



Appeal Decision

Site visit made on 2 May 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2024

Appeal Ref: APP/T5150/W/23/3322324

57 Donnington Road, Brent, Harrow HA3 0NB

- 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 A Gudka, Silver Circle Property 2 Limited against the decision of London Borough of Brent.
 - The application Ref is 23/0667.
 - The development proposed is demolition of existing building and outbuilding and erection of a new residential building housing a mix of 6 dwellings across ground, first and roof level with associated bins, cycle and parking provision.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: i) the effect of the proposal on the character and appearance of the area; ii) the effect of the proposal on the living conditions of the occupiers of 55 Donnington Road ('No 55'); iii) whether the proposed accommodation would be of an acceptable quality; iv) whether the proposal makes provision for affordable housing; v) the effects of the proposal on highway safety; vi) whether the proposal makes provision for urban greening; vii) the effects of the proposal on biodiversity and geodiversity; viii) the effects of the proposal on surface water flooding; and ix) whether the proposed cycle storage facilities would be of an acceptable quality.

Reasons

Character and appearance

3. The appeal site comprises a two-storey detached dwelling, located on the corner of Donnington Road and Ilmington Road. To the north of the appeal site is Woodcock Park. To the west of the appeal site but separated by Ilmington Road is St Gregory's Catholic Science College.
4. The nearby area is predominantly residential and mainly features detached and semi-detached properties some of which have been extended. These are mostly two storeys high and arranged so their principal elevations including main entrances face Donnington Road. These dwellings are of traditional designs with pitched and hipped roof forms with broadly consistent eaves. I observed that on nearby corner plots, the two storey elements of dwellings are generally setback from boundaries and therefore comfortably sit within their plots.

5. The appeal property is an attractive, individually designed dwelling with a compact footprint, which is consistent with the established building line along Donnington Road and is also set back from Ilmington Road. As such, this property positively contributes to the character and appearance of the area. Also, because the appeal site occupies a corner plot and is along an access into Woodcock Park (Ilmington Road), this site is prominent and sensitive to change.
6. The extant dwelling would be replaced by a building incorporating 6 flats. The proposed building includes a slight set-back along the Donnington Road elevation and a step-down of its eaves on this elevation. These features, along with a varied palette of materials, would provide some articulation to this façade of the building. Nevertheless, because of its three storey, flat roof form and lack of any focal feature along its Donnington Road frontage, the proposed building would not reflect the prevailing form and character of residential development in the area.
7. Along Ilmington Road, the proposed building would introduce an elongated elevation. This elevation would be uncharacteristically close to the highway. Also, the position of the proposed building would be forward from the front elevation of No 55. Thereby, extending beyond the established building line along Donnington Road.
8. Therefore, and notwithstanding that the proposed building would be of a similar height to dwellings along Donnington Road, because of its three storey form, overall massing and in particular proximity to the highway in respect of both Ilmington Road and Donnington Road, the proposed building would appear visually cramped and would fail to assimilate with the established street scene. In particular, the adverse visual impact of this building would be compounded by its prominent position.
9. Although the proposed building takes design cues from the nearby College, this is a large educational building, set within a substantial plot, which incorporates considerable planting. As such, this is a distinctly different form of development, which has a different character and appearance to the nearby residential development.
10. The appellant has also referred me to two other sites, which have been redeveloped for flatted developments. The first, 23 Forty Lane is along a major road where plots are appreciably bigger and occupied by larger detached buildings, in a broader range of styles relative to the appeal site and area.
11. The second development is at 44 Queens Walk. This building is located adjacent to development incorporating 3 floors of accommodation. Also, the approved building incorporates a two storey section to reflect neighbouring dwellings and is located in a spacious plot. As such, the context for this building is different. Therefore, these approved schemes do not lend support to the proposal.
12. Based on the foregoing reasons, the proposal conflicts with the design aims of Policy BD1 of Brent's Local Plan (2019-2041) ('BLP'), which requires that all new development is of the highest architectural and urban design quality and Policy DMP1 the BLP of which, says that development would be acceptable provided it is of a location, use, concentration, siting, layout, scale, type, density, materials, detail and design that provides high levels of internal and

external amenity. The proposal also conflicts with similar design aspirations of Policy D4 of the London Plan 2021.

Effect on the living conditions of neighbours

13. Notwithstanding that the proposed building would extend beyond the front and rear of No 55, based on the submitted Daylight and Sunlight Assessment, it is common ground between the main parties that the proposal would not have any adverse effect on sunlight and daylight received at this neighbouring property. Having also considered this assessment, I have no reason to disagree.
14. Although the proposed building would extend beyond the rear of the ground floor of No 55, in such views from the garden of this property, the proposed building would be largely screened by existing extensions and boundary treatments. In particular, the proposed building would not extend along the majority of the rear garden for No 55. Therefore, the proposal would not result in any unacceptable effect on the outlook from the rear garden of No 55.
15. Nevertheless, in assessing the impact of proposals on the outlook of adjoining properties, the Council applies the 1:2 rule. On the information before me, the 3 storey front and rear elevations of the proposed building would breach this rule in respect of the nearest first floor rear and front windows at No 55. From these windows, the proposed building would appear dominant and oppressive to the detriment of the living conditions of the occupiers of this dwelling with regard to outlook. This would be contrary to Policy DMP1 of the BLP, amongst other things this requires new developments which provide high levels of amenity and complement the locality.

Quality of the proposed accommodation

16. The front ground floor 1-bedroom flat, would be single-aspect. As such, both its bedroom and lounge/kitchen windows would outlook onto the site's frontage. The large bedroom window would mainly face the landscaped part of the frontage. Therefore, this proposed outlook would be acceptable.
17. The lounge/kitchen window would face towards the communal waste/recycling area and a parking space. Even so, the waste/recycling area would be located away from the window behind landscaping. The appellant advises that the parking space would be allocated to the ground floor, 1-bedroom flat. This could be secured by a condition and would limit any loss of privacy. When the parking space is in use, in part, would obscure views from the lounge/kitchen area. Nonetheless, this type of arrangement, where a ground floor flat has a principal window facing a frontage used for parking and refuse storage is not uncommon. For example, where a house is converted into flats. As such, this arrangement would not unacceptably compromise the outlook and privacy of the front ground floor flat.
18. Along the rear, the proposed 3-bedroom, ground floor flat includes two side facing bedroom windows. These windows are close to the proposed boundary treatment along Ilmington Road. Even though this boundary treatment would comprise railings, because of their proximity to the window these would undermine outlook. Moreover, this type of arrangement would also compromise the privacy of the relevant bedrooms. In particular, given that these face an access, which is in regular use for Woodford Park.

19. Despite the appellant's assertions, I have not been referred to any examples, where railings are located so close to windows. I have also been referred to a photo of a building with windows and doors located adjacent to a footpath. However, I have limited information regarding the context of this and the internal arrangement of this building to draw any meaningful comparisons. Whilst the existing dwelling at the appeal site has side facing windows, these are set back from the boundary and are not the only windows which serve a particular room.
20. For the above reasons, the proposed ground floor rear flat would fail to provide an acceptable quality of accommodation and conflicts with BLP Policy DMP1 and Policy D6 of the London Plan 2021. Together, these policies require that new developments are of high quality design, which provide high levels of external amenity, including privacy.

Affordable housing provision

21. Policy BH5 of the BLP requires that developments of between 5-9 dwellings will be required to make a financial contribution for the provision of affordable housing offsite.
22. The proposed development would provide 6 new dwellings. These would be subject to a contribution towards offsite affordable housing based on a tariff of £50,000 per dwelling. This necessitates a policy compliant affordable housing contribution of £300,000.
23. The actual wording of Policy BH5 of the BLP does not provide any flexibility to the above affordable housing requirements.
24. Paragraph 4.17 of the Council's 'Planning Obligations Supplementary Planning Document - In support of the Brent Local Plan 2020-2041', says that the Council commissioned a study to advise on an appropriate contribution which would not impact upon viability. It is therefore assumed that the proposed tariffs will be viable in most cases. However, this document recognises that there may still be some exceptional instances where site specific circumstances result in the financial contribution requiring adjustment. In such cases, the applicant would need to provide a Viability Assessment to evidence their proposed deviation from the obligation.
25. To establish if the affordable housing requirement can be viably delivered, the appellant has commissioned S106 Management ('S106M') to provide a 'Affordable Housing Viability Report' ('Viability Report'). The final viability information identifies that the proposed scheme would be in a deficit of -£230,463. On this basis, S106M advise that an affordable housing contribution cannot be supported.
26. BPS Chartered Surveyors ('BPS') were commissioned by the Council to undertake an independent review of the S106M Viability Report. BPS conclude that the scheme would deliver a surplus of £88,337. The main areas of contention between the parties relate to: Additional Revenue (Parking), Build Cost Contingency, Profit Return and Benchmark Land Value.
27. Additional Revenue (Parking) - Based on other residential resales, BPS assert that the proposed 3 parking spaces could generate additional revenue for the proposed development. There are also examples of developments where parking was not sold separately. Moreover, the accompanying 'Parking Survey'

demonstrates the availability of on-street parking in the area. Therefore, I am not persuaded that in this instance, the proposed parking spaces would generate additional revenue for the development.

28. Build Cost Contingency ('BCC') - S106M advise that while a BCC of 5% was historically considered acceptable, they suggest a higher percentage to take into account materials inflation and which reflects a figure supposedly agreed on other cases. However, I have limited evidence to support this. As such, and because Building Cost Information Services account for materials inflation in their forecasts of build costs, I am satisfied that 5% BCC is acceptable.
29. Profit Return - Although S106M advise that they have agreed a higher profit level on other schemes, the full details of these are not before me. Also, BPS have reviewed the viability for two similar schemes in Brent, where 15% profit levels have been agreed. Both projects consist of the demolition of a single dwelling, and erection of 8-9 units. As such, a profit level beyond 15% has not been reasonably justified.
30. Benchmark Land Value - S106M advise that a 20% landowner premium should be applied to the site's value based on a list of 3 schemes where 20% premiums have been proposed. Even so, there is limited information in respect of these. Furthermore, in this case there appears to be no margin for a premium as there is no viable policy compliant development available to fund this. As such, the suggested landowner premium is unjustified.
31. Because of the above discrepancies, I attach limited weight to the submitted Viability Report. Even if I were to accept the appellant's position that the proposal cannot support any affordable housing contribution, this would still be in conflict with the requirements of Policy BH5 of the BLP and weighs against the proposal. As a result, the proposal would also fail to comply with BLP Policy DMP1, with regard to supporting social infrastructure.

Highway safety

32. The scheme incorporates two vehicle parking spaces which would be accessed off a widened crossover from Ilmington Road. The proposed adjacent 1.8m high boundary fence would obscure the pedestrian visibility splays for vehicles using these spaces. Because Ilmington Road provides access into Woodford Park, this is likely to be used by children. Consequently, the Highway Authority require that there should be no obstruction over the height of 600mm within splays of 2m on either side of the crossover.
33. However, the proposed parking area already incorporates a garage and an additional parking space is unlikely to generate any significant vehicular movements. Furthermore, the appellant says that a low level wall with railings above could be provided to improve visibility. This could be addressed by a planning condition if the appeal succeeds. As such, the suggested arrangement would be acceptable.
34. In light of the above reasons, the proposal would not prejudice highway safety and I find no conflict with Policy DMP1, which requires that developments do not have an adverse impact on the movement network.

Urban greening

35. Notwithstanding the Council's validation requirements, the onus is on the appellant to ensure that the proposal meets the policy requirements of the development plan. Policy BH4 of the BLP requires minor developments to achieve an urban greening factor of 0.4. The proposal would result in an increase in built development on the site. In particular, urban greening is important to ensure that a balance is maintained between the intensification of sites for housing and green infrastructure. As such, this is an integral element of high quality design and in my opinion should not be left to a condition. Whilst a green roof is suggested, in the absence of any specific calculations for an urban greening factor, there is no certainty of this being achieved.
36. Therefore, the proposal fails to achieve the relevant urban greening factor and conflicts with BLP Policy BH4 and also DMP1 which supports the enhancement of green infrastructure.

Biodiversity and geodiversity

37. Although Woodcock Park is a Site of Important Nature Conservation (Grade 2), the appeal site is separate and enclosed from this. The rear garden of the appeal site incorporates grassed areas but has no trees or any other notable landscape features. As such, this is of limited biodiversity and geodiversity value. On this basis, it should not be difficult to secure an enhancement in the site's biodiversity, which could be arranged through a pre-commencement condition.
38. Accordingly I am satisfied that the proposal avoids any detrimental impact on the geodiversity of the area (including Woodcock Park) and could achieve a net gain in biodiversity. Therefore, I find no conflict with BLP Policy BGI1 and Policy G6 of the London Plan 2021. Together, these require that all developments should achieve a net gain in biodiversity and avoid any detrimental impact on geodiversity.

Drainage

39. The appeal site does not fall within any Flood Risk Zone but Donnington Road is on land that is liable to surface water flooding. Therefore, the Council require a drainage strategy.
40. Nevertheless, there is limited information in relation to the extent and nature of the existing surface water flooding issue, other than this appears to be along Donnington Road. To this end, the existing frontage which is the area most likely to contribute to the flooding along the highway is largely hard surfaced. As part of the proposal, this area would be largely soft landscaped and any areas of hard landscaping would be porous. Also, the rear amenity area is of a sufficient size to incorporate sustainable drainage. As such, this matter could also be dealt with a pre-commencement condition if the appeal succeeds.
41. Therefore, the proposal would meet the requirements of BLP Policy BSUI4, which requires adequate provision for the control and reduction of surface water runoff, including sustainable drainage and BLP Policy DMP1 with regard to the provision of physical infrastructure.

Cycle parking facilities

42. Based on the Council's standards, the proposal generates a requirement for 11 long-stay and 2 short-stay cycle parking spaces. A cycle parking facility for 12 long stay spaces is proposed in a secure and covered location adjacent the proposed parking off Ilmington Road. Because of where this cycle parking facility is to be located, occupiers of the development would have to walk around the building to access this. The lack of convenient access could be a deterrent to its use. The appellant has suggested that an additional access gate from the garden could be provided, which would improve accessibility to the cycle storage. This, along with the limited number of short stay spaces required, could be secured by a condition if the appeal succeeds.
43. As such, the proposal would accord with Policy T5 of the London Plan 2021 which seeks to remove barriers to cycling and the provision of cycle storage facilities. Accordingly, I also find no conflict with BLP policies BT1, which seeks to priorities sustainable choices and DMP1 with regard to providing physical infrastructure.

Other Matters

44. In support of other policies in the London Plan and the BLP, Policy BH4 of the BLP, relates to small housing sites and recognises that such sites can assist in delivering a net addition of self-contained dwellings through the more intensive and efficient use of sites. Such proposals will be considered where consistent with other policies in the development plan and within priority locations (i.e. Public Transport Accessibility Level ('PTAL') 3-6, intensification corridors, or a town centre boundary). The appeal site has a PTAL of 2 and would not be considered a priority location for intensification.
45. Even if I were to accept the appellant's evidence that the appeal site has good accessibility to public transport and other services, for the reasons set out above, the proposal results in other harm and conflict with the development plan and therefore cannot be supported. Although the Council supported the flatted development at 23 Forty Lane, which appears to be outside a priority location for intensification, this scheme was acceptable with regard to all other aspects. As such, this does not alter my findings.

Conclusion

46. I have found that the concerns raised by the Council in respect of highway safety, biodiversity and geodiversity, surface water drainage and proposed cycle storage facilities could be addressed through conditions and the proposal is acceptable in respect of these matters. On the other hand, the proposal would harm the character and appearance of the area, the living conditions of neighbours and the quality of the proposed accommodation would be less than acceptable. The proposal also fails to make any provision for affordable housing and to secure the required urban greening. For these reasons and conflict with the development plan, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR