



Appeal Decision

Hearing held on 14 May 2024

Site visit made on 14 May 2024

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Appeal Ref: APP/G5180/W/24/3338687

35 London Road, Bromley BR1 1DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Martin McFadden, Novo Land & Development Ltd, against the decision of the London Borough of Bromley.
 - The application Ref is DC/23/02276/FULL1.
 - The development proposed is demolition of existing Class E office building and erection of replacement mixed use office and residential building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The reference numbers of the plans submitted with the appellant's appeal statement are different to those listed in the Statement of Common Ground (SOCG). The appellant confirmed at the hearing that the reference numbers had changed to account for a different presentation format, but the contents of the plans remained the same. A copy of the plans referred to in the SOCG with the updated reference numbers was provided prior to the hearing and both parties agreed that these were the plans that the Council made its decision on.
3. Since the submission of the appellant's appeal statement, planning permission has been granted on this site for the demolition of existing Use Class E office building and erection of replacement mixed use office and residential building comprising eight residential apartments¹. The appellant's appeal statement alludes to this application and has referred to it in its accompanying Valuation and Viability Report by Stiles Harold Williams (2023). The Council's appeal statement takes account of this updated situation and I have also considered it in reaching my decision.
4. With the SOCG the appellant included proposed amended plans for the ground and first floor, with elevation changes. It was suggested by the appellant at the hearing that the proposed amended plans would more closely relate to the approved scheme in an effort to narrow the differences with the Council. These proposed amendments include changes to the ground floor layout to segregate the office and residential use, with the apartments being solely accessed from the passageway adjoining No.33a London Road, and the removal of the offices on the first floor reducing the total office provision to 189m². The elevations

¹ Ref.DC/23/04815/FULL1

show significant changes to the position of balconies, including new large balconies located on the rear of the building, and changes to openings on several floors, including new window openings facing the adjoining property.

5. Whilst the proposed amended plans have similarities with the appeal proposal, there are notable differences, not least the significant changes to the floorplans on the ground and first floor, changes to the external appearance of the building, and a reduction of office floorspace. Furthermore, a complete set of floor plans has not been provided despite the elevations indicating marked changes on the upper floors.
6. The appeal process is not the place to develop a scheme, and the proposed amended plans were not the plans before the Council when it made its decision, nor when it submitted its appeal statement, and they have not been consulted on. I therefore cannot be certain that accepting them would not prejudice the Council or other parties, including nearby occupiers, from being able to consider them properly. Nor do I have a complete set of plans. Due to all these factors, I concluded at the hearing that I could not accept the proposed amended plans. I have, therefore, determined the appeal based on the plans that the Council made its decision on.

Main Issues

7. The main issues are:

- whether or not the development plan would support the proposed office accommodation in this location;
- the effect of the proposal on the character and appearance of the area with regard to the heritage significance of the building and the setting of any non-designated heritage assets; and
- whether or not the proposal would provide suitable living conditions for future occupants with regard to daylight, layout and the provision of outdoor space.

Reasons

Office accommodation

8. Policy 80 of the Bromley Local Plan (2019) (BLP) identifies Bromley Town Centre as a strategic priority area for economic growth. Within this context, the appeal site is located within a tightly defined Business Improvement Area (BIA), designated under BLP Policy 84. This policy seeks to manage and improve the supply of high-quality office floorspace within BIAs and the Council will look to secure quantitative and qualitative improvements. Proposals which result in the loss of office floorspace, or which compromise the primary function of the BIA will not be permitted. Furthermore, an Article 4 Direction restricting changes to residential use further assists the implementation of the policy.
9. Policy E1 of The London Plan (2021) (LP) generally reinforces this approach by seeking the retention of existing viable office floorspace especially in town centre locations. It highlights refurbishment as a means to improve the quality, flexibility and adaptability of office space. Whilst this policy allows for mixed use development and the release of surplus office space to housing, this is

subject to exploration of alternative forms of office provision, including smaller, lower cost and affordable units.

