The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2024

Appeal Ref: APP/G5180/W/23/3325268
121-125 Elmers End Road, Beckenham, Kent BR3 4SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by K Taylor against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/22/03363/OUT, dated 1 August 2022, was refused by notice dated 25 January 2023.
- The development proposed is described as "part demolition of existing building 125 Elmers End Road. Addition of ground floor commercial unit at 123 Elmers End Road with residential units to first floor and second floor. Erection of new roof to 121 and conversion to residential use of roof. Erection of residential units to first floor and second floor of 125 Elmers End Road."

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made by K Taylor against the Council of the London Borough of Bromley. This is the subject of a separate decision.

Preliminary Matters

3. The application was submitted in outline, the application form specifies that access, layout, scale and appearance are to be considered at this stage, with landscaping as a reserved matter. In view of this, and notwithstanding that the plans are annotated as 'illustrative', consistent with the Council, I have also assessed the submitted plans as part of the appeal proposal insofar as they relate to matters to be considered at outline stage. I note that the appellant has not raised issue with the Council's approach in this respect, and in any event, it would not be possible to condition those matters which are specifically sought at this outline stage. I have dealt with the appeal on this basis.

4. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in this planning appeal. The main parties have been given the opportunity to comment on changes to the Framework, and I have determined the appeal on this basis.

5. I have been made aware that outline planning permission[1] (relating to appearance and scale) has been granted by the Council on 18 July 2023 for "construction of roof extension/alteration to No. 121 Elmers End Road to

[1] Application reference 23/01941/OUT

provide enlarged roof space in conjunction with existing flat, construction of part one/part three storey infill extension to No. 123 (with dormer projections to front and rear) to provide ground floor commercial space and three upper storeys of residential accommodation Parking spaces at front and rear and cycle and refuse storage". The planning permission relates to No's 121 and 123 Elmers End Road only, the approved scale and appearance details in respect of these two properties are the same as those proposed on this appeal scheme. Consequently, my assessment of the appeal scheme will be limited to those matters that have not already been approved at No's 121 and 123.

Main Issues

6. The main issues are:

- The effect of the proposal upon the character and appearance of the area, with particular regard to its design, siting and scale;
- Whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to the size of the internal accommodation, privacy and outlook, and outdoor space; and,
- The effect upon highway safety, with particular regard to access and parking.

Reasons

Character and appearance

7. The appeal site contains three terraced properties on Elmers End Road; a three-storey property (No. 125) on the corner of both Elmers End Road and Mackenzie Road; No. 123 which comprises a ground floor canopy; and No. 121 a three-storey property. The properties have commercial uses at ground floor, which are part of a parade of other units in that same terrace, No's 121 and 125 have residential uses above. Elmers End Road rises on its approach to the appeal site from underneath a railway bridge, when travelling towards Anerley Station. This makes the front and sides of No. 125 particularly prominent from Elmers End Road. The side of No. 125 faces onto Mackenzie Road, which comprises mainly two storey residential properties that are set back from the pavement edge, with some having parking spaces in front of them. Including the set back from the pavement edge on the side of No 125, there is a sense of openness along this part of Mackenzie Road, particularly near to the appeal site.

8. The scale and appearance of the proposals relating to No's 121 and 123 are identical to those approved by the Council,[2] as such I shall limit my assessment in respect of those matters to No. 125.

9. The proposed changes to No. 125 would significantly extend the scale of the property, both in terms of its height by adding a further storey of accommodation and its width which would in part take the building up to the pavement edge along Mackenzie Road. There would also be extensions to its rear.

[2] Application reference 23/01941/OUT

10. Notwithstanding the disjointed appearance of the appeal site, I share the same concerns outlined in the earlier appeal decision[3] regarding the development of the open space between the side of No. 125 and the pavement edge. Whilst this is a much different scheme to the earlier appeal proposal, it still involves substantial development up to the pavement edge that would be significant in its scale in such close proximity to Mackenzie Road and its junction with Elmers End. Furthermore, it would significantly add to the mass and bulk of the building making it a very domineering feature at this end of Mackenzie Road, which would harm views along both roads, and erode the open feel in this immediate area. I note that the building has been set in along part of its boundary with Mackenzie Road, however, this does little to offset the harm arising from the bulk and mass of the main part of the building.

