



Appeal Decision

Site visit made on 3 December 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/T5150/W/24/3339019

157 Kilburn High Road, Brent, London NW6 7HU

- 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 Amir Shirafkan against the decision of the Council of the London Borough of Brent.
 - The application Ref is 23/2198.
 - The development proposed is rear extension to ground floor commercial property and conversion of the upper floors into three self-contained flats together with ground, first and second floor extensions, and a mansard roof addition.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 12 December 2024, a revised version of the National Planning Policy Framework (the Framework) was published. In making my decision, I have had regard to the revised Framework and any comments in respect to it submitted by the appeal parties.
3. During my visit it was not possible for me to access the appeal site itself or enter the host building. However, I was able to view the building and the surrounding area from public land. For the avoidance of doubt, I have determined the appeal on the basis of the plans submitted and informed by the observations I made during my visit.

Main Issues

4. The main issues are:
 - Whether the proposed development complies with the relevant development plan policy which relates to offices and Local Employment Sites;
 - The effects of the proposed development upon the living conditions of neighbouring occupiers with particular regard to outlook and light;
 - The provision that would be made for urban greening; and
 - Whether the proposed development is required to provide accessible housing and, if so, whether it complies with relevant development plan policy.

Reasons

Offices and Local Employment Sites

5. Policy BE3 of the Brent Local Plan 2019-2041 (BLP) relates to Local Employment Sites. It concerns those local employment premises used for the likes of offices, research and development, industrial, and storage and distribution purposes. The Council has identified the appeal site as a Local Employment Site and has further identified the host property's upper floors as office accommodation. I have no substantive evidence before me which indicates to me that I should come to a different conclusion.
6. Policy BE3 sets out that Local Employment Sites have an important role to play in ensuring a range of employment premises are available to meet needs. Policy BE3 therefore seeks to retain such sites, permitting their use for non-employment purposes only when certain circumstances apply. In summary, these circumstances are when the employment use is unviable, when the proposal would comprise of particular forms of mixed-use development or when the site is allocated for development.
7. Amongst other matters, Policy E1 of the London Plan (LP) sets out that existing viable office floorspace should be retained. It also outlines the circumstances when it is appropriate to release and redevelop surplus office space for other uses such as housing.
8. Smaller office spaces within accessible locations, which the appeal site is within, can make a valuable contribution to the local economy and provide the type of accommodation the likes of start-up companies or small and medium-sized enterprises seek. No substantive assessments demonstrating an absence of office demand in the area or an oversupply of it, or a lack of market interest in the office accommodation within the appeal site have been submitted. Consequently, I have no firm basis on which to conclude that the office accommodation within the property's upper storeys, and which would be repurposed as residential flats, is unviable or is surplus to requirements.
9. Although the plans show that a workshop would be provided at ground floor, given the loss of the quantum of office space above this, the amount of employment workspace within the appeal property overall would decrease. Furthermore, I have very limited information on the purpose that the additional workshop accommodation would serve, and it is certainly not clear to me that it would be for the types of affordable studio, research and development, or industrial purposes comprised within the types of mixed-use development Policy BE3 allows for. Finally, I have no reason to conclude the appeal site is allocated for the development proposed.
10. Therefore, the proposal would result in the loss of office accommodation within a Local Employment Site. No adequate justification for this which meets the requirements of Policy BE3 of the BLP or Policy E1 of the LP is before me. This includes no demonstration that the office accommodation is surplus to requirements. Consequently, the proposal conflicts with these policies.

Living conditions

11. The rear elevation building line of the terraced row the appeal site forms a part of is not uniform. The host property's upper storeys of accommodation project farther rearwards than those of the adjacent terraced properties on either side. In part this is the result of an extension which has been erected which is similar in design to that previously granted planning permission (Planning application reference 24/0335). However, this extension is not the only reason for this arrangement. The upper storeys of the rest of the host property, aside from this extension, quite considerably project farther to the rear than those of the terraced property which abuts it to the north.
12. This arrangement means that the host property will already be having the effect of diminishing some of the outlook from, and light entry to, rooms at the back of the adjacent property to the north. The windows serving the rear elevation of this adjacent property vary in their proximity to the host property: some are positioned close to the common boundary with the host property and others farther away. Consequently, not all rooms will receive these effects, but the nearest will.
13. With a depth of around 2.1 metres the proposed rear extension would markedly extend the host property farther rearward. Given the existing irregular building line, this would result in the host property significantly extending beyond the rear elevation of the adjoining terraced property to the north. The proposed rear extension would also run the full width of the host property and, consequently, it would be positioned on the common boundary with this adjacent property. As a result of the proposed extension's proximity and total projection it would create an unduly dominant feature, and it would unacceptably reduce the level of outlook available from the nearest of the windows at the rear of the terrace to the north.
14. Furthermore, due to its proximity, its scale and its position to the south, I also find that the proposed rear extension would be likely to result in significant reductions of light entering the same neighbouring accommodation. For these reasons, the proposed development would result in harmful effects upon the living conditions of the occupiers of the neighbouring terraced property to the north.
15. On the opposite side, the upper storeys of the existing terraced property to the south are not set as far back from those of the host property than is the case with the neighbouring property to the north. Consequently, upon completion of the proposed development, the host property would not project as significantly beyond the windows within the neighbouring property to the southern side. Evidence within the Council's delegated report relating to planning application 24/0335, indicates to me that the nearest of the windows within the neighbouring property to the south is obscurely glazed. This obscure glazing will already be providing a significant limitation to any outlook from the room it serves. The remaining window within the back of the neighbouring terraced property to the south is significantly inset from the common boundary. Finally, as the proposed extension would be positioned to its north the effects upon light entering the rooms within the terrace to the south would not be as pronounced. For these reasons, harmful effects upon the living conditions of the neighbouring occupiers to the south would not result.
16. Nevertheless, I have identified that unacceptably harmful effects upon the living conditions of the neighbouring occupiers of the terraced property to the north would result with particular regard to the matters of outlook and light. As a result,

the proposal conflicts with Policy DMP1 of the BLP which, amongst other matters, requires that development provides high levels of amenity.

Urban greening

17. The benefits of urban greening are wide ranging, and they include visual improvements, biodiversity gains, improved drainage as well as making contributions towards regulating urban temperatures.
18. Policy G5 of the LP relates to urban greening. In part, it sets out that major developments should contribute to the greening of London, and it advocates that an Urban Greening Factor (UGF) be utilised to identify the appropriate amount of urban greening to be achieved by development. Although the supporting text to Policy G5 sets out that the UGF should be applied to major applications, which this proposal is not, it states that its application to smaller scale developments may be appropriate as London boroughs develop their own urban greening models.
19. To this end, the BLP has been adopted since the LP, and this includes Policy BH4 within it. This Policy adopts the position that an UGF applies to all minor residential developments and that they should deliver a greening factor betterment score of 0.4 on the site.
20. BGI1 of the BLP requires the achievement of a net gain in biodiversity and emphasises the contribution such provision would make to the urban greening factor as a whole.
21. In addition, amongst other matters, Policy G6 of the LP sets out that the development plans of London's boroughs should seek opportunities to create habitats, that development proposals should aim to secure net biodiversity gains and that proposals which reduce deficiencies to access to nature should be considered positively.
22. Consequently, these policies apply to the proposal, and they require it to achieve urban greening. The submitted planning application form includes a confirmation that no UGF betterment would be achieved. The submitted plans show no landscaping or habitat creation. Whilst the site's built-up character provides some constraint to urban greening options, with good design and some innovation, I fail to see that urban greening could not be achieved. The appellant refers to justifications or alternative measures to address the matter of urban greening but nothing substantive is before me.
23. Consequently, the proposal would provide no urban greening and, as a result, it conflicts with Policies BH4 and BGI1 of the BLP and Policies G5 and G6 of the LP. Although the Council's fourth reason for refusal also refers to Policy BGI1 of the LP I have taken this to be a typographical error as no such policy is within the LP.

Accessible housing

24. Policy D7 of the LP relates to accessible housing, and it sets out that 10% of dwellings are required to meet the standards contained within the additional optional Building Regulations category M4(3) and all other dwellings are required to meet category M4(2).
25. However, the supportive text to the policy sets out that these additional optional Building Regulations standards apply to those dwellings to which Part M volume 1

of the Building Regulations applies. The supporting text to Policy D7 highlights that the application of Part M volume 1 is generally limited to new-build dwellings.

26. In this case, the dwellings which would be provided would involve the repurposing of an existing building, albeit coupled with extensions and alterations. Even so, given the nature of the proposal, and degrees to which the existing building would be utilised and added to, I am not satisfied that the proposal amounts to the erection of dwellings created via works to which Part M volume 1 of the Building Regulations applies.
27. In turn, I cannot conclude that the proposal is required to provide accessible housing of a design which would meet the aforementioned additional optional Building Regulations categories. Consequently, I find no conflict with Policy D7 of the LP.

Other Matters

28. Policy BH4 of the BLP supports the provision of housing on small sites including through an efficient and intensive use of land but only when the housing proposed is consistent with other development plan policies. As I have identified clear conflict with BE3 of the BLP and E1 of the LP, I, in turn, find that the proposal conflicts with BH4 of the BLP.
29. Nevertheless, the proposal would make a contribution to housing supply and, as the Framework makes clear, the Government's objective is to significantly boost the supply of homes. The proposal would increase the choice of housing in the area and, as a small development, it is likely that it could be delivered quickly too. In providing only 3 dwellings, the contribution to supply would be a limited one, however. As Policy H2 of the LP also advocates the provision of homes on small sites and, unlike BLP Policy BH4, as this is not predicated on compliance with other development plan policies, the proposal complies with Policy H2 of the LP. The contribution to housing supply which the proposal would make is therefore a benefit of the scheme.
30. I am also mindful that the homes would be provided on previously developed land, and the Framework outlines that substantial weight should be given to the value of using suitable brownfield land for new homes. However, in this particular case, this would come at the cost of employment land. Employment land is also a suitable use of brownfield land, and the Framework also sets out that significant weight should be placed on the need to support economic growth and productivity. Therefore, although the provision of the flats is a benefit of the proposal it is, in this case, insufficient to outweigh the harms I have identified in my main issues.
31. The appellant has referred to permitted development rights which are afforded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Whilst it is the case that classes of permitted development rights relate to the change of use of commercial property to dwellinghouses or to a mixed use including them, limitations and conditions apply. Upon completion of the proposed development the property would include a mix of commercial premises and 3 flats. Class G of the GPDO permits a change of use to a mixed use but only including up to 2 flats. Consequently, the proposal, with its 3 flats, could not be implemented utilising the Class G permitted development rights. Potentially, an alternative proposal including a mixed use and only 2 flats could be devised or one

which, seeking to exercise the permitted rights under Class MA for instance, would result in there only being flats within the building.

32. However, firstly, permitted development rights are not always available for every property as the rights can be removed and, in this case, I do not know that the permitted development rights of the property are intact. Secondly, I have only vague assertions before me about how any permitted development rights could be exercised. This means that I cannot be confident that there exists an alternative scheme which could be delivered, which would be suitable to the appellant and their aspirations for the site, and which would be either more harmful or at least have very comparable effects with the proposal the subject of the appeal. Furthermore, a series of limitations and conditions apply to the relevant permitted development rights within the GPDO, and these include the requirement for the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required in relation to a series of matters. With such limited detail before me in relation to the alternative schemes, I also cannot be confident that all these limitations and conditions would be met.
33. Consequently, the potential to exercise permitted development rights is, in this case, a fallback position of only limited weight. It is not sufficient to outweigh my concerns with the scheme.
34. In support of the proposal, the appellant refers to the previous appeal decision at the site (referenced APP/T5150/W/23/3321054) and the relevant plans and the decision itself are before me. However, the scheme the subject of that earlier appeal decision involved no proposal for flats and the extension proposed was at ground floor level only. As a result, the previous scheme is not very comparable with the proposal which is before me and, consequently, the outcome of the earlier appeal is of very limited weight in my decision.
35. I have also had regard to the planning permission 24/0335, and I have already referred to it in my main issues. Again, that development did not involve a proposal for flatted accommodation and the extension proposed was not of the same scale as the proposal before me. Therefore, planning permission 24/0335 does not weigh in favour of the appeal proposal to any meaningful extent.
36. The appellant refers to some other planning permissions in the area. However, very limited detail is before me in relation to them. Consequently, I cannot draw accurate comparisons between those schemes and that proposed in this appeal. The cited permissions are, therefore, of very limited weight in my decision.
37. It may be, in respect of a range of other planning considerations, that the development would not result in harmful effects. This may include the effects of the proposal upon the character and appearance of the area and fire safety, whilst the proposal may provide acceptable living conditions for the prospective occupiers of the flats proposed. Even so, an absence of harm in respect of such matters is a neutral factor in my decision, and it does not outweigh the harm that I have identified.

Conclusion

38. Although, in relation to the matter of accessible housing, I have identified no conflict with Policy D7 of the LP, I have, in my remaining three main issues, identified harmful effects and conflicts with several development plan policies.

Overall, I conclude that the proposed development conflicts with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate a decision other than one in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR