
Appeal Decision

Site visit made on 11 February 2025

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Appeal Ref: APP/A5270/W/24/3347870
433 – 439 Uxbridge Road, Southall, UB1 3ET

- 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 Nasir Choudery of Dashwise Ltd against the decision of the Council of the London Borough of Ealing.
 - The application Ref is 233880FUL.
 - The development proposed is construction of a four storey building comprising of commercial use at ground floor level and eight self contained residential units above.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address and description of the development proposed is taken from the appeal form as they both more accurately reflect the location of the appeal site and the proposal.
3. A revised National Planning Policy Framework was published in December 2024. The parties were given the opportunity to comment on this document and I have taken the comments received into account in my decision.

Procedural Matters

4. The appellant has requested that I consider amended drawings which includes an amended design of the scheme and blue badge car parking.
5. The Procedural Guide: Planning appeals – England (Updated 17 September 2024) makes it clear that the appeal process should not be used to evolve a scheme and there are no provisions within the Rules for amendments to be submitted. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning A and by interested parties at the application stage.
6. Having regard to the principles established in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), I consider that the changes are more than ‘tweaked drawings’ as asserted but are substantive resulting in a significant change to the proposal, including increasing the buildings scale. Moreover, my acceptance of the drawings would be procedurally unfair because those that should have been consulted of the changes have not had the opportunity to comment on the amended scheme.

7. I therefore will not consider the revised drawings and have determined the appeal on the same basis that the Council determined the planning application.

Main Issues

8. The main issues in this case are the effect of the proposal on:
- The character and appearance of the area; having particular regard to the design of the new building;
 - The living conditions of nearby occupiers at No 1 Wharncliffe Drive, with particular regard to daylight and sunlight;
 - The living conditions of the intended future occupiers, with particular regard to outdoor private and communal open space;
 - Whether suitable provision is made for inclusive and accessible accommodation, including disabled car parking provision; and
 - Whether cars associated with the proposal would result in highway safety.

Reasons

Character and Appearance

9. The appeal site is located in a prominent position on the corner of Uxbridge Road and Wharncliffe Drive. Uxbridge Road is a 3 lane highway in both directions within the vicinity of the site, whereas Wharncliffe Drive is a 2 way highway serving a small residential estate. Opposite the appeal site is the St Bernard's Hospital site.
10. The northern side of Uxbridge Road within the vicinity of the appeal site is characterised by short terraced rows of 2 storey, uniformly designed, bay fronted, hipped roofed dwellings with small front gardens and parking spaces, largely enclosed by low walls. The southern side of the road is of a markedly different character and appearance, with tall, flat roofed buildings, large areas of car parking set behind landscaped verges. Wharncliffe Drive has a residential character with 2 storey, bay fronted properties under hipped roofs, of a domestic scale, similar to the northern side of Uxbridge Road. Beyond the residential development on the northern side of Uxbridge Road are a number of commercial units of a similar scale to nearby residential properties.
11. The new building would reflect the building line of nearby properties on Uxbridge and the ground floor would reflect that on Wharncliffe Drive. Its largely rectangular form would also reflect that of nearby terraced properties.
12. However, the scale and design of the building would not reflect the domestic scale and design of buildings on this side of Uxbridge Road and would be much higher than nearby properties resulting in a prominent, dominant feature in the street scene. Moreover, the flat roofed design would be an alien feature given the context of the appeal site. The overall height, window to wall proportions, vertical subdivision, and lack of uniformity would not be sympathetic to the architectural cohesiveness of the residential area within which it would be located. The setting back of parts of the building, projecting upper floors forwards of properties on Wharncliffe Drive and resultant scale and mass would result in an incongruent feature in the street scene.

13. I acknowledge that the building would be constructed of quality materials and that in isolation the proposal would represent good design. However, both national and local planning policies are clear in requiring development to be sympathetic to local character and history, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change (such as increased densities), which in this case would not be achieved.
14. I have considered the examples provided by the appellant. The site at 62 Greenford Road, Greenford, Middlesex was for a smaller building and does not appear to be located within a street scene comparable to the appeal proposal; the site at 36-38 Wales Farm Road, Acton has some similarities with it being a corner plot, but in this case the varying heights of the building and smaller scale are not directly comparable to the proposal before me. In my judgement the building at 1-3 Bollo Lane Chiswick, dominates and overpowers neighbouring development and does not provide justification for harmful development in this case, and the street scene in the Milap Day Centre case does not appear comparable to the appeal scheme. Given the above and mindful that each application and appeal must be determined on its merits, none of these examples provide justification for the appeal proposal.
15. I acknowledge that small sites such as this make an important contribution to the delivery of new homes and that the character of areas evolves over time, however for the reasons given I conclude that the proposal would be harmful to the character and appearance of the area, in conflict with Policy 7.4 of the Development Management Development Plan Document (Adopted December 2013) (DPD) which requires development in Ealing's existing built areas to complement, amongst other matters, scale and detailing. There would also be conflict with The London Plan The Spatial Development Strategy for Greater London (March 2021) (LP) Policy D3 which, amongst other matters requires development to enhance local context by delivering buildings that positively respond to local distinctiveness.
16. The Council's decision notice in its first reason for refusal also refers to LP Policy D4, which relates to processes and actions sought to deliver good design as opposed to specific design criteria. It is thus not directly relevant to this main issue and is not determinative in this case.

Living conditions – nearby occupiers

17. No 1 Wharncliffe Drive is an extended dwelling separated from the appeal site by a narrow access road. To its rear is a small garden. It is located to the north of the appeal site.
18. Apart from a modest single storey building along the boundary with No 431 Uxbridge Road and a large advertisement hoarding, the appeal site is largely open and devoid of built form. On this basis it is likely that the rear facing garden and windows of No 1 experience good levels of sunlight and daylight throughout the year.
19. The new building would be constructed to the south of No 1 in close proximity to its boundary with the narrow access road.

20. The appellant's Daylight, Sunlight and Overshadowing Assessment¹ identified that the rear facing windows at No 1 would see the amount of daylight reduced, but by a negligible amount in terms of applying the BRE 209 guidance. The Council has not provided evidence to substantiate its concern and on the basis of the evidence before me, there would be a low probability that the proposal would result in a loss of daylight to No 1 to the degree that would be harmful to the living conditions of its occupiers.
21. However, the Assessment identified that the proposal would have a major adverse effect on sunlight to the ground floor rear facing window of No 1 closest to the appeal site. Although I have no details of the internal layout of No 1, it is not suggested that this window serves a non-habitable room. The Assessment also identified that the rear garden of No 1 would be overshadowed by the new building to the degree that the effect would be major adverse. Given these results, there is a high probability that the room that the window serves would be less pleasant to use and the reduction in sunlight to the rear garden would also make this less pleasant to spend time within.
22. Collectively the reduction in sunlight to the rear facing room and rear garden of No 1 Wharncliffe Drive would be harmful to the living conditions of its occupiers, in conflict with DPD Policy 7B which requires new development to achieve a high standard of amenity for adjacent uses by ensuring good levels of sunlight, and LP Policies D3 and D6 which seeks development to deliver appropriate amenity, including sufficient sunlight to surrounding housing.
23. DPD Policy 7A referred to in the Council's decision notice is not relevant to this main issue because it relates to emissions, nor are Policies 1.1, 1.2 and 2.1 of the Development Strategy 2026 Development Plan Document (adopted 3 April 2012) (DS2026) because they relate to the spatial vision for Ealing.

Living conditions – intended future occupiers

24. The proposal would comprise 2, two bed apartments on the first floor and 2, one bed apartments. On the second floor there would be 2, three bed apartments and a one bedroom apartment. The third floor would have 2, two bed apartments. Each of the apartments would have a balcony or winter garden. No communal open space is proposed.
25. Table 7D.2 of the DPD sets out minimum space provision requirements for houses and flats. For flats 5 sq.m per 1-2 person unit plus 1sq.m for each additional occupant is required. LP Policy D6 requires that a minimum depth and width of 1.5 metres is provided.
26. There is dispute in respect of the sizes of the balconies and winter gardens proposed. Even if I were to accept the appellant's case that the balconies/winter gardens were sized in accordance with the London Plan, it is clear that these standards are minimum requirements, and given the number of family sized apartments proposed in this scheme, in my judgement the outside space provided would be unlikely to cater for the needs of the occupiers of the proposed development, including space for children to play. In particular the proximity of the apartments with balconies facing Uxbridge Road would be in close proximity to a busy road and traffic light junction as well as a bus stop.

¹ Syntegra Consulting September 2023

27. Occupiers using these spaces would be likely subjected to traffic noise, engines revving, people talking at the bus stop and as such they would be unlikely to be pleasant spaces to spend time. I acknowledge that if the areas were enclosed that this would likely mitigate these effects, however this would result in the occupiers having very limited access to an outside area to sit, dry washing and play, particularly given that there would be no communal open space provided on the site.
28. I note the proximity of the appeal site to Brent Meadow where occupiers could go walking, play and enjoy the outdoors, however this does provide justification for providing unsuitable outdoor space at the scheme proposed.
29. I conclude that given the above that suitable living conditions would not be provided for the intended future occupiers of the scheme, in conflict with DPD Policy 7B which requires that a high standard of amenity is achieved for users of the development, as well as the open space requirements of Policy 7D. There would also be conflict with LP Policy D6 and the private outside space requirements.
30. Policy 3.5 of the DPD refers to space standards in Table 3.3. I have not been provided with a copy of this table so have been unable to assess the proposal against it. I consider that Policies 1.1 and 1.2 of the DS2026 referred to in the third reason for refusal are not relevant to this main issue because they relate to the spatial vision for Ealing as opposed to living conditions.

Inclusivity and accessibility

31. LP Policy D7 requires that 10% of all dwellings proposed are designed as wheelchair user dwellings, and that all others are accessible and adaptable dwellings. LP Policy H2 recognises that small sites such as the appeal site make a contribution to meeting London's housing needs.
32. Whilst a lift would serve each floor of the proposed dwellings, there is dispute whether one of the units would be suitable as a wheelchair dwelling and that all others would be accessible and adaptable. No details of wheelchair circulatory space has been shown on the submitted drawings, nor evidence produced to substantiate the Council's concern.
33. The proposal shows 3 car parking spaces to the rear of the building, likely accessed off the narrow access road, albeit this is not included in the red line of the application site. Although none of the spaces are marked as a blue badge parking bay, there appears to be sufficient space for this to be provided, subject to access to the space from a public highway being demonstrated.
34. Had the proposal been acceptable in all other respects these are matters that I would have sought clarification on.
35. On the basis of the evidence before me I am unable to conclude on this issue, or whether or not the scheme complies with the inclusivity and accessibility objectives of LP Policies D7 and H2.

Highway safety

36. The appellant has indicated that the appeal site is located in an area with a PTAL rating of 3. There is a bus stop on Uxbridge Road adjacent the appeal site which

appears to have a regular bus service and the appellant has indicated that it is a short walk to the nearest station.

37. The appeal site is located within a Controlled Parking Zone (CPZ) which is operational Monday to Saturday between 0930 and 1730. Although the CPZ spaces run along both sides of the road, not all are likely to be used because of the number of off-road parking spaces in Wharncliffe Drive and neighbouring streets. At the time of my visit many of the spaces, not blocking driveways were occupied. Although this is a snapshot in time, I have no evidence before me to indicate that this is not the norm.
38. Accordingly, and given that Uxbridge Road has no parking along it within the vicinity of the site, it is likely that the area is under parking stress. To reduce parking demand LP Policy T6 sets out that car-free development should be the starting point for all development proposals to allow existing residents to maintain safe and efficient use of their streets. An exception to this is for Blue Badge holders
39. A Unilateral Undertaking (UU) dated 10 July 2024 accompanied the appeal which makes provision for none of the occupiers of the development to apply for a Resident's Parking Permit, other than disabled persons. The Council has not commented on the UU. Notwithstanding this, I am satisfied that given the above that the UU and its obligations are reasonable and necessary to make the proposed development acceptable.
40. Given the obligations contained within the UU and on the evidence before me, I am satisfied that the proposal would not result in inconsiderate parking by occupiers of the proposed scheme or result in harm to highway safety. The proposal accords with LP Policy T6 and the transport impact objectives of LP Policy T4.

Other Matters

41. I note the positive discussions with the Council's planning officers; however, the decision of the Council was to refuse the planning application and I have assessed the proposal accordingly.

Planning Balance

42. There is no doubt that the benefits of the proposal are considerable, including housing provision on a small site in a sustainable location, at a time when the Council need to increase its supply of specific deliverable sites as a result of the 2023 Housing Delivery Test Results. Economic benefits associated with the build and occupation also weigh in favour of the proposal, as is the likely support the occupiers would give to services and facilities in the locality. Being a small site, the development is likely to be delivered quickly.
43. The use of a seemingly brownfield site in a residential location, close to public transport links broadly accord with many policies of the development plan. Such policies also support an effective use of land in meeting the need for new homes.
44. That said, development also needs to be well designed and reflect the context within which it is located and provide acceptable living conditions to nearby occupiers and the intended future occupiers of the scheme. For the reasons set out, this would not be achieved.

45. Although considerable, the benefits of the proposals are not sufficient in this case to outweigh the harm I have identified and the conflict with the development plan as a whole.

Conclusion

46. For the above reasons and having regard to all other matters raised, I conclude that there are no material considerations, including the Framework, which indicate a decision other than in accordance with the development plan.
47. The appeal is dismissed.

RC Kirby

INSPECTOR