



Appeal Decision

Site visit made on 17 November 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/T5150/W/21/3289054

82 Chaplin Road, London NW2 5PR

- 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 Euros Investments Limited against the decision of London Borough of Brent.
 - The application Ref 21/1774, dated 12 May 2021, was refused by notice dated 9 August 2021.
 - The development proposed is change of use of existing two storey building from Office (Class E) to residential accommodation (Class C3) comprising 6no. residential dwellings, with associated landscaping, elevational amendments, and cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In February 2022, the Council adopted the Brent Local Plan 2019-2041 ('BLP'). Therefore, the Policies of the Brent Development Management Policies Plan (2016) referenced within the decision notice, have been superseded by Policies of the BLP. I have proceeded with the appeal on this basis.

Main Issues

3. During the appeal, the appellant submitted a number of amended drawings as part of an alternative scheme. Details and changes associated with the alternative scheme are explained in the submitted Appeal Report¹. Annexe M of the Procedural Guide: Planning Appeals – December 2022, states that the appeal process should not be used to evolve a scheme. Where, exceptionally, amendments are proposed during the appeal process, I need to take account of the Wheatcroft Principles derived from *Bernard Wheatcroft Ltd v SSE (1982)*, when deciding if the alternative scheme can be accepted.
4. The alternative scheme seeks to address some of the Council's reasons for refusing the original scheme and does not alter the overall nature and quantum of the original proposal; a scheme proposing 6 residential units. Furthermore, the Council has commented on the alternative scheme and raised no objection to this being considered as part of the appeal. As such and having regard to the Wheatcroft Principles, I have proceeded with the appeal on the basis of the alternative scheme and I do not consider that the interests of any party have been prejudiced by my doing so.

¹ Appeal Report (December 2021) prepared by Autor Architecture.

5. As a consequence of the alternative scheme, the proposed housing mix has altered, insofar as the 2x3-bed units originally proposed are now shown as 2-bed units. To this end, the Council has objected to the lack of provision for family sized homes (3+ bedrooms) in the alternative scheme.
6. Accordingly, the main issues are:
 - i) Whether the loss of an employment site has been justified;
 - ii) Whether the proposal makes appropriate provision for affordable housing;
 - iii) Whether the proposal provides an acceptable quality of accommodation;
 - iv) Whether the proposal makes appropriate provision for family accommodation; and,
 - v) Whether the proposal would result in unacceptable levels of overlooking to the rear gardens of 84A and B Chaplin Road.

Reasons

Loss of employment site

7. The appeal property has a lawful office use. Therefore, and in accordance with the BLP, the appeal site is classified as a Local Employment Site.
8. Policy BE3 of the BLP emphasises the importance of the role of Local Employment Sites in ensuring that a range of premises are available to meet employment needs. Nevertheless, this Policy does allow the development of such sites for non-employment uses where a continued wholly employment use is unviable. The supporting text to this Policy, sets out the evidence requirements to demonstrate there is no demand for a Local Employment Site.
9. The submitted Commercial Marketing Report ('the CMR') summarises the marketing that has taken place in regard to the appeal premises. Most notably, the premises have been marketed over the last seven years by a number of local commercial agents.
10. The CMR concludes that whilst some interested parties have viewed the premises, no acceptable bids were received, and no occupiers were found through this extended marketing. As such, the office units have remained void of commercial occupants. Feedback collected by the marketing agents also highlights the general unsuitability of the appeal premises for a number of reasons.
11. I note the Council's concerns that the appeal premises was marketed at a higher price than the valuations suggested by professional agents. Nevertheless, during the application process and as part of the appeal, the appellant has confirmed that following receipt of quotes from the three local agents, those agents, after 2019 were instructed to market the properties based on their recommendations. I have no strong reason to dispute this.
12. Based on the evidence before me, I am satisfied that a wholly employment use of the site is unviable. Accordingly, the loss of the appeal premises to a non-employment use would not be in conflict with Policy BE3 of the BLP.

Affordable housing

13. Policy BH5 of the BLP requires that developments of between 5-9 dwellings will be required to make a financial contribution for the provision of affordable housing offsite.
14. The completed S106 Agreement, dated 17 August 2022, incorporates an obligation for a financial contribution of £300,000 to fund offsite affordable housing provision.
15. The Council advises that affordable housing should be calculated using the BNP Paribas Affordable Housing Report, August 2021 (Affordable Housing Report'). This is a borough wide viability study, which informs tariff rates for affordable housing contributions. In particular, this sets out a two zone tariff system with fixed rates for each zone equating to £50k and £100k per unit. This document is also referenced in the Council's 'Planning Obligations Supplementary Planning Document - In support of the Brent Local Plan 2020-2041' which was adopted in June 2022. Together, these documents provide a methodology for calculating the contribution. Based on these documents and the Council's submissions, the fixed rate for the proposed scheme is £50k per dwelling.
16. A planning application for 9 units at Draycott Avenue in Harrow was presented at the planning committee in August 2021. Although no affordable housing contribution was sought, this application was presented prior to the adoption of the BLP. Therefore, I attach limited weight to this.
17. As such, in the scheme before me, the affordable housing contribution is necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. This accords with Policy BH5 of the BLP and the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended). I have taken this into account when determining the appeal.

Quality of the proposed accommodation

18. Layout - Based on the alternative layout, the proposed accommodation would comply with the National Technical Housing Standards.
19. The revised layout for Unit 01_03 shows a kitchen area separated from the living and dining area, which would be lit via two roof lights. The living and dining area would utilise two large windows and one roof light. This arrangement would provide the living and dining area with an acceptable outlook and daylight and addresses concerns raised by the Council in respect of the original layout.
20. Outlook - The separation distances between the two main blocks of the appeal property are particularly limited. However, the windows for the ground floor accommodation would face the proposed landscaped amenity areas/courtyard. This arrangement would provide an acceptable outlook, subject to securing the detailed design of these areas, which could be secured by a condition if the appeal were to succeed.
21. The outlook from first floor windows would mainly comprise the elevations of opposing blocks of the appeal property. Notwithstanding this, the existing building incorporates a flat roof and therefore its elevations are not particularly

tall. Also, the different external finishes and use of fenestration add interest to them. As such, these elevations are not unacceptably dominant or oppressive. The proposed landscaped courtyard would complement the existing built form to improve the amenity from the upper floors. Overall, the outlook from the proposed accommodation would be acceptable.

22. Private amenity space – All of the ground floor units would incorporate accessible outdoor amenity areas which would have a depth of at least 1.5m. The quality of the space for Unit 00_02 would be compromised by its impractical shape and none of the upper floor units incorporate any private amenity space.
23. Although the proposed private amenity spaces would be in line with Policy D6 of the London Plan, this Policy is clear that these standards should be applied where there are no higher standards in the Borough Development Plan Documents.
24. In this case, Policy BH13 of the BLP expects all new dwellings to incorporate external private amenity space of a sufficient size and type to satisfy its proposed residents' needs. This is expected to be 20sqm for each type of unit of accommodation proposed.
25. Nonetheless, the supporting text to the above Policy does provide some flexibility in that where sufficient private amenity space cannot be achieved individually for each dwelling to meet the full requirement of the Policy, the remainder should be supplied in the form of communal amenity space. Also, this Policy recognises that in some locations, such as town centres, in high density developments that meeting the overall minimum might be challenging. As such, flexibility is allowed where it can be shown that all reasonable options for provision have been considered.
26. Policy BH13 of the BLP goes on to state that where not meeting the standards, developments will need to demonstrate how the level of amenity space provided is considered to be acceptable taking into account factors such as, accessibility of dwellings to their own amenity space and its quality, the amount and quality of communal space, proximity to other areas of open space nearby.
27. The proposed communal space would be limited to some seating areas in the courtyard. Nevertheless, the appellant has referred me to the availability of other public open spaces, some of which are within reasonable walking distance of the appeal site.
28. I acknowledge that the constraints of the appeal property in terms of separation distances and the size of the existing accommodation, make it impractical to incorporate private external balconies or inset balconies. Nevertheless, Policy BH13 of the BLP refers to roofspaces as areas which could potentially accommodate amenity areas. The appeal property incorporates a large flat roof and on the evidence before me, I cannot be certain that this was considered as an option for the provision of amenity space.
29. Whilst the appellant has referred to several schemes of varying scales, wherein the level of amenity space proposed did not fully accord with the Development Plan, I do not have sufficient details of these to draw any meaningful comparisons with the appeal scheme.

30. For the above reasons, the proposed scheme lacks sufficient private and/or communal amenity space in terms of quantity and quality and on the evidence before me, I cannot be certain that all reasonable options for provision have been considered for providing onsite amenity space. Accordingly, and whilst there are some public open spaces nearby, I do not believe this would be a reasonable atonement for the failure to provide sufficient private and/or communal amenity space directly associated with the development. Therefore, the proposed level of amenity space does not provide a high level amenity for residents.
31. Privacy – The Brent Design Guide - SPD 1 (2018) at Principle 5.1 states that new development should provide adequate privacy and amenity for residents. Development should ensure a good level of privacy inside buildings and within private outdoor space. Directly facing habitable room windows will normally require a minimum separation distance of 18m, except where the existing character of the area varies from this. The configuration of the appeal property means that very limited separation is achievable between some of the proposed units.
32. The proposed ground floor windows face the proposed private amenity spaces and the courtyard. However, on the information before me, I am not persuaded that the use of planters and furniture in the courtyard would be sufficient to limit overlooking between the ground floor units. There would also be some unacceptable overlooking in respect of the bedroom window to unit 00_02 which is adjacent to the courtyard.
33. At first floor, whilst I have had regard to the submitted 'Privacy diagram' based on my visit, there would be considerable intervisibility between unit 01_01 and unit 01_03. This would result in some unacceptable overlooking. The installation of user operable sliding louvres would assist to mitigate this. Nonetheless, I have concerns about the effects of these on daylight and outlook. In particular, given that the proposed accommodation is largely single aspect.
34. For the above reasons, because of the less than acceptable quality of the proposed amenity space and the degree of overlooking associated with some units, the proposal would fail to provide high levels of amenity for residents. Consequently, the quality of the proposed accommodation would be significantly compromised.
35. Therefore, the proposal conflicts with BLP Policy BH13. The proposal also fails to accord with Policy DMP1 of the BLP, which amongst other things states that development would be acceptable provided that it is of a location, use, concentration, siting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity and complements the locality.

Provision of family accommodation

36. As already stated, the alternative scheme makes no provision for family sized homes. The BLP states that in terms of dwelling sizes Brent's predominant needs (54%) are more for larger sized (3 bed or more) family dwellings.
37. Although Policy BH6 of the BLP requires that for every four dwellings included within developments at least one must be 3 bedrooms or more, there are some

exceptions to this requirement, where the location or characteristics of the development are such that it would not provide a high quality environment for families, or its inclusion would fundamentally undermine the development's delivery of other Local Plan policies.

38. On the evidence before me, I am not persuaded that the characteristics of the development are such that this could not provide a high quality environment for families, or that the inclusion of this type of accommodation would fundamentally undermine the development's delivery of other Local Plan policies. As such, the proposal conflicts with Policy BH6 of the BLP. Given that this is a housing requirement based on a recently adopted development plan, I attach substantial weight to this.

Living conditions of neighbours.

39. The appeal property incorporates a number of first floor windows along its western flank elevations that face the rear garden of 84A and B Chaplin Road. However, both these windows are limited in size and would be obscure glazed.
40. The proposed scheme would also incorporate first floor windows for Unit 01-01, which generally face the existing access and the appeal property. These would facilitate some views over the rear garden of 84A and B Chaplin Road. This, along with the windows along the flank elevations is largely an existing arrangement and therefore some overlooking is likely, irrespective of the use of the appeal property. Furthermore, the use of a privacy on one of these windows would mitigate some overlooking. In any event, the appeal site is located in a high-density area where some degree of overlooking of neighbouring gardens is not uncommon.
41. For the above reasons, any overlooking associated with the proposal would not have an unacceptable effect on the living conditions of the occupiers of 84A and B Chaplin Road. The proposal, therefore, accords with the Policy DMP1 of the BLP, which amongst other things seeks to secure a high level of external amenity.

Other considerations

42. I acknowledge that the appeal site is in a backland location and because of this there are constraints with developing it and meeting the Council's space standards. Furthermore, the alternative scheme in general exceeds the National Technical Housing Standards and provides a good level of internal accommodation.
43. The proposed 6 additional units would assist to address housing needs within the borough for this type of accommodation. The proposal would also contribute towards affordable housing provision. This, and the overall provision of additional dwellings weigh in favour of the proposal.
44. The appeal site is a relatively small site that comprises brownfield land in a predominantly residential area, and the building occupying the site has been vacant for a considerable number of years. The proposal is for the conversion of the existing building which would make effective and efficient use of land to boost the supply of housing in a location with good accessibility. Therefore, the proposal is also an opportunity to realise a sustainable form of development. These and any associated benefits are important factors which are supported by local and national planning policies and weigh in favour of the proposal.

Other Matters

45. The appellant has referred to examples of courtyard and mews style developments. In particular, the Tudor Mews scheme approved in 2012 comprises a building in an 'L' configuration and was determined under a different development plan. Therefore, this is not directly comparable to the proposal before me. I therefore attach limited weight to this and other examples.

Planning Balance and conclusion

46. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
47. I have found that the loss of the appeal premises to a non-employment use is justified. The proposal would also provide the required offsite financial contribution for affordable housing and would not harm the living conditions of neighbours.
48. On the other hand, the proposed alternative scheme provides no provision for family sized homes and the quality of the proposed accommodation would be significantly compromised with regard to the insufficient private/communal amenity space and some unacceptable overlooking within the development. The harm associated with these factors and conflict with a recently adopted development plan attract substantial weight.
49. Having taken account of the other considerations in support of the proposal to which I attach significant weight, I do not consider these to be sufficiently forceful to outweigh the harm and conflict with the development plan I have identified.
50. Consequently, in the circumstances of this case, the material considerations do not justify a decision other than in accordance with the development plan.
51. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR