



Appeal Decision

Site visit made on 23 January 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 MAY 2024

Appeal Ref: APP/G5180/W/23/3325964

8 Madeira Avenue, Bromley BR1 4AY

- 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 Banton against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/23/00288/FULL1.
 - The development proposed is demolition of existing dwelling and erection of four storey building comprising four x one and three x three bedroom flats with underground parking for five vehicles and space refuse store and cycle parking on frontage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was made, the Government published the revised National Planning Policy Framework (the Framework) and the 2022 Housing Delivery Test results. In the interests of natural justice, the main parties have been invited to provide comments on the relevance of this to the appeal. I have taken any comments received into consideration in the determination of this appeal.

Main Issues

3. The main issues are:
 - The effect of the proposal on pedestrian and highway safety having regard to cycle storage facilities, car parking provision and refuse arrangements,
 - Whether the proposal would provide a satisfactory standard of accommodation for future occupiers with regard to privacy, internal floor area and accessibility/adaptability,
 - The effect of the proposal on the residential character of the area, and;
 - The effect on the living conditions of the neighbouring occupiers at 1 – 6 Kimberley Terrace and 10 Madeira Avenue.

Reasons

Pedestrian and highway safety

4. The appeal site relates to a large plot with an existing footway crossing. There are parking restrictions on the road. A parking survey has not been provided.

Whilst just a snapshot in time, based on my observations at my site visit, the availability of on-street parking spaces is limited.

5. Four cycle parking spaces are proposed, which is below the 14 spaces that would be required. However, there would be sufficient space at the lower ground floor level to increase the cycle parking provision, which could be secured by condition.
6. Policy T6 of the London Plan 2021 (the LP) is clear in its intention to make car-free the starting point for new development, but this is in places that are well-connected by public transport. There is no substantive evidence before me to conclude that the appeal site falls within the 'PTAL 2 Outer London Opportunity Area'. Consequently, I have determined the appeal based on the Council's assertion that the appeal site has a PTAL score of 1b.
7. For this development, the minimum parking standards set out within the Bromley Local Plan 2019 (the BLP) require nine parking spaces and the maximum parking standards set out in the LP require 11 spaces. Five parking spaces are proposed which is below the minimum. The proposal would therefore be likely to increase the competition for on-street parking spaces, in an area where the availability of on-street parking spaces is limited. Increased demand would increase parking stress and consequent illegal or unsafe parking, which would be harmful to pedestrian and highway safety.
8. Driving in and out of the parking spaces would likely require several manoeuvres because of the layout of the car park. In particular, manoeuvring in and out of 'space 4' in a forward gear would be difficult. I have no detailed dimensions on the size of the spaces, nor other evidence such as vehicle tracking plans to convince me otherwise. If parking spaces are too awkward or inconvenient to use, or perceived as such, drivers may park their cars on the road, further increasing the demand for on-street parking.
9. Neither main party has provided details of the size of the bin store nor any technical evidence to demonstrate the required level of provision for the proposal. The bin store is shown to be located at street level at the front of the site. As the requirements of the bin store are unclear, should it need to be enlarged, this would compromise the space at the front of the site. Without evidence to the contrary, a refuse store in this location could block sight lines which would endanger pedestrians. In light of this, it would not be appropriate to secure the provision of the bin store through planning condition as I cannot be sure that such a condition would be reasonable.
10. Drawing all of the above together, it has not been demonstrated that the proposal would not cause harm to pedestrian and highway safety having regard to the car parking provision and refuse arrangements. The proposal therefore conflicts with Policy 32 of the BLP and Policy T4 of the LP which seek to ensure that the impact of development does not lead to a significant adverse affect on road safety and that it does not increase road danger. These policies are also broadly consistent with the Framework as development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Standard of accommodation

11. The rear windows of proposed Flats 1 and 2 would be adjacent to the shared patio area. There would be direct views from the patio area into these flats. Future occupiers would therefore be unacceptably overlooked by their neighbours, to the detriment of their privacy.
12. The Nationally Described Space Standards 2015 (the NDSS) are minimum standards specific to the requirements of Policy D6 of the LP. Policy 4 of the BLP also expects new housing development to meet minimum space standards.
13. Even though the proposed floor plans show double beds in some of the rooms, in Flats 4 and 6, only one of the bedrooms in each of the flats would be big enough to be a double occupancy room. In Flat 7, two of the three bedrooms would be double occupancy rooms.
14. Whilst some of the head height in the bathroom of Flat 7 would be low in height, the remainder of the headroom in this flat would be acceptable.
15. Flats 3 and 5 are proposed as one-bedroom, one-person units. However, both bedrooms are big enough to be classed as double occupancy rooms. The floor areas would be below the expected minimum internal floor area for a one-bedroom, two-person unit and would not meet the NDSS. These flats would be too small and would not provide a comfortable and functional layout for future occupiers, irrespective of the floor-to-ceiling height, fenestration and lighting.
16. Policy 4 of the BLP and Policy D7 of the LP require ninety per cent of new housing to meet Building Regulations requirement M4(2) 'accessible and adaptable dwellings'. The planning application form indicates that this would not be met. It is not sufficiently clear as to why it is not possible, particularly as the development relates to a new building. There is limited substantive evidence before me to understand how the design of the proposed flats would compensate for not meeting M4(2). In the absence of such evidence, I cannot but conclude that the proposal would not provide suitable housing and genuine choice for London's diverse population.
17. For the above reasons, the proposal would not provide a satisfactory standard of accommodation for future occupiers with regard to the privacy of Flats 1 and 2, the internal floor area of Flats 3 and 5, and accessibility and adaptability. The proposal therefore conflicts with Policies 4 and 37 of the BLP and Policies D3, D6 and D7 of the LP. These policies, amongst other things, require all new housing development to be of a high quality design, that respects the amenity of future occupants and is fit for purpose, inclusive and provides accessible housing. These policies are consistent with the Framework in seeking to ensure development provides a high standard of amenity for future users.

Residential character

18. Although the surrounding area predominately consists of houses, there are examples of flats. The residential character of the area is therefore not exclusively of single occupancy houses. As the appeal site is in an urban area, some noise and disturbance is to be expected.
19. The Council has made some observations about the appearance of the proposed building. However, I do not consider that the design of the building would have a significant effect on the residential character.

20. Given the number of residential units proposed, there would be an increase in domestic paraphernalia such as refuse and recycling bins and bike storage. However, such items are not uncommon in residential areas.
21. I acknowledge that the level of activity associated with the proposal would be different to that associated with the existing house. The comings and goings would result in a more intense and varied pattern of activity than that associated with a family dwelling. Notwithstanding this, there is an extant planning permission for the erection of a pair of five-bedroom houses on the appeal site (the extant permission)¹. If this development were to be implemented, each of these houses could be occupied by a large family, generating a greater variation in pattern and activity than the existing house.
22. Even if I were to accept the proposal could lead to more than 20 persons living at the site, the proposal would remain to be a residential use. In the context of the area, this would be a compatible residential use.
23. I therefore find that the proposal would not cause harm to the residential character of the area and complies with Policy 4 of the BP and Policy D3 of the LP which amongst other things requires housing schemes to respect and respond to local character.

Living conditions of neighbouring occupiers

24. The appeal site boundary adjoins 1 – 6 Kimberley Terrace and 10 Madeira Avenue. Whilst there would be more external activity through the comings and goings, this would largely take place within the site frontage. There would be a good degree of separation from these surrounding neighbours. Given the number of properties along the road, some existing noise is likely to be generated by the various vehicular movements. The increase in vehicular movements from the proposal would therefore not be significant in the context of the road. Furthermore, this activity would either take place within the enclosed car park or on the road and the extent of the noise generated would give rise to significant disturbance.
25. The proposal would therefore not cause harm to the living conditions of the neighbouring occupiers at 1 – 6 Kimberley Terrace and 10 Madeira Avenue. Accordingly, it complies with Policy 37 of the BLP which amongst other things, seeks development that ensures the amenity of occupiers of neighbouring buildings is not harmed by noise and disturbance.

Other Matters

26. The Council's first reason for refusal refers to Policy D6 of the LP. However, this policy relates to housing quality and standards. It is therefore not determinative in my assessment of the effect on residential character and living conditions of neighbouring occupiers.
27. The extant permission could be implemented and there is no evidence before me to suggest that if this appeal does not succeed the extant scheme would not be built. Thus there is a greater than theoretical possibility that development will take place.

¹ APP/G5180/W/21/3279708.

28. The appeal proposal would have a similar impact on the residential character of the area and the living conditions of neighbouring occupiers, as the extant permission. However, the appeal scheme would fail to provide a satisfactory standard of accommodation for future occupiers and would cause harm to pedestrian and highway safety. Subsequently, the proposal would result in greater harm to future occupiers, pedestrians and the highway. This therefore limits the weight I give to the extant permission as a fall-back position and it would not outweigh the level of harm identified.
29. Regarding the other Council decisions, the case of Holly Trees, Avondale Road² relates to the redevelopment of a plot for flats and as such has some parallels with the appeal scheme. However, there is limited evidence to demonstrate that it is directly comparable to the scheme before me. The developments at 21 Bromley Avenue³ and 75 Clarendon Green⁴, are for single dwellings and are not directly comparable. As such, these decisions by the Council attract limited weight in support of allowing the appeal.
30. Turning to the appeal decisions which are referenced by the appellant, the 22 Crofton Lane appeal⁵ relates to the erection of two houses and the 2 Bromley Avenue appeal⁶ also relates to a scheme for flats. However, the main issue in each case related to the proposal's effect on the area's character and appearance. This is different to the issues raised in the appeal before me. Because of these differences, these appeal decisions are given limited weight in my consideration of this appeal.

Planning Balance and Conclusion

31. The Council cannot currently demonstrate a five-year housing land supply. Therefore, in accordance with the provisions of paragraph 11 d) ii. and footnote 8 of the Framework, permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
32. For the reasons set out above, the proposal would conflict with Policies 4, 32 and 37 of the BLP and Policies D3, D6, D7 and T4 of the LP. Whilst it does comply with other policies of the development plan, this conflict means the proposal conflicts with the development plan as a whole. I apportion significant weight to this conflict and the associated harm.
33. The proposal would be supported by parts of the Framework with regard to the efficient use of the land in meeting the need for homes, being sympathetic to the local character and ensuring to some extent the development provides a high standard of amenity for existing users. It would provide 6 additional homes, which is more than the extant permission. A limited amount of short-term employment would arise through the construction of the development and future occupants would bring trade to nearby shops and services. Taken together, these benefits attract moderate weight given the quantum of development under consideration.

² Council Ref: DC/22/04619/FULL1

³ Council Ref: DC/22/01222/FULL1

⁴ Council Ref: DC/16/03981/FULL1

⁵ Appeal Ref: APP/G5180/A/13/2193621

⁶ Appeal Ref: APP/G5180/W/22/3296844

34. When assessed against the policies in the Framework taken as a whole, the significant adverse impacts of providing an unsatisfactory standard of accommodation for future occupiers and the harm to pedestrian and highway safety would significantly and demonstrably outweigh the scheme's benefits. As a result, the presumption in favour of sustainable development does not apply.
35. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

L Reid

INSPECTOR