



Appeal Decision

Site visit made on 3 October 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th November 2023

Appeal Ref: APP/N5660/W/23/3320225

Bray Court, Madeira Road, Lambeth, London SW16 2DE

- 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 Safeer Malik of Morning View Capital Ltd against the decision of the London Borough of Lambeth.
 - The application Ref 22/04084/FUL, dated 14 November 2022, was refused by notice dated 25 January 2023.
 - The development proposed is erection of a new build 1 bedroom bungalow.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the appeal form differs from that on the planning application form. No confirmation has been provided of an agreed change, and therefore I have used the description as set out on the planning application form.
3. The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (Statutory Instrument 2009/452) (as amended) allows an opportunity for those who commented upon a planning application to be notified of an appeal and make further representations. The redaction of names does not result in an inability to identify whether fresh points are made, as such matters can be ascertained by considering the content of the representations made at an appeal with those made in the determination phase. I am therefore satisfied that there has been no procedural unfairness to the appellant in this case.

Background and Main Issues

4. The Council's decision notice details seven reasons for refusal. The second and fourth reasons for refusal address living conditions for future occupiers, and therefore I have grouped these issues together. The fourth reason for refusal refers to privacy, but from the evidence before me, the Council's case does not explicitly reference this issue. Therefore, the main issues are:
 - a) the effect of the proposal upon the living conditions of neighbouring occupiers at Bray Court, with particular regard to communal amenity space;
 - b) the effect of the proposal upon the character and appearance of the area;
 - c) whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to internal storage, noise and disturbance, and levels of sunlight and daylight;

- d) the effect of the proposal upon biodiversity;
- e) the effect of the proposal upon existing trees; and
- f) the effect of the proposal on the operation of the highway network with particular regard to parking provision.

Reasons

- 5. Bray Court is a three-storey block of flats, well set back from the highway with a deep intervening area of hardstanding to Madeira Road. This area includes parking bays and areas for refuse storage.
- 6. The appeal site is a triangular shaped piece of land adjacent to Bray Court and Russell's Footpath, which leads from Madeira Road to nearby Streatham Station. It is bounded by chain link fencing on the side to Russell's Footpath and by taller metal fencing to the boundary adjacent to the railway. The remaining side faces towards neighbouring Bray Court and at my visit, this boundary was marked by a series of thin wooden battens set in the ground at intervals with an intervening rope.

Living Conditions – neighbouring occupiers

- 7. The main parties are in dispute as to whether Bray Court is the host property to the proposal. The Council's report regarding the planning application references historic maps which are not before me. In summary, the Council's position is that Bray Court was built sometime after the 1950s following the demolition of Madeira Hall, and this is not contested by the appellant. Nevertheless, there is little substantive or compelling evidence before me to demonstrate the particular circumstances of the appeal site. Moreover, it is not the role of an Inspector dealing with a s78 appeal to determine such matters.
- 8. The surface of the appeal site is predominantly laid to lawn, which runs contiguously with other grassed areas around Bray Court to its side and rear elevations. The edges of the site towards the railway and Russell's Footpath include shrubs and trees. The appeal site appears as part of a contiguous open area around Bray Court and thus forms an important part of its setting, regardless of whether or not residents have access to it. The open setting of Bray Court would be lost as a result of the development.
- 9. In my judgement, the appeal site serves as part of the communal amenity space to Bray Court in both physical and functional terms. While the land itself is free of built form, it does not appear as vacant or underutilised land as the appellant suggests.
- 10. The appeal site forms a significant proportion of the existing grassed space around Bray Court. Consequently, the proposal would result in the loss of a significant area of communal amenity space to Bray Court. In such circumstances, Policy Q14 of the Lambeth Local Plan 2020-2035 (2021) (LLP) seeks (among other things) to ensure that requirements for external amenity space for existing occupiers are met, and there is no compelling evidence before me to demonstrate that the proposal would do so. The remaining grassed areas available to occupiers at Bray Court would be narrow/shallow and thus they would be of limited usability.

11. I therefore conclude that the proposed development would unacceptably harm the living conditions of neighbouring occupiers at Bray Court, with particular regard to communal amenity space. The proposal conflicts with Policies Q2, Q14 and H5 of the LLP, which when taken together seek to ensure that development is of a high-quality design in accordance with required standards, including those for external amenity space for existing occupiers.

Character and appearance

12. The appeal site is in an established residential area, which is characterised by a mix of property forms including detached, semi-detached and terraced forms, with variety in terms of height, including single storey forms fairly close to the appeal site near the corner to Russell's Footpath and Madeira Road. However, the prevailing character is of brick two or three storey properties with hipped and gable roof forms, with a small degree of variety in brick colour between reds and browns. This provides a strong harmonising appearance to the area, despite the occasional use of render.
13. Bray Court is immediately adjacent to the appeal site, and its fairly simple design and flat roof contrasts with the grander adjacent three storey forms at Melrose Mansions (Nos 78 and 80 Madeira Road), with their extensive architectural detailing.
14. The proposed dwelling would be single storey, about 3m high, with a floorspace of about 52m² and it would be sited well behind the principal elevation to Bray Court. It would thus be a much smaller built form to that prevailing in the immediate and wider area, and significantly smaller in scale, bulk and mass than its immediate neighbour. I note that its triangular plot shape would be out of step with the more regular shaped plots within the wider area, and while its proposed flat roof would harmonise with that of Bray Court, it would be at variance to the wider prevailing character of hipped and gable roofs.
15. The proposed dwelling would be of grey cement board cladding, which is a highly discordant material to the predominant red and brown brick, and to Bray Court, Melrose Mansions and the properties along Hopton Road which can be seen from Russell's Footpath and the appeal site. The proposed materials include light grey solar shade eaves which are not in keeping with the wider area, in contrast to the anthracite fenestration, which is not uncommon in the wider area. There is little in the way of any other architectural detailing to the proposed dwelling. When considered as a whole, the proposed design would appear incongruous to the character and appearance of the immediate and wider area. The visual representations before me reinforce my findings in this regard.
16. The appellant draws my attention to the Council's reason for refusal on this matter, which references the host building and the Council considers this to be Bray Court. Given my findings on the first main issue, I agree with the Council in this regard. Even if that were not the case, the proposal would still fail to respect the character and appearance of the immediate and wider area as I have set out above.
17. The fact that the proposal would be behind a proposed 1.8m/2m fence does not set aside its discordance to the wider character and appearance of the area. The proposal would still be seen from the well-used Russell's Footpath and from the rear elevations of properties along Hopton Road.

18. I therefore conclude that the proposal would harm the character and appearance of the area. It conflicts with Policies Q5, Q7 and Q8 of the LLP. Taken together, these policies seek to ensure that development is of quality design; respects and preserves local distinctiveness and responds positively to local context, taking account of various factors including but not limited to detailing, bulk, scale, mass, and siting.

Living Conditions – future occupiers

19. The main parties are in dispute as to the proposed quantum of internal storage. The Council states that some 0.89m² is proposed when measured off plan. The appellant states that the proposal includes some 2.5m² of in-built storage, to include space within the hallway, and a large built-in wardrobe within the bedroom. Such provision would accord with the requirement of at least 1.5m² as set out in *Technical housing standards – nationally described space standard*. However, drawing reference KAD-08-A-PB-Rev.A details only one area to the hallway annotated as storage and there is no annotation depicting a wardrobe. I therefore cannot be certain that the proposal as submitted would deliver sufficient space to meet the required standard.
20. The proposed dwelling would be sited very close to the railway, which has frequent services to and from nearby Streatham Station. From the evidence before me, including visual representations, the proposed dwelling appears to be of a less robust form of construction than neighbouring brick-built forms along the railway line, including Bray Court. It is therefore reasonable to consider whether the proposed dwelling would be of a sufficient construction to ensure that future occupiers would not experience unacceptable levels of noise and disturbance, including vibration from passing trains.
21. While the proposed glazing would not directly face the railway, and it is suggested that 'increased density' materials could be used, there is no substantive nor compelling evidence before me to demonstrate that the proposal would not result in unacceptable levels of noise and disturbance to future occupiers. Even if I were to accept the appellant's position that any further issues with sound transmission could be mitigated by an increased density to external walls, which is not demonstrated, there is no certainty that this would not result in a material change to the internal or external dimensions of the proposed dwelling.
22. The proposed dwelling would be sited well behind the principal elevation of the three-storey building of Bray Court. The appellant states that the plot would be bounded by a fence of 1.8/2m high. The edges of the appeal site towards the railway and Russell's Footpath include a number of well-established trees and shrubs, with further vegetation including trees beyond the boundary along the railway line. In this regard, the appeal site is very well shaded, and there is little evidence before me on the nature of any proposed landscaping scheme.
23. The proposed dwelling would be dual aspect and served by fenestration to facilitate daylight and sunlight and it would be served by some 100m² of private amenity space. However, due to its relationships to the tall structure of Bray Court and existing trees, together with its proposed means of enclosure, it would be subject to a significant degree of overshadowing. In the absence of any evidence to demonstrate otherwise, I cannot be certain that the proposed dwelling and its proposed amenity space would be served by adequate levels of daylight and sunlight.

24. I therefore conclude that the proposal fails to demonstrate acceptable living conditions for future occupiers, with particular regard to internal storage, noise and disturbance, and levels of sunlight and daylight. The proposal conflicts with Policies H5 and Q2 of the LLP, and Policy D6 of the London Plan 2021, which when taken together, seek to ensure that new housing development is of a high-quality design, fit for purpose and meets relevant standards.

Biodiversity

25. The proposed dwelling would have a green roof. The appellant states that the roof would have a multiple diversity of species to counter the loss of mono-culture grass, and the proposal would result in a net biodiversity loss/gain of 0, but there is no substantive or compelling evidence to demonstrate this.
26. Furthermore, the appeal site is in proximity to a Site of Importance for Nature Conservation (SINC), which is a section of railway lineside with associated habitats. From the evidence before me and my visit, the proposal would displace not only a substantial portion of grass, but also other vegetation near the railway line. There is very little information on any proposed hard or soft landscaping that might be implemented.
27. Therefore, having regard to the above, and in the absence of any information to demonstrate otherwise, I cannot be certain that the proposed development would not result in any adverse ecological impacts to the SINC or surrounding areas, and if so, whether any mitigation would be necessary and appropriately secured.
28. I therefore conclude that it has not been demonstrated that the proposed development would not result in loss, reduction, or significant harm to biodiversity value. The proposal conflicts with Policies EN1 and Q9 of the LLP, which seek to ensure that development meets requirements for green infrastructure and their function; and to prevent development that results in loss, reduction or significant harm to the nature conservation or biodiversity value of an open space (including SINC), unless adequate mitigation or compensatory measures are made.

Trees

29. The appeal site includes several trees in proximity to the proposed dwelling. The proposed dwelling would have a screw pile foundation of some 2-3m depth. There is no compelling evidence before me to demonstrate that such a foundation would not harm existing trees, nor that any soakaway would serve to support them. I therefore cannot be certain that the proposed development would not result in any harm to nearby trees.
30. I therefore conclude that the proposal fails to demonstrate that existing trees would not be harmed by the development. It conflicts with Policy Q10 of the LLP, which seeks to ensure that existing trees are satisfactorily protected from construction impacts.

Parking

31. Policy T6 of the LLP requires that developments are permit free where the development has a Public Transport Accessibility Level (PTAL) score of 4-6, or where the development is within an existing or planned controlled parking zone

- (CPZ). Policy T6 also requires the provision of car club and cycle club memberships for new residential development.
32. The appeal site has a PTAL score of 5, which is considered very good. Although the site is not within a CPZ, the Council is continuing to expand its CPZs and contends that it is highly likely that the site would fall within a CPZ in the future. Furthermore, the Council has identified that the area is in parking stress, although there is no car parking survey before me. While only a snapshot, I note that the area was well parked at my visit.
33. The appeal scheme does not include any additional off-street parking provision. The appellant suggests that future occupiers would use the existing car parking at Bray Court, but there is no substantive evidence before me to demonstrate that this would not displace other vehicles to the highway. In that event, existing parking stress would be increased.
34. Therefore, the proposal would generate further demand for on-street parking, thus exacerbating the existing pressure on parking in the area. Due to the appeal site's good accessibility and the existing parking stress, the proposed development should be car free.
35. The Planning Statement sets out that no additional parking is proposed, and that *"an electric vehicle charging point would be linked to a 'Zip' car club space will be added to the existing spaces at Bray Court"*. The submitted plans do not precisely demonstrate the location of these matters. The statement also sets out that a s106 agreement is expected, but there is no such agreement before me.
36. The appellant draws my attention to a previous planning application for prior approval (ref 22/03347/P20) for a scheme to add two additional storeys of accommodation to Bray Court, which was refused. The appellant states that the Council advised that provision for a car club was not required under that application, but there is no evidence before me to demonstrate this. The provision of a private cycle store is not sufficient to meet all of the requirements of Policy T6.
37. I therefore conclude that in the absence of a suitable mechanism to ensure that the proposal would be delivered as a car free development, and to deliver the required provision for car club and cycling club memberships, future occupiers would be more likely to use private vehicles rather than sustainable forms of transport. Consequently, the proposal is likely to increase pressure for car parking and thus harm the operation of the highway network. The proposal conflicts with Policies T1, T3 and T6 of the LLP, which when taken together, seek to reduce reliance in car ownership, private car trips and promote sustainable modes of transport.

Other Matters

38. The proposed dwelling would be in a suitable location for housing, and it would assist in meeting housing supply and wider housing needs.
39. The appellant states that the proposed dwelling would be highly sustainable, in that it would be constructed to exceed the thermal insulation elements of the regulations and would include 2kW of solar panels to its roof. However, there is little evidence before me to demonstrate this. The roof is also proposed as a green roof. In this regard, there is a significant lack of clarity within the

proposal, and therefore I cannot be certain as to its sustainable credentials. If I were certain, a sustainably constructed dwelling would assist in meeting the demands of climate change, but such a benefit would be of limited weight.

40. A range of other matters have been raised by interested parties. However, as I am dismissing the appeal on the main issues, and consideration of these matters will not alter my decision, it is not necessary for me to address them directly.

41. My attention is drawn to matters regarding rights of access to the appeal site. However, these are private civil matters and do not impact upon my consideration of the appeal, and nor does the conduct or character of any party. Matters pertaining to the handling of the planning application are outside my authority.

Conclusion

42. For the reasons given, I conclude that the development conflicts with the development plan, read as a whole. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with it, and therefore the appeal is dismissed.

J Moore

INSPECTOR