



Appeal Decision

Site visit made on 6 August 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2024

Appeal Ref: APP/D5120/W/24/3336708

186 Lower Road, Belvedere, Bexley DA17 6DG

- 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 Mrs Lillian Idahosa against the decision of the Council of the London Borough of Bexley.
 - The application Ref is 23/02381/FUL.
 - The development proposed is a change of use from dwelling house (Class C3) to nursery day care (Class E).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have used the description of development stated on the Council's notice of decision, as it most accurately describes the proposed use, and reflects the changes made to The Town and Country Planning (Use Classes) Order 1987 (as amended).
3. On my site inspection, I saw that a garage previously positioned to the side of the appeal property (shown on the existing plans) had been demolished, and that a proposed rear door (shown on the proposed plans) had been installed. The appeal has been determined on this basis.
4. I also saw on my inspection that there were signs posted at the appeal site regarding fire safety, including specifying fire assembly points. However, I have not been provided with any written details of these measures, and I cannot be certain that other parties, including the Council, have been made aware of them, or been able to comment on them. Consequently, I shall attach limited weight to this information in my decision.
5. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 19 December 2023. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context, and both parties have had the opportunity to make comments on the revised Framework within their statements and final comments.
6. On the 30 July 2024 the Deputy Prime Minister and Secretary of State for Housing, Communities, and Local Government issued a Written Ministerial Statement "Building the homes we need" regarding changes to the planning system, and consultation was started on "Proposed reforms to the National

Planning Policy Framework and other changes to the planning system". The main parties have had the opportunity to make submissions regarding both documents in the context of the appeal proposal, and the appeal has been determined on this basis.

Main Issues

7. The main issues are:

- Highway safety, with particular regard to parking; and,
- Fire safety.

Reasons

Highway safety

8. The appeal site contains a detached two storey property that faces onto Lower Road, it has a driveway to one side that rises steeply away from the road. I saw on my site inspection that the length of the driveway would be unlikely to accommodate more than 2 no. cars, without straddling the pavement that runs in front of the appeal site. Whilst the Council have said that the existing driveway has restricted visibility and does not comply with its current highway standards, it has not specified this as part of its reason for refusal, and as this is an existing arrangement for the property, I see no reason to disagree.
9. There are existing residential properties to either side of the appeal site, and Belvedere Infants and Junior School is located on the opposite side of the road. The school has a pedestrian access point from Lower Road near to the appeal site, its vehicular access is from Mitchell Close, a nearby cul-de-sac also accessed from Lower Road. It is said that school drop-offs and pickups cause traffic congestion already along this part of Lower Road. Some drop-offs and pickups for the proposed nursery could also coincide with movements to and from the school.
10. Lower Road in the immediate area of the appeal site has parking and waiting restrictions that operate between the hours of 8am–6.30pm on Monday – Saturday. There are also bus stops nearby on either side of Lower Road, along with a pedestrian crossing point to one side of the appeal site, near to the pedestrian entrance to the school (it has parking restrictions to either side including in front of the appeal site). There are also approximately 4 no. unrestricted parking bays on the opposite side of the road (of which 3 were vacant on my site inspection that was during the school summer holiday). The Council regard Lower Road (B213) as a London Distributor Road in accordance with its hierarchy of roads, and there are dedicated cycle pathways to either side of the road.
11. The proposed nursery use seeks to operate between 7am–7pm on Monday – Fridays. The application form states that the proposal would create 5 no. full time equivalent jobs. The proposed floor plans show that there could be up to 8 members of staff and 18 children at the appeal site, although the appellant has said they would limit the number of children at the appeal site to no more than 10, which the Council say can be restricted by condition. Nevertheless, the associated movements to and from the appeal site each day for the 10 no. children and employees could be significant.

12. I saw on my site inspection that Lower Road is a busy thoroughfare with traffic, including vehicles, cyclists, and pedestrians. Other than the unrestricted parking spaces nearby and the 2 no. spaces at the appeal site, there are no other opportunities for parking on Lower Road near to the appeal site. It has been suggested that parking on nearby Mitchell Close, Poplar Mount and Methuen Road, is possible as they mostly do not have parking restrictions. I saw on my site inspection that the parking spaces on these roads were largely occupied, and they were also some distance from the appeal property, not necessarily convenient for parents/carers to drop-off or pickup, some of whom could be either on their way to or from work.
13. Reference is made within the appellant's submission to a parking stress survey that says most parents/carers live 3-5 minutes' walk from the appeal site. However, no such actual parking stress survey has been submitted to demonstrate adequate parking spaces are available close to the appeal site to accommodate the likely parking need for the proposal. In any event, the location of prospective parents/carers of children who could attend the nursery could change, and it would not necessarily be an indication of whether they would be travelling to and from the appeal site by car, which could be a linked trip, such as on the way to or from work.
14. There is a strong likelihood that for convenience parents/carers would park on Lower Road, perhaps partly on the pavement, for what may be short periods of time to drop-off or pickup their children from the proposed nursery. Such movements could cause congestion along Lower Road, including for vehicles, cyclists, and pedestrians. This could also cause obstructions in the highway, create, or perhaps add to any congestion in the immediate area, and create conditions prejudicial to highway safety for all highway users. In addition, such parking near to the appeal site could also be prejudicial to the safe operation of the nearby pedestrian crossing point by restricting intervisibility of highway users, including pedestrian movements to and from the school. As a result, the proposal is likely to result in the proposal having very significant harmful effects upon highway safety in this immediate area.
15. It is said that the drop-offs and pickups would be staggered, and they would take up to 4 minutes each. There is also some conflicting information to say that the parking on the driveway could be used for drop-offs and pick-ups, instead of being solely for staff parking (which in that event could be insufficient to accommodate all the required staff parking). Nevertheless, there are no precise details of how this staggered arrangement would operate, and there may be times when this 4-minute time is exceeded. Moreover, it is likely that some parents/carers would need to drop-off or pickup their child/children, to accommodate their own work requirements, or there may be unexpected trips, which could coincide with others. There is insufficient information before me to demonstrate how a staggered drop-off and pick up system could safely operate, including how staff parking can be safely accommodated.
16. It is noted that the appeal site has a PTAL rating of 3, and that it is said other parts of Lower Road have a PTAL rating of 4, that there are bus stops very close to the appeal site, and Belvedere train station is within walking distance. I accept the point made by the appellant that not all children and employees may arrive by car, and some may walk and use public transport in this relatively well-connected area. Nevertheless, there would still likely be a considerable number of car journeys associated with its proposed use.

17. A road marshal has been suggested by the appellant as an effective way of ensuring the free flow of traffic along the road. Such a road marshal would need to be outside of the appeal site for a considerable period, particularly during the mornings and afternoons/evenings, and it is unlikely that they would have any highway enforcement powers. As such, this point has not altered my findings as set out above.
18. Taking into account the points raised by the appellant, I am not persuaded that the use of planning conditions to provide mitigation measures, including limiting the number of children at the proposed nursery to be no more than 10 children, would be capable of addressing the harm identified above in regard to highway safety.
19. I therefore conclude that the likely parking associated with the proposed development would be harmful to highway safety, and there would be conflict with Policy T4 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP), and Policy DP24 of the Bexley Local Plan, adopted April 2023 (BLP) that amongst other things, require development not to have a significant negative effect on the safety of any users of the transport network, and for development not to increase road danger. In addition, the dismissal of the appeal on this main issue would also accord with paragraph 115 of the Framework, that says development should be 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.

Fire safety

20. LP Policy D12 requires all development proposals to achieve the highest standards of fire safety. This includes demonstrating sufficient unobstructed outdoor space for fire appliances; an evacuation assembly point; that buildings are designed with fire safety features including being designed to reduce the risk of fire spread; include a robust fire evacuation strategy; allow safe means of escape; and provide an appropriate amount of firefighting equipment.
21. LP Policy D12 is a criteria-based policy, and this information should, therefore, have been provided in support of the planning application to assess the fire safety acceptability of the proposed development.
22. No Fire Statement has been provided, although the appellant has submitted some limited information with their appeal, which says the staircase and hallway would be free of obstruction and that the property would have a front and rear door that can act as fire escapes, leading to fire assembly points. In addition, it is said that the design and fenestration of the building would reduce fire risk, and that the kitchen has a fire alarm fitted that is connected to the mains, along with internal and external materials being non-combustible. Even taking into account the signage at the appeal site, this information falls somewhat short of that required by LP Policy D12, particularly in view of the proposed use of the building. Furthermore, there are no precise details provided to support the statements made, or any detailed plans or strategies provided that can be periodically reviewed, that demonstrate how fire safety risks can be satisfactorily addressed. I also cannot be certain that the comments provided by the appellant would satisfy local planning authority, as they have been provided post determination.

23. In view of the very limited information submitted, I am not persuaded that it would be appropriate to condition fire safety matters. Whilst fire safety would likely be addressed at building control stage, there is also a policy requirement for it to be considered at the outset of the design of the proposal and incorporated into the planning submission.
24. For this reason, I conclude that there is insufficient information submitted in respect of fire safety and the proposed development would conflict with LP Policy D12, as set out above.

Other Matters

25. It is noted that the appellant has said that the appeal site is not listed, not in a conservation area, nor is it subject to article 4 directions. However, these are neutral factors that neither weigh in favour or against the appeal scheme.
26. The appellant has drawn my attention to LP Policy GG2 that seeks to create sustainable and mixed-use places and promote higher density development. In addition, I have been referred to various parts of the Framework, which it is suggested support the proposed development, these include promoting an effective use of land; optimising land and buildings; creating, healthy, inclusive and safe places; taking a positive approach to development; supporting sustainable development; along with achieving well-designed places. Both the development plan and the Framework must each be read as a whole, complying with certain parts of them, does not mean complying with them as a whole. In this case, whilst there is no dispute regarding the principle of the proposal, harm has been identified in terms of highway safety and the lack of information regarding fire safety, and the broad support cited above by the appellant would not outweigh this conflict.
27. It has been said that the appeal site is close to Belvedere Infants and Junior School and that the appellant has identified a high need for nursery places to support children and parents/carers, and that it would provide increased choice for childcare provision. I am also aware that Paragraph 97 of the consultation draft of proposed changes to the Framework says it is important that there is sufficient choice for early years education and Local Planning Authorities should take a proactive, positive, and collaborative approach to this. In addition, it further says great weight should be given to the need to create, expand or alter early years, schools, and post 16 facilities. The consultation draft of the Framework is not government policy and is subject to changes, I can therefore only give it limited weight at this stage. Nevertheless, the strong support offered by the consultation draft of the Framework for the proposed use, does in the circumstances add some support in favour of the proposal.
28. My attention has been drawn to an earlier planning application¹ that is said to have been recently refused planning permission by the Council for the same reasons, and that this submission has sought to address the earlier reasons for refusal. Be that it may, the appeal proposal before me, has been assessed on its planning merits.
29. I have also had regard to objections received from residents and others, expressing concerns in addition to the main issues above which include, introducing a business into the area; that a nursery is said to not be needed;

¹ Ref. DC 23/00915/FUL

that works have already commenced and said to have caused some subsidence to a neighbouring front garden; that there are protective covenants on the property; the appeal site is said to be used as a 6 person HMO and the owner is said to live elsewhere; the safety of children at the site; and the effect of the proposal upon the living conditions of nearby occupiers. Property covenants and the subsidence issues would likely be separate matters between respective landowners, and they are not usually land-use planning matters. If the appeal site was in use as an HMO, this would also be a separate matter for the Council, should any permission be required for any such use. In terms of the other issues raised, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conclusion

30. The proposed development would be harmful to highway safety and there is inadequate information regarding fire safety. As such, the proposal is contrary to the development plan.
31. It is acknowledged that the proposed 10 no. additional nursery places would provide added choice for early years nursery provision and the strong support stated in the consultation draft of the Framework for such provision. There would also be economic benefits associated with the proposal, including local employment opportunities. However, the benefits of the proposal, even when taken collectively, would not outweigh the conflict with the development plan in terms of the very significant highway safety harm and the lack of information regarding fire safety, and there are no other considerations that indicate a decision otherwise than in accordance with the development plan. Accordingly, for the reasons outlined above the appeal should be dismissed.

A Hunter

INSPECTOR