10. The appeal property is a detached former 19th century dwelling fronting London Road with vehicular access and parking to the rear. The planning history indicates that the building has been predominantly in office use since the 1970s and in 2001 permission was granted for the change of use of the building to offices for community care/rehabilitation and a consulting room. At the hearing, the appellant advised that this use had continued until April 2024 when the occupant's lease had expired. It was further explained that it had not been possible to agree a new lease agreement with the existing tenant who had moved elsewhere.
11. Although the premises are now vacant, the information indicates that the building has had a long-standing use as occupied offices/clinic space with the last tenant occupying the whole building for at least 15 years. I am not satisfied that the available information clearly shows that this tenant vacated the property because it was no longer suitable for its general purpose, and I have not been made aware of any longstanding periods of vacancy of the building.
12. Whilst the appellant suggests that new office tenants are deterred by factors such as the age and condition of the building and tightening EPC regulations, its small rooms, split levels, access provision and the facilities on offer, I am not persuaded by the evidence before me to demonstrate that any of these factors, or several in combination, are a significant and determining barrier to the building's re-occupation as offices.
13. The building may have been marketed for several months without success but with the exception of the marketing details submitted at the hearing (Styles Harold Williams Partnership LLP, undated), and some discussion at the hearing about the approaches that had been received, there is little written and documented evidence before me of that campaign. Such information should illustrate how and where it was advertised, the enquiries received and the feedback. Indeed, the photographs in the marketing brochure showing the building still in use as a clinic/offices illustrate to me that it appeared fit for purpose with several rooms in use as offices, accommodating multiple desks, and several other rooms appearing capable of office use. Even during my visit, with the building recently vacated by the tenant, it appeared capable of providing useable and productive office space consistent with other provision I have seen in smaller period buildings. Therefore, although there is no requirement in BLP Policy 84 to conduct a marketing exercise, in my view, if such an approach had been carried out over a prolonged period it would have more robustly demonstrated whether or not there is a demand for office accommodation in this building. This is a point that the Council has made and to which I agree and, therefore, the weight that I can attach to the marketing evidence which has been submitted is fairly limited.
14. It also appears logical that the existing floorspace in the building may have a better prospect of attracting new occupants if the building was renovated and modernised, especially for prospective tenants deterred by a full repairing lease. Limitations may well exist as to what refurbishment can achieve but I am not persuaded by the evidence that upgrading has been explored to such an extent or that other incentives such as rent-free periods have been

considered in sufficient detail to attract interest, and evidence that these would not be feasible options for the building. Furthermore, in this regard, insofar as Policy E1 makes reference to smaller, lower cost and affordable units, I have no clear evidence that this has been adequately explored to satisfy me that this position can be accepted.

15. Therefore, based on the appeal documentation and what I saw on site, whilst the last occupant may have been a specialist tenant with particular requirements, I have no compelling evidence to indicate that the building would be unsuitable as ongoing office accommodation and that there is no demand for it at a fair price.
16. It is acknowledged that the appeal scheme would provide modern, open plan offices mainly on the ground floor which would provide the qualitative improvements sought by BLP Policy 84. This would no doubt be attractive to future tenants, even with the proposed mixed-use scheme. It would also enable the Council to retain the office use within the building in the long term. However, the scheme would represent a loss of approximately 47m² compared to the existing provision which is a not insignificant percentage of the total office floorspace. The appellant suggests that the existing office floorspace calculations are over-generous and include areas not suitable for desk space such as storage rooms and a makeshift lean-to. Also, that the open plan floorspace in the appeal proposal could accommodate a greater number of employees. However, I see no substantive reason why the existing building could not be reorganised or modernised to provide a more efficient floorspace. Therefore, in my view, the qualitative improvements in office space would not outweigh the loss in floorspace, and the proposal would, therefore, be in conflict with this aspect of BLP Policy 84.
17. I have carefully considered the viability evidence that has been presented during the application and appeal, including the Valuation and Viability Report by Stiles Harold Williams (2023) (VVR) submitted to support the claim that it would not be viable to provide more office accommodation on the site. I have also considered the differences in value since purchase, and the reasons and effect that this has had on the return of any redevelopment proposal. I have also considered the views of the Council and its comments on the original purchase price and the effects of this on the amount of office space that could be delivered to make a reasonable developer profit. Overall, it seems to me that the market has been reasonably volatile in past years and that those factors that influence the outcome of the viability of redevelopment and other options, with the permitted scheme not being considered to provide an adequate return, have not been sufficiently rigorously established. Therefore, this does not persuade me that the appeal scheme with its level of office space and number of flats is an acceptable and reasonable approach that should be pursued despite policy concerns.
18. It is possible that the existing building could be converted under permitted development rights to another E Class use. However, part of another use, such as a medical practice or nursery could still involve office space. The building would also remain available for office use in the future and in the meantime other E Class uses, if the building was occupied, could continue to contribute to the economic vitality of the area in line with BLP Policy 80. Vacant office space contributes little if anything to the economy but that does not however mean

that it has no potential to contribute, or that it should thus be considered surplus.

19. The appeal site is within a tightly defined area where the Council is committed to protecting, enhancing and increasing office accommodation to support the economy of the local area. For the reasons set out above, I conclude that whilst the development would provide qualitative improvements there would be an overall loss of office space on the site. Therefore, the development plan would not support the proposed office accommodation in this location, compromising the primary function of the BIA, undermining the local economy and giving rise to conflict with BLP Policies 80 and 84, and LP Policy E1, as outlined above. The scheme would conflict with the National Planning Policy Framework (the Framework) which seeks, amongst other things, to protect employment floorspace.

Heritage significance

20. The appeal building (No.35) dates from the 19th century and is a detached former dwelling located on the corner of London Road and Blyth Road. Although it now stands amid mostly larger and more modern buildings of mixed use on London Road and has lost its historic boundaries, and much of its rear garden is now a parking area, it is representative of many buildings which would have previously addressed the road frontage. It is constructed in buff brickwork with a slate roof and a mix of contrasting brick and stone detailing. Although it is a fairly typical town house of its period which retains many of its historic openings, fenestration and other details, it is more notable and eye catching due to its attractive, two storey canted bay window on the corner which signals the start of Blyth Road, drawing the eye down to other dwellings of the period along that road. It is also notable for its decorative porches to the front and rear.
21. The Council has identified No.35 as a non-designated heritage asset (NDHA) whilst considering the current proposal. The appellant's Heritage Statement (May 2023) also concludes that it is of sufficient local interest to warrant this status. Based on the submitted information and following my visit, I am satisfied that, despite some more modern interventions, such as conversion works to the interior and the loss of its historic boundaries, the historic quality of the appeal property is sufficient to identify it as a NDHA and this accords with the Framework and the Planning Practice Guidance. For the purpose of this appeal, I consider that the building's significance is derived from its form, fabric, architectural detailing and its historic function. This significance is elevated by its architectural detailing addressing the street corner and its visual relationship with the cohesive group of other 19th century houses to its rear on Blyth Road which collectively add to the historic character of the area and contribute to its significance. Based on my analysis, I consider that the building has a high degree of significance in its local context.
22. No.14 Blyth Road (No.14) is a locally listed building which is located on the outer bend of Blyth Road and is representative of an adjoining row of similar, detached brick dwellings with hipped pyramidal roofs. Each of these, although similar in overall form, exhibits subtly different detailing, with No.14 being a particularly good example with two storey bay windows to either side of the central decorative porch and well-preserved historic detailing including terracotta panels and decorative ironwork. All of these details contribute to the

significance of the building, and the cohesive historic context of the surrounding period buildings on Blyth Road make a positive contribution to its setting and significance. The appeal building is some distance from No.14 and mature shrubs and street trees filter the interconnected views to some extent. However, the appeal building contributes positively to No.14 although less so than the buildings closer to it.

23. Although No.1 Blyth Road (No.1) has been given permission to be demolished as part of an approved scheme for redevelopment which appears to be extant², the Council has subsequently refused a recent scheme for redevelopment³ and identified the building as a NDHA. It is a large brick dwelling, and its significance derives from its form, fabric and architectural details including its contrasting brickwork, terracotta detailing, period doors and fenestration, and its grand conservatory. Its significance is also elevated by its connection with a renowned hardware and stained-glass manufacturer. In common with No.14, the surrounding context of period dwellings, including the appeal building, contribute to the building's significance. However, due to their back-to-back gardens and mature planting, interconnected views between the appeal building and No.1 are somewhat diminished.
24. The appeal proposal would result in the demolition of No.35, and consequently the significance of the building and its contribution to the historic character and appearance of the area would be irreversibly lost. The demolition of the building would also cause some harm to the setting of No.1 and No.14, and despite the distance away and the intervening vegetation, it would diminish their setting within this cohesive group of period buildings. In my view, the loss of the building and harm to the setting of others would not be mitigated by the overall appearance of the replacement scheme. Although this is of generally good design quality, it would not be a substitute for a notable period building which is a key part of a cohesive group.
25. Although it appears that No.1 could be demolished under the approved scheme, having assessed the views on site, that redevelopment would have little effect on the intervisibility between No.14 and the appeal property due to their position on the road. Their collective heritage value would remain. Also, No.1 currently remains standing and with the Council recently refusing a subsequent planning application for redevelopment and identifying it as an NDHA, it would be premature to claim that this building no longer has intrinsic heritage value. It is also still contributing to the group value of the buildings.
26. The appellant suggests that No.35 could be imminently demolished under permitted development rights or to implement the recently approved scheme on the site. As a result, the appellant considers that the heritage significance of the building and its contribution towards the setting of others should carry little weight in determining this proposal. Whilst demolishing the building under permitted development rights would be subject to approval by the Council, I am not aware that heritage value is a factor which could be considered by it. Also, it may appear financially prudent to demolish the building in the short term to avoid future costs such as repairs and business rates. However, I am not convinced that this is such a realistic or likely possibility as I have already concluded that it has not been demonstrated to my satisfaction that there is no

² Ref.DC/20/01217/ELUD

³Ref.DC/19/04183/FULL1

reasonable and viable use or demand for the existing building, especially as it has only just been vacated, and it still appears capable of a beneficial use.

27. Whilst the approved scheme allows the building's demolition, a condition attached to this permission seeks to restrict demolition until such time as a contract has been approved for redevelopment to avoid the premature loss of the building and an unsightly area. This is consistent with the Framework which states that all reasonable steps should be taken to ensure that new development will proceed after the loss has occurred. At the hearing both parties expressed doubts about the soundness of the condition as no documentation had to be submitted and approved by the Council, and the appellant commented that the development was likely to be controlled by them and could start and stop at any time. However, despite the concerns regarding this condition, the appellant has advised that the approved scheme would be unlikely to meet the necessary level of viability to proceed at the present time. Therefore, based on the submitted evidence before me, I remain unconvinced that the building would be demolished prematurely.
28. I therefore find that the proposal, involving the demolition of the building, would have a harmful effect on the character and appearance of the area with regard to the heritage significance of the building and setting of other NDHAs. It would therefore be contrary to LP Policy HC1 which requires development proposals to be sympathetic to an asset's significance and BLP Policy 40 which requires proposals to be considered in accordance with the Framework. The Framework requires the effect of a proposal on the significance of a non-designated heritage asset to be taken into account in determining the application, and that a balanced judgement is required having regard to the scale of any harm or loss and the significance of the heritage asset, a matter considered later in this decision.

Living conditions

29. BLP Policy 4 and LP Policy D6 require all new housing to achieve a high standard of design and layout. This is further amplified in The London Plan Guidance Housing Design Standards (2023) (HDS) which, in relation to this appeal, states that housing should be comfortable with functional layouts which are fit for purpose and provides a list of housing standards.
30. Part C4.1 of the HDS states that new homes should be dual aspect unless exceptional circumstances make this impractical or undesirable. Apartment 5 is a duplex apartment with bedrooms on the first floor and a combined living/kitchen space on the second floor. These rooms are single aspect with windows running along the shorter side of the rooms facing London Road in an easterly direction. The second floor living/kitchen space would have a balcony but this would appear to be set behind the outer curtain wall of the building which has window openings. Therefore, the internal room would be set well back into the body of the building. In my view, despite the balcony, based on the details before me, the living/kitchen area in the apartment is likely to be dark and gloomy owing to the set back and its single, easterly aspect. Furthermore, it would not be possible to seek revised elevational changes showing additional windows via a condition, were I minded to allow the scheme, as this would be a significant change and may prejudice other parties. Therefore, whilst I acknowledge that the other apartments appear to be dual aspect, as this room would be the main living space within Apartment 5 it

would not represent a high standard of design or layout and is not likely to be a comfortable environment. Furthermore, I have not been presented with any adequate explanation that there are exceptional circumstances which warrant allowing this layout.

31. Part B of the HDS relates to shared and ancillary spaces and states, amongst other things, that shared entrances should be safe, visible and identifiable from the public realm. The plans suggest that access to the apartments would either be from a passageway alongside No.33a London Road or a shared access with office-users from Blyth Road. This proposed residential access has the potential to lack legibility for users and lead to potential conflicts with the office workers. However, following discussions at the hearing, I am satisfied that a condition could be attached to an approval, were I to find in favour of this scheme, to make the entrances clearly identifiable and to segregate access within the building.
32. The development would provide apartments of various sizes. Each would have a private terrace with shared outdoor amenity space to the London Road frontage and a further area to the rear of the building which adjoins the parking area and cycle store. Despite the proximity of the office space, the private terraces would afford a reasonable degree of outdoor space which would not appear to be directly overlooked. Furthermore, whilst the amenity space fronting London Road may be more suitable for the office workers during office hours, because of the degree of overlooking and traffic noise, the smaller rear amenity space would be quieter and provide a reasonably pleasant area for residents to sit out. Although some overlooking would occur from the offices, this would not be unacceptable given the urban nature of the site and the provision of the private terraces of each apartment.
33. Following discussions at the hearing, I am satisfied that, were I to allow the appeal, a condition could be attached to any approval to allow the outdoor space to be landscaped and managed so that both office workers and residents could make use of it without harm to the living conditions of the residents.
34. Although I have found that the development would provide suitable living conditions for future occupants with regard to layout and the provision of outdoor space, subject to the imposition of conditions on any approval, it would not provide an acceptable level of daylight for the occupants of apartment 5. Consequently, this element of the scheme would conflict with BLP Policies 4 and 37. Nor would it accord with LP Policies D3, D6, H2 and the HDS, and the Framework. I have omitted BLP Policy 8 listed in the decision notice as side space is not relevant to this decision. I have also omitted reference to LP Policy D1 as this relates to defining an area's character and its capacity for growth.

Other Matters

35. The recently approved scheme⁴ appears to be based on the appeal proposal but with a revised internal layout and external elevations. It would provide 8 apartments and approximately 15m² more office space than the existing building. The appellant advised at the hearing that this permission was sought to establish a consent for the mixed-use development on the site, to confirm that the building could be demolished and to resolve the living condition issues. It was further explained that this permission also demonstrated that the

⁴ Ref.DC/23/04815/FULL1

reduction in the number of flats and the increase in office floorspace would result in a developer profit which would not provide a satisfactory level of viability in the current climate.

36. Whilst I recognise that the VVR indicates that the approved scheme would not provide an adequate return, I have already concluded that I am not persuaded by the case made in this respect. Although this permission demonstrates that the Council accepted the demolition of the building, this indicates to me that in weighing up the issues the increase in office floorspace and therefore the compliance with BLP Policy 84, and the resolution of the living conditions issues tipped the balance in favour of the redevelopment. The balance of the issues is different before me, especially with regard to the proposed level of office provision and living conditions. Therefore, while I have taken this permission into account as part of the planning balance below, it is not a significant determination such that it should only carry modest weight in the considerations in support of approval.

Planning Balance

37. The appeal proposal would represent a loss of office space within the BIA, would result in the total loss of a NDHA and cause harm to the setting of other NDHAs, and would not create satisfactory living conditions for future occupants due to the lack of light to one of the apartments. Thereby it would be contrary to the identified planning policies. These harms would conflict with the development plan when considered as a whole.
38. The Council is unable to demonstrate a Framework compliant 5 year supply of deliverable housing land. At the hearing, both parties agreed that a figure ranged between 2.96 years (taking into account the Housing Delivery Test figure) and 3.99 years. It was agreed that this is a very significant shortfall. In these circumstances, the presumption in favour of sustainable development as set out in paragraph 11.d) of the Framework is engaged. This indicates that planning 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.
39. In terms of the benefits of the scheme, the proposal would assist with the Government's objective of significantly boosting the supply of housing and nine apartments would be provided in a location with good access to services, facilities and public transport. Furthermore, the scheme would add to the mix of housing in the area, and it is suggested that it could be delivered relatively quickly. There would also be economic and social benefits to the area during construction and in subsequent occupation. However, whilst these benefits would be worthwhile and attract Framework support, given that only nine apartments are proposed the cumulative benefits merit moderate weight in favour of the scheme. I attach the permitted redevelopment scheme modest weight in favour of the proposal.
40. Although the appellant suggests that the scheme would make use of a brownfield site, I have found that the development would not make better or more efficient use of this land given its specific designation in relation to office use. It is also suggested that the modern office space would contribute to the vitality of the BIA and that the Council would maintain control through the planning system of the office space in perpetuity. However, I have found that BLP Policy 84 requires both quantitative and qualitative improvements and the

reduction in office floorspace is clearly in conflict with this policy. Whilst there is no objection to the overall design of the proposal, I have found that that the development would cause harm to non-designated heritage assets, and this would be of greater weight than the design benefits of the replacement building. Measures to improve local biodiversity would be expected of any development of this nature and this attracts minimal weight as a benefit in favour of the scheme.

41. The development may well contribute to new and improved facilities, open space and services through the Community Infrastructure Levy, but these measures would essentially mitigate the effects of the new development and are therefore neutral in the overall balance. Likewise, finding no harm to neighbouring amenity, flooding, highway safety or to trees is also neutral in the planning balance.
42. As the principle of the mixed use involving residential development is agreed, the policies of the development plan which guide the delivery of housing across the plan area are not under question. The harm I have identified mainly results from the reduction of office space on the site, the total loss of a NDHA and some harm arising to the setting of other NDHAs, and the living conditions of future occupants. These are important matters and, as a consequence, there would be conflict with the identified planning policies. I find these policies to be generally consistent with the Framework which seek to protect employment space, conserve heritage assets appropriate to their significance and to create high quality places. In these circumstances, I attribute substantial weight to the scheme's conflict with the policies in the development plan and with the development plan as a whole.
43. Drawing all these matters together, I find that the wide-ranging, cumulative benefits of the development should be afforded moderate weight in favour of the scheme. In terms of the harms that would result from the scheme, I have found an unacceptable loss of office space within a designated BIA, an area where the Council is committed to protecting, enhancing and increasing office accommodation. It would also result in the total demolition of a NDHA and it would also harm the setting of other NDHAs. In this regard, the Framework requires me to form a balanced judgement having regard to the scale of the harm or loss and the level of significance of the assets. I have identified the appeal building as having a high degree of significance in its local context and owing to the proposed demolition that loss would be irreversible, harming the character and appearance of the area. In addition, it would result in harm to the living conditions of future occupants by virtue of a lack of daylight. These combined harms weigh heavily against the scheme in the overall planning balance and attract substantial weight.
44. As a result, whilst the benefits of the proposal merit moderate weight, the harms I have identified attract substantial weight. In these circumstances, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, the proposal would not constitute sustainable development.
45. Therefore, for the reasons given above, the effects of the development would be unacceptable, giving rise to conflict with the development plan taken as a

whole. There are no other material considerations which alter or outweigh these findings.

Conclusion

46. I therefore conclude that the appeal should be dismissed.

G Bayliss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Adem Mehmet	Highgate Planning and Development Ltd
David B Marcelline	Styles Harold Williams Partnership LLP
Aziz Elkhadraoui	Novo Land & Development Ltd

FOR THE LOCAL PLANNING AUTHORITY:

David Bord	London Borough of Bromley
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DOCUMENTS SUBMITTED AT THE HEARING

- Extract from Office Marketing Review, Bromley, Quarter 1, 2024: Styles Harold Williams Partnership LLP.
- Marketing details, 35 London Road, Bromley: Styles, Harold Williams Partnership LLP (undated).