
Appeal Decision

Site visit made on 28 November 2022

by C Harding BA(Hons) PGDipTRP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2023

Appeal Ref: APP/T5150/W/22/3293670

Arena Hotel, 6 Forty Lane, Wembley HA9 9EB

- 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 Patel against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/3779, dated 27 September 2021, was refused by notice dated 3 December 2021.
 - The development proposed is the demolition of existing hotel and erection of a part three, part 4 storey residential block comprising 9 self-contained flats, provision for 6 car parking spaces, cycle and refuse storage, associated amenity space and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has provided plans¹ that comprise amendments to the scheme that was originally submitted to the Council. These plans include changes to the layout of the front of the proposed development including a reduction in car parking space from 7 to 6, changes to the proposed internal layout and the replacement of glazed balustrades to the front elevation of the proposed development with a metal rail.
3. The Council have had opportunity to comment upon these revised drawings, and they would not significantly change the nature of the proposals. Accordingly, and having regard to the Wheatscroft principles, I have considered the appeal on the basis of these plans.
4. As the amended plans have reduced the number of proposed car parking spaces from 7 to 6, I have amended the description of the development accordingly.
5. Following the Council's decision, the Brent Local Plan [2022] ('the BLP') has been adopted, superseding the Brent Local Plan Development Management Policies [2016] ('the DMP'). Accordingly, those policies within the BLP can be afforded significant weight, and I have not referred to policies within the DMP further.

Main Issues

6. The main issues are:

¹ A102.1 Rev C, A102.2 Rev C, A102.3 Rev C, A103.1 Rev C, A103.2 Rev C, A103.3 Rev C, A103.4 Rev C, A103.5 Rev C, A104.1 Rev C, A104.2 Rev C, A105.2 Rev C and A106 Rev C

- the effect of the proposed development upon the character and appearance of the area;
- whether the proposed development would provide suitable living conditions for future occupiers with regard to the provision of storage space, accessibility, daylight, outlook and access to outdoor space;
- the effect of the proposed development upon highway safety;
- whether the proposed development would achieve a suitable standard of fire safety; and,
- whether adequate and suitable bin storage facilities would be provided.

Reasons

Character and appearance

7. Forty Lane is a wide road carrying multiple lanes of traffic and is identified within the evidence as being a distributor road and an intensification corridor. Development along the road is predominantly two-storey in nature, however there are a number of substantial dwellings evident, as well as a number of taller buildings, including blocks of flats. The current building on the site is of a two-storey nature and has been heavily extended to the side and rear.
8. The proposed development would represent a significant change to the streetscene, replacing a property which presents a frontage of relatively domestic scale and traditional character, with a much a larger, contemporary development, incorporating flat roofs. The proposed development would appear as being markedly different from existing development that immediately adjoins the appeal site.
9. However, the surrounding area has a diversity of buildings, with other examples of contemporary buildings juxtaposed with more traditional housing stock. Accordingly, although of a very different form of development in terms of design, the proposal would not be inherently harmful to the area as it would reflect the variety of buildings that currently exists and the evolving nature of the area.
10. It is agreed between the parties that the height of the proposed development would be acceptable. However, there is dispute with regards to the effect of the massing and bulk of the appeal scheme. With regards to this, I acknowledge that the proposed fourth storey would be set back from the front of the proposed building. However, it would also extend for much of its width. In doing so, this storey would appear as a substantial element of the building, which would be over-dominant in relation to the adjacent roofscape and the overall footprint and proportions of the building. It would not serve to minimise the scale of the proposed development to any significant degree.
11. Furthermore, the front elevational treatment with upper storey balconies overhanging ground floor flats would serve to highlight the scale of these second and third storeys. When taken as a whole, the resultant building would have rigid boxlike proportions, and would appear to be significantly larger than the buildings adjacent to which it would be situated, even if it would not be of an unacceptable height.

12. My attention has been drawn to development elsewhere on Forty Lane which is of a similar contemporary design approach. However, this example is materially different as the upper storey is smaller in scale, and the front elevation incorporates less pronounced balcony overhangs than the scheme currently before me. Accordingly, it is not directly comparable, nor does its presence justify the harm that I have identified.
13. With regards to the proposed palette of materials, the amended plans indicate a yellow buff brick is proposed, with red brick accent areas. Although the use of red brick is prevalent in the local area, there are examples of the use of a lighter coloured brick, as well as light coloured render. Overall, I consider that the proposed materials would not be harmful to the character and appearance of the area.
14. The proposed development would include grasscrete car parking spaces, as well as a small amount of landscaping in the form of dwarf walls and hedges. The Council has stated that due to the proposed level of hardstanding, the proposed development would be detrimental to the character of the area.
15. The proposed development would lack any notable elements of soft landscaping beyond dwarf hedges and the use of grasscrete. However, at present, the area to the front of appeal site comprises a significant open area of hardstanding with no landscaping elements evident. When assessed against this existing context, the proposed development would not lead to harm to the character and appearance of the area.
16. As the proposed parking area would not result in adverse visual impacts, or be likely to result in an increase in surface water run-off, I consider that the limited level of soft landscaping proposed would be adequate, and would be in accordance with the requirements of BLP Policy BT2.
17. Although I have found that the proposed development would be acceptable with regards to the proposed materials and treatment of the front parking area, I have also found that it would lead to harm to the character and appearance of the area as a result of its form and overall bulk.
18. Consequently, it would fail to accord with BLP Policies BD1 and DMP1, as well as the SPD which together require new development to be of the highest architectural quality and be of a scale and design that complements the locality.

Living conditions

19. The Council raise concern that the proposed development would provide substandard accommodation due to its lack of internal storage space, internal layout, failure to demonstrate that the development would meet Building Regulations M4(2) standards, and inadequate access to outdoor space.
20. The amended plans indicate that internal storage could be accommodated within each flat, in accordance with the levels set out in London Plan (LP) Policy D6, and would be located such that it would not lead to unacceptable living conditions for future occupiers with regard to its location. Furthermore, although some of the proposed flats and most notably Flat 7, would incorporate areas of corridor space, these areas would not be excessive in proportion to the overall size of the proposed flats. It is not disputed between the parties that the proposed residential accommodation would meet the overall size

requirements set out in LP Policy D6. Accordingly, I consider that the proposed internal layouts would provide adequate living conditions for future occupiers in these respects.

21. The proposed flats on the ground floor (Flats 1 and 2) would be located underneath the cantilevered upper storeys of the proposed development, and accordingly the front elevation of these units would be set-back. The appellant has identified that the set-back would amount to 1.5m. Although the front elevation would be south-facing, I consider it likely that the cantilevered upper storeys would lead to the overshadowing of ground floor living areas, leading to lower levels of natural light and outlook being available to occupiers of these flats than would otherwise be normally expected, particularly in those areas of rooms furthest from the windows.
22. Although Flats 1 and 2 would be dual aspect, the internal layout indicates that there would be a degree of internal partitioning within the communal living areas, and accordingly I consider that they would not be truly open plan. Furthermore, although additional windows are indicated on the provided plans within the side elevations of the proposed development, these would be small in size and would look out towards existing neighbouring development. Accordingly, the benefits of the dual-aspect arrangement and additional windows would not significantly mitigate the reduction in available light and outlook that occupiers within the kitchen and dining areas would experience.
23. The appellant has confirmed that the boundary treatment proposed between the front elevation of the proposed development and the associated car parking area has been amended to comprise a dwarf wall and associated landscaping. Whilst this would prevent a further reduction in outlook and light, it would not overcome or mitigate my concerns with regards to the oppressive nature of the ground floor rooms that would be located at the front of the proposed development, and upon the living conditions of future occupiers which would result.
24. The Council is concerned that it has not been demonstrated that the proposed residential accommodation would meet Building Regulations Requirement M4(2) standard. The appellant has asserted that the M4(2) standard would be achieved.
25. LP Policy D7 requires residential development to meet M4(2) standard. However, Planning Practice Guidance ('PPG') advises that local planning authorities should not impose additional information requirements or seek to determine compliance with the requirements of Requirement M4(2). Furthermore, the supporting text to LP Policy D7 states that M4(2) dwellings should be secured by means of a planning condition.
26. In this context, although the appellant has not demonstrated how the proposed dwellings would achieve M4(2) standard, it would be unreasonable to require such detail in order to achieve compliance with LP Policy D7. I am satisfied that the evidence before me does not indicate that there would be any reason why adherence with Requirement M4(2) could not be secured by means of a planning condition, and accordingly, the development would be capable of providing suitably accessible accommodation in accordance with LP Policy D7.
27. LP Policy D6 sets out minimum private outdoor space standards where there are no higher local standards. BLP Policy BH13 expects new development to

provide 50 square meters (sqm) of external space for family homes of three bedrooms or more situated at ground floor level, and 20sqm for all other housing. The requirements of BLP Policy BH13 are a higher standard than those set out in LP Policy D6.

28. The proposed development would provide gardens for the two ground floor flats, and it is not disputed between the parties that these would be of an appropriate size and location. A further communal garden is proposed beyond these gardens. Those flats proposed on upper storeys would also have access to balcony areas.
29. The Council has indicated that some of the proposed balconies would fail to meet the required 1.5m depth set out in the Brent Design Guide Supplementary Planning Document ('the SPD'). However, in terms of available external space, it is not disputed that when the communal garden is taken into account, that sufficient space would be provided.
30. However, the Council is concerned that access to the communal garden would involve residents having to leave the proposed building and walk around the building to the rear, via the proposed car park. The amended plans indicate an additional dwarf wall to demarcate the pedestrian area which would provide access to the communal garden.
31. Access to the communal garden would require a somewhat circuitous route, however it would not be excessive in length, and nor would it require future residents to leave the appeal site. Furthermore, the access path would be demarcated from the proposed parking area meaning that potential for conflict with moving vehicles would be minimised. Additionally, although some of the proposed balcony areas are smaller than required, they would nevertheless provide a modest amount of private external space that would be usable by residents in combination with the communal garden. Overall, I consider that the proposed development would provide adequate access to outdoor space for all potential future occupiers.
32. The proposed development would provide acceptable living conditions for future occupiers with regards to internal storage space, internal layout and access to outdoor space. It would also be capable of achieving Building Regulations Requirement M4(2) Standard. Therefore, it would accord with LP Policies D6 and D7, as well as BLP Policy BH13.
33. However, it would fail to provide adequate living conditions for the future occupiers of Flats 1 and 2 with regards to light and outlook. Accordingly, it would conflict with BLP Policy DMP1 and Principle 5.1 of the SPD which together, and amongst other criteria, require new development to provide high levels of internal amenity for future occupiers.

Highway safety

34. The Council has indicated that a financial contribution is required towards improvements to the Blackbird Hill/Forty Lane/Salmon Street junction to improve pedestrian crossing facilities.
35. The evidence includes a Road Safety Report² which identifies that the current operation of this junction has resulted in several collisions over recent years. It

² Blackbird Hill/Forty Lane/Salmon St/Tudor Gardens Road Safety Improvement Study, Red Wilson Associates 07/05/2019

also identifies that pedestrian crossing facilities on Forty Lane are of a substandard design. As a means of addressing these problems, the Council has advised that its preference would be to implement the signalisation of the junction. However, it has also stated that there is no identified funding at present, and as a result financial contributions are being sought from nearby developments.

36. LP Policy T2 states the new development should facilitate residents making shorter, regular trips by walking. LP Policy T4 states that where appropriate, mitigation through financial contributions, will be required to address adverse transport impacts that are identified, and that development proposals should not increase road danger.
37. The proposed development would introduce additional pedestrian and vehicle movements onto the highway network in a location where there is identified safety issues and substandard pedestrian infrastructure. Accordingly, the development would lead to harm to highway safety in this respect.
38. However, the appeal site is currently occupied by a hotel, which the appellant indicates previously operated with 17 rooms. This is not disputed by the Council. Although not currently operating, I have been presented with no evidence to suggest that the premises could not reopen as a hotel without further requirement for planning permission, and that there remains a greater than theoretical possibility that it could do so. The previous use therefore comprises a fallback position to which I afford significant weight.
39. When operating, the hotel would generate a level of vehicle and pedestrian movement. I have been presented with no substantive evidence that would indicate that the proposed development would lead to an increase in vehicular or pedestrian traffic over the current hotel use, such that it would have a material additional effect on the operation of the junction or pedestrian safety.
40. The need to mitigate the operation of the junction in order to improve its safety for both vehicles and pedestrians is an issue that currently exists and would remain regardless of whether the proposed development would be carried out.
41. Accordingly, I am not satisfied that a financial contribution towards improving the junction would be necessary to make the development acceptable in planning terms, or that such a contribution would be directly related to mitigating the effects of the development.
42. Therefore, the requirement for a planning obligation in this instance would be contrary to Paragraph 57 of the Framework. This advises that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind.
43. The Council has also raised concern in relation to whether a safe access to the site for pedestrians would be provided. The amended plans provided by the appellant indicate that a pedestrian access would be provided to the front of the property at its eastern extent. However, whilst this access would be segregated from the parking area by a low hedge for much of its length, the indicated width of the access gate of 4.5m, along with the vehicle tracking indicated on the provided plans, suggests that conflict would occur between vehicles entering and leaving the site and pedestrians using the paved access path, particularly if the parking area was substantially occupied. Whilst such

conflicts would be likely to occur at low speeds, they would nevertheless be likely to occur, and in doing so, would present a risk to pedestrian safety.

44. Such conflict would be likely to be exacerbated by the width of the access which the provided vehicle tracking indicates would be insufficient to allow vehicles entering and exiting the site to pass each other. This would lead to additional conflict with pedestrians, if vehicles are attempting to enter and leave the site simultaneously, and are required to reverse either into the site, or out onto the highway in order to do so.
45. The appellant considers that a revised layout could be secured by means of planning condition, and whilst the highway authority have indicated in general terms how a more suitable arrangement could be achieved, I have been presented with no specific evidence to provide sufficient assurance that an acceptable arrangement could be arrived at. Accordingly, I consider that it would not be appropriate to secure such amendments through means of a planning condition.
46. I therefore conclude that the proposed development would be harmful to highway safety. It would therefore be contrary to BLP Policy DMP1 which requires development to be satisfactory in terms of means of access for all, parking and manoeuvring, as well Paragraph 112 of the Framework, which states that development should minimise the scope the conflicts between pedestrians, cyclists and vehicles.

Fire safety

47. LP Policy D12A requires new development to achieve the highest standards of fire safety and ensure that it meets a range of specified criteria. The evidence includes a document³ setting out a fire safety strategy.
48. The provided strategy identifies a number of recommended design features required in order to provide an appropriate "stay-put" evacuation strategy, however in many cases it sets out what measures would be required, as opposed to identifying and confirming the measures that are proposed in this instance, or how the proposed development would achieve these measures.
49. In particular, the strategy notes that as the proposed development would include more than two flats at first and second floor level, that the use of the "stay-put" strategy would require approval from a building control body, but no evidence of such approval has been provided and I have no certainty that such approval would be forthcoming.
50. Furthermore, evacuation assembly space is only loosely identified as being at the pavement, and a suitably positioned unobstructed outside space for the positioning of fire appliances, that would achieve a hose length of less than 45m to the furthest point in each flat has not been identified.
51. Overall, although the submitted information sets out measures that should be incorporated within the development in order to achieve a high standard of fire safety, it has not been demonstrated that the development would be capable of achieving the measures as set out.
52. I am therefore unable to conclude that the proposed development would achieve a suitable standard of fire safety, and it would therefore be contrary to

³ Fire Safety Design Recommendations for 6 Forty Lane, Planning Fire Safety Strategy Issue 1

LP Policy D12A which requires new development to achieve the highest standard of fire safety, including specifying evacuation assembly space and adequate positioning for fire appliances.

Bin storage

53. The Council had raised concern that the previous location for the bin storage would not be adjacent to the highway edge and would require bin collection operatives to cross the site in order to collect and return bins.
54. In its refusal reason, the Council makes reference to BDP Policy BT2, however this policy relates to parking provision, and makes no reference to waste management. Therefore, it is not relevant to this main issue. Further reference has been made to DMP Policies DMP1 and DMP12, however these policies have now been superseded and can no longer be afforded weight. No other development plan policies that relate to this main issue have been identified.
55. The amended plans indicate that bin storage would be provided at the front of the appeal site, towards the western boundary, with a wooden gated entrance to allow access to the bin store from Forty Lane directly. This revised arrangement would allow direct access to the bin store from the highway to aid collection, whilst not requiring future residents to carry waste unreasonable distances in order to dispose of domestic waste.
56. I therefore consider that adequate and suitable bin storage facilities would be provided.

Other Matters

57. There is no dispute between the parties with regards to the principle of development and the loss of the existing hotel; the effect upon the living conditions of occupiers of neighbouring properties; or whether appropriate levels of off-street parking and cycle parking would be provided. Even if I were to agree with regard to these issues, these would only represent neutral factors and would not weigh in favour of the proposal.
58. The proposed development would represent a boost to housing supply in an appropriate location with good access to facilities and services. I afford this moderate weight in my consideration.

Conclusion

59. Although I have found that the development would be acceptable with regards to the provision of bin storage, I have also found that the proposed development would conflict with BLP Policies BD1 and DMP1, as well as LP Policy D12A. I afford this conflict with the development plan significant weight.
60. There are no material considerations, including the Framework, which would outweigh this conflict. The appeal should therefore be dismissed.

C Harding

INSPECTOR