



Appeal Decision

Site visit made on 24 January 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/A5270/W/22/3304030

163A Boston Road, Hanwell, LONDON W7 3QJ

- 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 Yousef Shawish against the decision of the Council of the London Borough of Ealing.
 - The application Ref 220045FUL, dated 22 December 2021, was refused by notice dated 25 February 2022.
 - The development proposed is the demolition of existing kebab shop and outbuildings to rear and redevelopment to provide 5 x 1bed/Studio flats above.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Policy CG5 of the London Plan 2021 (the London Plan) is cited within the decision notice. The cited policy does not form part of the London Plan. The Council have subsequently confirmed that their reference to policy GG5 appears to be an error, and that whilst the policy does reference London's economic competitiveness, it is not entirely applicable to the development proposal.
3. The appellant indicates that as part of the appeal an amended plan has been submitted, within which the proposed internal layout of flat E has been altered. I have not been provided with any such plan. Even if this plan had been submitted, Annex M.1. of the Procedural Guide – Planning Appeals – England advises that if an applicant thinks that amending their proposals will overcome the local planning authority's (LPA) reasons for refusal, they should normally make a fresh application. Annex M.1.2 of the same guide further advises that if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the LPA, and on which interested people's views were sought. This appeal has therefore been determined based on the plans submitted in support of the application and upon which the Council's decision was made. I have had regard to the Wheatcroft¹ principles and the degree of engagement for all parties, in coming to this view.

Main Issues

4. The main issues are

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

- whether the proposal would provide adequate living conditions for future occupiers of the property, with particular regard to internal space standards, light and privacy; and the effect of the development on;
- the living conditions of the occupiers of 165 and 163 Boston Road, with particular regard to outlook and light;
- the supply of a range of dwelling sizes to reflect the local need within the borough;
- employment land within the borough; and
- the character and appearance of the area.

Reasons

Living conditions – future occupiers

5. The proposed 3 storey building would be constructed on the comparatively narrow and deep appeal site. It would provide 5 residential units taking the form of a mixture of studio and one-bedroom flats. Access to 4 of the flats would be via a narrow passageway within the appeal site directly adjacent to the 2-storey building at 163 Boston Road (number 163).
6. The main parties agree that the Gross Internal Area of flat D does not meet the minimum standard identified within the Government's Technical housing standards – nationally described space standard document (the technical housing standards). Nor does it meet the size identified within table 3.1 of the London Plan for a 2-storey dwelling. These standards are minimums, and I have been presented with no cogent case for why they should not apply in this instance. I therefore conclude that the accommodation provided within flat D would not be sufficient to ensure adequate living conditions for 2 people.
7. The ground floor window in the passageway facing side elevation of the proposed building, would afford future occupiers of the ground floor accommodation very little privacy. Whilst the obscure glazing of part of this window could overcome this privacy-based concern, it would also harmfully reduce the levels of light and outlook available to future users of the room served by the window.
8. I have not been provided with full details of the planning permission previously granted², authorising the residential redevelopment of the site. However, the evidence before me does not indicate that it included the provision of a ground floor window onto the narrow passageway. The previously approved scheme does not therefore lead me to take an alternative view in respect of privacy.
9. The plans indicate that 2 windows would be provided within the front roadside facing wall of studio flat E. These would provide a good level of light to and outlook from this studio flat. Even if the small room closest to the front door were to be used for sleeping in, given the good levels of light and outlook to the studio flat as a whole, I find that occupiers of that flat would be able to secure adequate levels of light and outlook. This finding, does not outweigh the previously identified harms however.
10. The main parties do not dispute that the proximity of Elthorne Park to the appeal site means that future occupiers of the flats would be unharmed by the lack of private open space provision. Therefore, policy 7D of the local plan, which relates to open space provision, is not determinative in this appeal.

² Planning application reference 170041/FUL

11. For the reasons given above, I conclude that the development would not provide adequate living conditions to future occupiers of the development, with particular regard to internal space, light and privacy. In these respects' it would not comply with policy D6 of the London Plan, and policy 7B of the Local Plan, where they require development to comply to minimum internal space standards, and to provide good levels of privacy. In respect of this main issue, it would also conflict with the part of paragraph 130 of the National Planning Policy Framework (the Framework), which requires new development to create places with a high standard of amenity for future users. In addition, it would fail to meet the minimum standards contained within the technical housing standards document.
12. Policy 3.5 of the Ealing Development Management Development Plan Document -2013 (the Local Plan) indicates that the minimum space standards within table 3.3 will be applied to proposals for new residential development. However, as table 3.3 has not been provided, I cannot conclude that the development proposal would conflict with this policy.

Living conditions – occupiers of neighbouring properties

13. The proposed 3-storey building would project further towards the rear of the site than that which was previously authorised³. A consequence of this would be the elongation of the narrow passage-way adjacent to the building at number 163. The side wall of number 163 which addresses the appeal site contains several windows at both ground and first floor levels. The level of natural light which would be able to enter those rooms which have windows facing the appeal site, would be substantially reduced by the proposed development. This is due to the substantial depth and the height of the proposed development, in combination with its closeness to the side of number 163. Even if some of the rooms served by these windows are bathrooms, or if they are secondary windows, then this does not alter my finding that the development would cause an unacceptable and harmful loss of light for users of the rooms served by the windows.
14. The submitted plans indicate that 165 Boston Road (number 165) is divided into 3 addresses; 165; 165b; and 165c Boston Road. However, even after my site visit, I am unable to ascertain what, if any, openings exist within the rear of number 165, or the locations of any such openings.
15. I cannot therefore conclude that the proposed development would reduce the outlook available from any rooms within the rear of number 165 to an extent that would be unacceptably harmful to living conditions of the occupiers of that property. However, I have found that the proposed development would cause unacceptable harm to the living conditions available to the occupiers of number 163, in respect of light. Consequently, and in this respect, it would conflict with policy D6 of the London plan, policy 7B of the Local Plan and 1.1(g) of the Ealing Development Strategy 2026 Development Plan Document (the core strategy) where they require development to provide sufficient daylight and sunlight to surrounding housing and to protect and enhance suburban communities.
16. As section 7 of the Framework relates to the vitality of town centres, it is not determinative to this main issue.

³ Planning application reference 170041/FUL

Housing Mix

17. Although a scheme for 3 one-bedroom units was previously approved on the site, this was prior to the 2021 London Plan. Policy H10 of the London Plan indicates that schemes should generally consist of a range of unit sizes. To identify the appropriate mix of unit sizes, the policy indicates that decision makers should have regard to, amongst other things; the local evidence of need; the requirement to deliver mixed and neighbourhoods; and the nature and location of the site, with a higher proportion of one and 2-bedroom units generally being more appropriate in locations which are closer to a town centre, station or with good public transport access and connectivity.
18. Although the appellant suggests that the proposed mix is in keeping with those within the parade, I have been provided with no compelling evidence regarding the housing mix within the area. Even if there is a high proportion of one bedroom and studio units locally, the approval of a further 5 such units would not contribute towards providing a range of housing sizes within the area or help to address the greater need for 2 and 3 bedroom market housing than one bedroom market housing, as identified within the Ealing Strategic Housing Market Assessment Update Report of Findings - 2018 (the SHMA).
19. The site is within reasonable proximity of a number of bus stops and a tube station and has a Public Transport Accessibility Level (PTAL) rating of 3. However, no compelling evidence has been submitted demonstrating that these factors make the site more suitable for the provision of studio and/or one bedroom accommodation only, or that the construction of purpose built one bedroom and studio apartments would contribute to reducing the pressure for the subdivision of larger homes. Similarly, I have been presented with no cogent case for why its position within a primary retail frontage makes it more suitable for studio and/or one-bedroom units only rather than a mix of accommodation containing some larger units.
20. I have previously found that the accommodation would not provide appropriate living standards for future occupiers. It is unlikely to therefore be attractive to those wishing to downsize, and it would not optimise the housing potential of the site.
21. For the reasons given above, the proposed development would have a harmful effect on the supply of a range of dwelling sizes to reflect the local need within the borough. In this respect it would conflict with Policy H10 of the London plan which indicates that schemes should generally consist of a range of unit sizes. It would also fail to reflect the need for a range of housing sizes, identified within the SHMA.

Employment opportunities

22. The appeal site is located within a primary retail frontage, in an area within which a range of employment generating businesses operate. Although currently vacant, based upon the submitted evidence and my own observations on site, I understand that the building on the appeal site was last in use as a hot food takeaway establishment.
23. With some stated exceptions, policy 4A of the Local Plan requires that development proposals which would result in the redevelopment of an employment site for a non-employment use, may be permitted only where it

can be demonstrated that the site is not viable for re-occupation; it is not viable for an alternative employment use; and it does not constrain or undermine neighbouring employment uses. From the evidence I am unable to conclude that any of the policy 4A exceptions would apply.

24. The appellant confirms that the commercial unit has remained vacant from 2017 to present. However, there are other operational retail and commercial businesses within the area, including within the primary frontage that the appeal site forms part of. No compelling evidence has been presented demonstrating that it would not be viable to reoccupy the commercial unit for either a hot food takeaway or other employment generating use. The unjustified loss of an employment generating property, would have a harmful effect upon the local economy.
25. Planning permission was previously granted which authorised the loss of the commercial use of the site. However, it has not been demonstrated that this permission was implemented or that it is still capable of being implemented. As a result, I do not consider that it represents a fall-back option. Whilst the Local Plan remains the same as at the time the permission was granted in 2017, I have found that the development proposal would conflict with the requirements of policy 4A of the Local Plan, and that the loss of the employment generating property would be harmful to the local economy.
26. For the reasons given above, the development proposal would result in an unjustified reduction in the amount employment land within the borough. Consequently, and in respect of this main issue, it would conflict with the aim of policy 4A of the Ealing Development Management Plan 2013, to prevent the loss of employment uses, unless the site is not viable for re-occupation.
27. Policy GG1 of the London Plan seeks to ensure that London continues to generate a wide range of economic and other opportunities to ensure that London is a fairer more inclusive and more equal city. Given that the development would not widen the range of economic activities within London, this policy is not determinative to this main issue.

Character and appearance

28. The appeal site is located within a built-up area, fronting on to a busy road. The character and appearance of the area is informed by the busy Boston Road and the wide range in the design, massing and appearance of the buildings that front on to it. The single storey building within the appeal site is currently vacant and in a state of dis-repair. The Council indicate that it is not of sufficient architectural merit as to warrant its retention.
29. The roof form of the proposed development would differ from that of the neighbouring building at number 165, and the upper section of the side wall and the roof of the proposed building would extend above the eaves of number 165. The section of upper wall and roof of the building closest to the front of the site would be clearly visible within the carriageway and pavement forming part of Boston Road. However, the ridge height would be similar to that of the neighbouring buildings at 163, 165, 165b and 165c Boston Road. Given this, and the absence of any prevailing roof form within the buildings at 163, 165, 165b and 165c, users of the public realm are no more likely to notice the juncture between appeal site and number 165, than other junctures between buildings within the area.

30. Although projecting further to the rear of the site than previously approved development, intervening neighbouring buildings would prevent all but glimpses of the rear of the proposed development being visible from vantages within Boston Road and nearby public spaces. As such, and in terms of this main issue, the proposal would not represent the over-development of the site.
31. Waste and recycling storage facilities would be provided within an open topped fenced enclosure to the front of the building. Although a snap-shot in time, during my site visit I noted the presence of structures and bins to the front of number 165. The positioning of a well-designed bin store enclosure to the front of the site would not therefore be atypical or harmful to the established character and appearance of the area.
32. For the reasons given above, I conclude that the proposed development would not have an unacceptable harmful effect on the character and appearance of the area. In this respect, it would not conflict with the aims of policies D3 and D4 of the London Plan; 1.1 and 1.2 of the Core Strategy; and 7.4 and 7B of the Local Plan, where they seek to ensure that development is of a high standard of design that responds to the site's context, and complements the scale and building patterns within the area. In respect of this main issue, it would also not conflict with the objective of chapter 12 of the Framework to achieve well-designed places.

Planning Balance

33. There would be a benefit from the creation of 5 new residential flats on a small site, which is supported by London Plan Policy H1 and paragraph 69 of the Framework. The site has a reasonable access to public transport and the provision of cycle storage will contribute towards promoting sustainable travel. It would also result in the re-development of a currently unattractive and vacant building. However, given the scale of the scheme any benefits would be small, and as such the weight that can be attributed to them is limited.
34. I attribute great weight to the failure of the scheme to provide adequate living conditions for all future occupiers, and to the harm that it would cause to the living conditions of occupiers of number 163 Boston Road. I also attribute great weight to the failure to supply a range of dwelling sizes to reflect the local need within the borough. More limited weight is attached to the unjustified loss of employment land within the borough, because only a single small unit would be lost. In this case the benefits would be clearly outweighed by the harms which would be caused.
35. I have found that the development would not harm the character and appearance of the area. However, the absence of harm related to this matter does not justify a different conclusion being reached regarding the acceptability of the development.
36. The proposed development conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

Conclusion

37. For the reasons given above, the appeal is dismissed.

V Simpson

INSPECTOR