to the rear of the property. None of the private balconies would in themselves comply with standards set out in BLP Policy BH13. However, whilst the provision of communal garden space may compensate for that shortfall, access would be via a narrow path between the proposal and the boundary with No. 7. The distance for occupants of upper floor flats to access this area would be lengthy and tortuous and therefore render its use inconvenient and unappealing.
20. For the family-sized units, private amenity space would be split between terraces at the ground and lower ground levels. Access to the lower ground floor space would be through a bedroom. Access to a small amount of amenity space would be via living accommodation on the ground floor, and further access to the communal garden area would be down steps onto the lower terrace and back up again into the garden area. This would conflict with BLP Policy BH13 which requires amenity space for family sized units to be accessible from a main living room without level changes.
21. Therefore, the unacceptable level of provision of private space coupled with the poor relationship between the living accommodation and the communal external space would not provide adequate living accommodation for future occupiers.
22. For these reasons, having regard to the internal space and external amenity space proposed, I consider that the proposal would not provide for a satisfactory standard of accommodation for future occupiers. The proposal would therefore conflict with BLP Policies BH13 and DMP1 and London Plan (2021) (LP) Policy D6. Together, these policies require, amongst other things, that all new dwellings have external private amenity space of sufficient size and type and that a high quality environment is created which addresses issues including spaces between buildings, outlook and amenity space.

Highway Safety

23. Four car parking spaces would be provided to the front of the site. According to LP Policy T6.1 between 3.5 and 5.25 spaces should be provided for the proposed development. The provision of four spaces would therefore fall within the threshold for the policy. Although there remains some uncertainty as to the exact tenure and nature of occupation of the proposed flats, and therefore the exact level of required parking provision, the various scenarios broadly fall

- within the scope of what could be provided within the site. Therefore, I am satisfied that the proposal would provide an appropriate level of car parking.
24. A swept path analysis has been provided to demonstrate how vehicles would access the spaces and it would appear from those plans that it would not be possible to access or exit a number of the spaces in a forward gear. Furthermore, spaces would have to be vacant to enable safe access of the site due to the constrained layout of the site and the proposed position of the access point from the highway. This would result in manoeuvring within the highway which would be detrimental to the safety of other highway users.
25. Cycle parking would be provided in 9 spaces on the side elevation of the development. This would fall short of the 11.5 spaces required by LP Policy T6. As a result, the lack of cycle parking would fail to promote sustainable modes of transport required by BLP Policy BT1.
26. For the reasons set out above, the proposal would not result in an overprovision of car parking and would not be in conflict with BLP Policy BT2 and LP Policy T6 in this respect. However, the manner in which the car parking would be laid out would be detrimental to highway safety and therefore in conflict with BLP Policy BT4 which requires access to developments to be safe. The proposal would also fail to provide the required levels of cycle parking in conflict with LP Policy D6 and BLP Policy BT1 which, amongst other things, aim to promote sustainable modes of transport.
27. I accept that the layout of the parking could be amended so that the reason for refusal could be overcome. However, this could not be reasonably conditioned as a revised layout could potentially significantly change the overall proposal, which could prejudice interested parties who would not have the opportunity to comment on it. Furthermore, I am not satisfied that this would overcome the shortcomings of the proposal in this respect in any event.

Other Matters

28. The Council's fourth refusal reason is broad and wide ranging. Beyond the matters considered in the fourth main issue, above, it is likely that a number of the other matters raised therein could be covered by condition had the appeal succeeded.
29. The appellant has put forward a range of benefits which would be arising from the proposal including the provision of additional homes. I have also been presented with a range of policies in the BLP and LP which the appellant claims that the proposal complies with. None of these matters outweigh the harm that I have found on the main issues.
30. I have had my attention drawn to other similar developments and proposals on the lane. I do not have the full details of these before me but from my observations and the evidence I do have, none of them are directly comparable to the proposal before me in either their context or design. They do not, therefore lead me away from the harm that I have identified above.

Conclusion

31. For the reasons given above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

Katherine Robbie

INSPECTOR