11. Unlike No. 125 at present, which has a diagonal design feature to its front corner that makes a positive contribution to the immediate area, the proposal would have no such softening feature to its corner. Moreover, because of its diagonal alignment with Mackenzie Road, it would be angled so that its front side was wider and tapering along part of its side elevation, which would appear discordant and add to the identified harm. Along with its poorly fenestrated and prominent side elevation, which would not positively add to the local character.

12. I have considered the other examples of corner development referred to in the documentation. Due to a combination of their lower scale, differing setbacks of properties nearby, road alignment, and their built context, these examples are not entirely comparable with this appeal proposal and its effect upon the character and appearance of the area. Consequently, those examples did not lead me to conclude differently on this appeal proposal.

13. I recognise that the proposal would comprise an effective use of land, however this cannot be at the cost of other key considerations, as such this argument would not outweigh the above identified harm.

14. I therefore conclude that the proposal would be harmful to the character and appearance of the area and conflict with Policy D3 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP) and Policies 4, 8 and 37 of the Local Development Framework, Local Plan, London Borough of Bromley, dated January 2019 (BLP), that amongst other things requires a high standard of design in new developments that positively responds to local distinctiveness and character, contributes to the existing streetscene, physical context, density and provides a 1 metre separation from its side boundary. In addition, the proposal also conflicts with paragraph 135 of the Framework which requires development to add to the overall quality of an area, be visually attractive and sympathetic to local character.

Future living conditions

15. As layout details have not been approved regarding No's 121 and 123,[4] I shall have regard to the proposals before me in my decision in this respect.

16. Proposed Flat 1 (No. 123), would have a floor area of 47.13 square metres, below the minimum size of 50 square metres for a 2-bed flat, as set out within Policy D6 of the LP and the Technical Housing Standards – Nationally Described

[3] Ref: APP/G5180/W/20/3264344
[4] Application reference 23/01941/OUT

Space Standard, March 2015 (NDSS). The proposed flat would be significantly below the minimum size, which are there to ensure adequate internal space is provided to create adequate living conditions for future occupiers. Overall, the size of the two-bedroom flat would be sub-standard.

17. The appellant has said that flat 1 (No. 123) could be changed to a one-bedroom studio flat, to comply with Policy D6 of the LP and the NDSS in these respects and suggested this be conditioned with the application being made in outline. However, as layout details have been provided, which the appellant has asked to be addressed at this stage, it is not possible to condition any layout changes. In addition, no amended floor plans have been provided in this respect, consequently I must assess the proposed plans before me.

18. To the rear, there would be a degree of overlooking between a living/dining room window (flat 1 No. 123) and a bedroom window (flat 1 No.125) and between bedroom windows (flat 2 No. 123 and (flat 2 No. 125). Although this would be at oblique angles, the diagonal alignment of the inner side wall of No. 125, and their very close proximity towards one another, would not provide adequate privacy or outlook for future occupiers of these respective rooms and harm their future living conditions. Again, whilst the appellant has stated they are willing to consider changes in this respect, none have been formally proposed and I must assess the plans submitted as part of the matters in question.

19. Policy D6 of the LP requires a minimum ceiling height of 2.5 metres for 75% of the floor area of each flat. The submitted section drawings do not adequately show that flat 3 (No. 125) would achieve this, particularly given the roof slopes on the majority of its sides. This would likely result in significantly constrained internal accommodation and harm the living conditions of future occupiers. In terms of the other proposed top floor flats, and notwithstanding, the window heights, the section drawings indicate that the other proposed flats could achieve this ceiling height requirement.

20. The shape of the proposed living/dining areas proposed for flats 2 and 3 (No. 123) provide adequate space for single occupiers. Whilst the size of both flats would be 0.24 metres square below the minimum size set out in Policy D6 of the LP and NDSS for a 1 bed flat. However, given that the shortfall in area is very minor in this case, it would not be objectionable, and the flats would provide adequate living conditions for future occupiers.

21. Flat 1 (No. 123) has two bedrooms, one of which meets the minimum width of 2.75 metres based on the dimensions on the proposed floor plans. Furthermore, it is unclear from the submitted information whether bedroom 2 meets the 11.5 metres square bedroom size. However, I am satisfied it would be of a size and shape that could be used as a double bedroom and thereby meet the objective of Policy D6 of the LP of providing at least one double bedroom in a 2-bedroom flat.

22. Although the proposed ground floor glazed kitchen doors serving flat 1 (No. 123), would look towards the rear access path and communal area, nevertheless for its use as a kitchen, it would have a satisfactory outlook and there would be no unacceptable privacy issues for future occupiers. Whilst small, the proposed kitchen would be of an adequate size.

23. I also found the living/dining area for flat 1 (No. 125), would provide adequate space for a dining table and seating area. In addition, the roof light serving flat 3 (No. 125) would provide a satisfactory outlook for future occupiers, and although its height above floor level is unclear, means of escape would be addressed at Building Regulations stage.

24. Policy D6 of the LP sets out a requirement for 5 square metres of private amenity space for each 1-2 bed flat, with an additional 1 metre square for each occupier. In this case it has not been possible to provide private amenity space for each unit, and a communal space, said to be of some 70 metres square is provided to the rear of the building also behind a fence facing Mackenzie Road.

25. The communal space would mostly be a private area for the occupiers of the proposed flats, it would provide a shared area that in total was above their collective private amenity space minimum size requirements. In the context of this urban area, this space could function well as a communal shared area and provide satisfactory outdoor space with adequate daylight, for all occupiers, including those with children. Whilst some occupiers would have to access it from the side gate on Mackenzie Road, this would be a very short distance from the proposed flats.

26. I therefore conclude that whilst in many respects as detailed above, the proposals would provide satisfactory living conditions for future occupiers, in respect of the size of flat 1 (No.123), the ceiling height of Flat 3 (No. 125) and the privacy issues between flats 1 and 2 (No. 123) and flats 1 and 2 (No. 125), the proposal would not provide satisfactory living conditions for future occupiers. In doing so, I find the proposal would conflict with Policies 4 and 37 of the BLP insofar as they require a high standard of layout that respects the amenity of future occupiers in terms of privacy, and by providing healthy environments. In addition, there would be conflict with Policy D6 of the LP, that amongst other things; requires a high-quality design with adequately-sized rooms; a minimum of 75% of a dwelling's floor area to have a ceiling height of 2.5 metres or more (flat 3 No. 125); and for a 2 bed flat to have a minimum of 50 square metres in size (flat 1 No. 123). In addition, flat 1 (No. 123) would also conflict with the minimum area for a 2-bedroom flat of 50 metres square as set out in the NDSS. Furthermore, due to the identified conflict above, the proposal would not comply with paragraph 135 of the Framework that requires a high standard of amenity for existing and future users.

27. Although there would be a degree of conflict with Policy D6 of the LP and NDSS in terms of the minimum floor area for flats 2 and 3 (No. 123), I am satisfied that the proposal would in this particular case be consistent with its objective of providing adequate internal space for future occupiers of these one-bedroom flats. Whilst there may be some conflict with Policy D6 of the LP in terms of the size of bedroom 2 of flat 1 (No. 123) it would meet the objective of providing a double bedroom for that 2-bedroom flat.

28. The Council has referred to the proposal being contrary to the Mayor's Housing Supplementary Planning Guidance, however, based on the very limited information provided it has not been demonstrated that there would be any conflict.

Highway safety

29. The appeal site has a PTAL rating of 5, there are parking restrictions along Elmers End Road and on the corner of Mackenzie Road adjoining the appeal site.

30. Policy 30 of the BLP sets out the residential parking requirements that normally apply, which would be a minimum of 5.1 parking spaces and a maximum of 7.5 parking spaces for the residential development proposed in this case. Nevertheless, the Council has accepted 0.5 space for each unit. It is recognised that the wording of Policy 30 allows some flexibility and that there is no dispute over the parking provision, I see no reason to disagree.

31. There are 3 no. spaces proposed to the side of the appeal site, accessed from Mackenzie Road, which would fulfil the required parking spaces for the residential flats. Whilst these spaces would interrupt on-street parking areas, parking on the highway is not an unqualified right.

32. Turning to the parking for the commercial units, the appellant has stated that 8 parking spaces are available, however no parking layout plan of this area has been provided.

33. I saw on my site inspection that the forecourt area is used for parking, understood to be by a car sales use, with a crossover to the front side from Mackenzie Road and an additional crossover mainly in front of No. 121. To the front of the site are metal barriers preventing access to the forecourt on the appeal site, and also bollards on the pavement that prevent vehicular access onto and over the pavement. The proposed extension to No. 125 would likely make movements over the crossover from Mackenzie Road very restrictive.

34. Although the appellant has said the metal barriers on the appeal site are to be removed, it is unclear how vehicles would access, turn and re-enter the highway and what level of parking provision would be provided, particularly given the bollards on the pavement would remain. The display and parking of cars by the car sales use would likely all be under the same control, whereas the use of the space by multiple unconnected users would not allow the same degree of parking. The existing site arrangements would mean vehicles could be blocked in by others, and could cause reversing into the highway, contributing to congestion, which could be harmful to highway safety.

35. As the appellant has asked for both access and layout to be assessed at this stage, the information submitted does not show adequate access and parking layout for the commercial uses. Furthermore, I saw that there is considerable pressure for parking along Mackenzie Road, which had both limited parking and available space. In addition, no parking stress survey has been provided to demonstrate that there is space locally to accommodate the parking from the commercial uses.

36. I note that the site is within a well-connected area and the appellant's intention to provide cycle parking provision, however these points do not justify the proposal without a satisfactory access and parking layout for the commercial units.

37. Accordingly, there is inadequate information to demonstrate that the proposal would not be harmful to highway safety, the proposal is contrary to Policy 30 and 32 of the BLP that amongst other things, seek to ensure that there is

satisfactory parking, and that road safety is not significantly adversely affected. For the same reasons the dismissal of the appeal would also be consistent with paragraph 116 of the Framework that requires development to create places that are safe, secure and minimise the scope for conflicts between pedestrians.

Other Matters

38. I note the planning history for the appeal site, and I have had regard to this insofar as it relates to the matters before me on this appeal.

39. It is noted that the appeal site is not in a conservation area or in the curtilage of a listed building and the appellant's comments that building work would be undertaken to a high standard. However, these are neutral matters that neither weigh in favour or against the proposal.

40. My attention has been drawn to parts of the Framework and development plan policies that are said to provide support for the proposal, such as relating to making an effective use of land, boosting housing supply, supporting economic development and looking favourably at proposals. These points are noted, however, the development plan and the Framework must be read as a whole, and in this case the proposal has been found to conflict with other parts of the development plan and national guidance.

Planning Balance and Conclusion

41. The Council has stated following an appeal decision[5] that it has 3.38 years of housing supply as of August 2023. As such the Council does not have a 5 year supply of housing. I attach considerable weight to the lack of housing supply. In such circumstances, as there would be no identified conflict with policies referred to in footnote 7 of paragraph 11 of the Framework, paragraph 11 d) ii, applies which states permission should be granted unless the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

42. The proposal would make an effective use of land and deliver housing on a small and medium sized site, which would add to Bromley's overall housing supply in this well-connected area. However, taking into account the approved development at No's 121 and 123,[6] the net additional 2 flats of residential accommodation would make a limited contribution to the Government's objective of significantly boosting the supply of homes. There would also likely be a relatively small contribution to the wider local economy following occupation of the residential accommodation. The extended commercial unit (discounting the already approved commercial unit at No. 123[7]), which is said to provide space for local businesses would provide economic benefits, although these would tapered though by its relatively small scale. There would also be economic benefits during the construction phase of the development. I give these collective benefits limited weight.

43. Against these benefits is the harm that would be caused to the character and appearance of the area, and in this regard the Framework at paragraph 135 makes it clear that developments should be sympathetic to local character and

[5] Appeal reference APP/G5180/W/23/3315293)
[6] Application reference 23/01941/OUT
[7] Application reference 23/01941/OUT

history. It also states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve and that development that is not well designed should be refused.[8] Furthermore, the proposal would conflict with paragraph 135 in terms of not providing future users with a high standard of amenity. In addition, there would be conflict with paragraph 116 that requires development to create places that are safe, secure and minimise the scope for conflicts between pedestrians, and with paragraph 115 that states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. I regard the identified harm from the above conflicts to be significant.

44. Accordingly, when assessed against the policies in the Framework taken as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

45. For the reasons outlined above, the proposed development conflicts with the development plan taken as a whole. There are no other considerations, including the Framework which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR

[8] Paragraph 139 of the Framework