



Appeal Decision

Site visit made on 15 April 2025

by **C Housden BSc(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th of June 2025

Appeal Ref: APP/G5180/W/24/3358126

Burnhill House, 50 Burnhill Road, Beckenham BR3 3LA

- 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 Randalswood Construction UK Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/24/02187/FULL1.
 - The development proposed is for the change of use of part of ground floor and part of first floor from ancillary office / storage and facilities to provide 4 no. residential flats (3 no. 1 bedroom flats and 1 no. studio flat), alterations to southern elevation at ground floor level, and creation of external amenity space at ground floor, along with associated refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal comprises two flats on the ground floor (Plots A and B) and two flats on the first floor (Plots C and D). I have been provided with evidence by the parties confirming that a separate planning permission¹ has been granted by the Council for Plots C and D. On this basis and the evidence before me, my decision will focus on Plots A and B.
3. The Council has questioned whether the proposed planters would be situated on land comprising a public footpath outside the control of the appellant. However, the appellant has since confirmed in their final comments that the land would be within their control.

Main Issues

4. The main issue is whether the appeal proposal would provide adequate living conditions for the future occupiers of Plots A and B, with particular regard to noise and disturbance including the agent of change; the provision of sunlight and daylight; and outlook.

Reasons

5. Plots A and B of the appeal site are situated on the ground floor of Burnhill House and currently comprise refuse and cycle storage space. The plots have a proposed single aspect that faces towards Burnhill Road. The wider building is a mixed use commercial and residential building situated over three storeys.

¹ LPA ref: DC/24/03881/FULL1

Noise

6. The area surrounding the appeal site has a number of sources of potential noise, including, Burnhill Road and the pedestrian walkway, and the Coach and Horses Public House which has a front garden that fronts onto Burnhill Road with a number of tables. I understand that the public house is used for live music events and sports coverage. The evidence before me also demonstrates that the public house's licence generally covers between 11:00 – 23:00, with some slight deviations above and below these times dependent on the day of the week. The evidence also shows the external area has extensive hours of use, only being prohibited, except for smokers, after 23:00 and from playing live or recorded music after 22:00.
7. In relation to the Coach and Horses, I am mindful of paragraph 200 of the National Planning Policy Framework (the Framework) which states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established, and any suitable mitigation should be provided by the agent of change. These requirements are re-enforced by Policy D13 of the London Plan (2021) (LP).
8. The appellant has submitted a Noise Impact Assessment (NIA) as part of the appeal submission. The NIA identifies that due to the level of noise within the area, habitable rooms at the appeal site would not be able to achieve an adequate internal noise level with their windows open.
9. The appeal scheme does not propose to seal shut the openings on the façades of the flats, and therefore the mitigation relies upon the assumption that future occupiers would keep the openings shut. However, it cannot be assumed that future occupiers would want to keep all external openings shut at all times. Whilst alternative ventilation for the flats is proposed, future occupiers may still wish to open a window to access fresh air or for a variety of other reasons. Furthermore, due to being single aspect, both Plots A and B have doors on their external façades to provide access into their respective private amenity areas. As such, any time a future occupier would access their private amenity area it would undermine the proposed mitigation.
10. As such, the internal mitigation is outside the control of the appellant and the Council, which undermines its effectiveness. Therefore, securing the mitigation through a condition would not be enforceable or reasonable as it relies on a third party, the future occupiers, to not open any of the proposed windows or doors. As a result, the appeal proposal would not provide adequate mitigation from the surrounding noise sources which would result in a significant adverse effect on the living conditions of the future occupiers.
11. In relation to the external amenity space, the NIA acknowledges that the upper guideline criteria of 55 dB $L_{Aeq,16hr}$ would be exceeded at the appeal site, with a predicted noise level of 59 dB $L_{Aeq,16hr}$. The NIA suggests that access to nearby public amenity areas, such as Kelsey Park, would partially offset the noise levels.
12. However, public outdoor spaces do not serve the same function as private outdoor spaces, and therefore access to public areas is not sufficient mitigation to make up for the deficient private outdoor space at the appeal site. Future occupiers of the flats could not undertake the usual activities associated with a private amenity space such as sitting outside or hanging out washing without being subject to excessive noise levels which would be materially harmful to their living conditions.

13. I therefore conclude that the proposed internal and external noise mitigation for Plots A and B would be insufficient to provide adequate living conditions for future occupiers of the flats. Given that this is the case, I also cannot conclude that the Coach and Horses, as an existing noise source, would not have unreasonable restrictions placed upon it by the development introducing noise sensitive receptors utilising inadequate mitigation.

Daylight/Sunlight

14. In support of the planning application a Daylight/Sunlight Report (DS Report) was submitted. The parties are in dispute over the daylight standard which should be applied in relation to the shared living/dining/kitchen areas. I agree with the appellant that due to the open plan living arrangement of the room, the kitchen area is unlikely to be used as a habitable space by future residents and the dominant use of the room as a living room would be the appropriate standard to achieve. I do not have other convincing evidence before me to take a different approach.
15. The DS Report details that the BRE criteria is met in relation to the habitable rooms of both Plots A and B. Therefore, I am satisfied that, whilst the flats would be single aspect, the future occupiers of the proposed flats would achieve a satisfactory level of daylight in order to ensure adequate living conditions. No evidence has been provided in order to make me reach a different conclusion.
16. In relation to sunlight, the DS Report identifies that the living/dining/kitchen area of Plot B would not meet the minimum sunlight exposure level, however the bedroom would. Plot A would meet the minimum sunlight exposure level in both the bedroom and living/dining/kitchen area.
17. I am mindful of paragraph 130(c) of the National Planning Policy Framework. This states that "...when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)".
18. In this context for this specific site, given that at least one habitable room within Plot B receives the required exposure to sunlight, I do not find that the deficiency within the living/dining/kitchen area would be harmful to the amenity of the future occupier of Plot B. I am satisfied that, whilst the flats are single aspect, the future occupiers of the proposed flats would achieve a satisfactory level of sunlight in order to ensure that they would have adequate living conditions in this regard.
19. Whilst the Council is concerned with the depth of the proposed properties, I note that the rear areas of the two flats comprise a bathroom, storage area and hall. Whilst the provision of daylight and sunlight may be more restricted in these areas due to the depth of the flat, given that these areas are non-habitable I do not consider this to be harmful to the living conditions of future occupiers.

Outlook

20. A planter is proposed outside the windows of the two flats which separates the private amenity space from the adjacent public footpath. The sections plan submitted in support of the application demonstrates that when standing, a future occupier would be able to see over the planter and the planting. Given that a future occupier could readily observe views beyond the site, I do not consider that a future

occupier would feel constrained or oppressed by the living environment and therefore would have sufficient outlook. Whilst I note that the Council has raised concern over the visual interest and range of these views, given the urban context of the appeal site, I do not consider this to be harmful to the living conditions of future occupiers. As such, whilst the flats would be single aspect, I consider that the outlook would be sufficient to ensure adequate living conditions of future occupiers.

Conclusion on living conditions

21. To conclude, I have found that the appeal proposal would provide adequate living conditions in relation to outlook, daylight and sunlight. However, I have found that the proposed mitigation in relation to noise for both the internal and external areas of Plots A and B would be inadequate. As such, future occupiers of the development would be subject to unacceptable levels of noise which would result in a significant adverse effect on their living conditions. Furthermore, without sufficient mitigation I cannot be certain that the existing public house would not have unreasonable restrictions placed upon it.
22. As such, the appeal proposal would conflict with Policies 4, 10 and 37 of the Bromley Local Plan (2019) (BLP) and Policies D3, D6 and D13 of the LP. These policies seek to ensure that development is of a high-quality design that provides healthy living conditions for future occupiers by ensuring the impacts from existing sources of noise and disturbance are appropriately mitigated and that these existing sources of noise do not have unreasonable restrictions placed upon them.

Other Matters

23. Whilst I am aware that other residential properties have been recently constructed in the wider building, I have not been given the specific details regarding the noise considerations of these properties, and if it would be comparable to the appeal proposal. Furthermore, I note that the residential plots in the wider building are situated above ground floor level which is a material difference between these units and Plots A and B of the appeal proposal.
24. The appellant has identified that there are existing residential properties along Kelsey Lane which abut the pub and as far as they are aware, the pub has not received complaints regarding noise and disturbance from these properties. However, the existence of these properties and a potential lack of complaints from these occupiers does not diminish the inadequacy of the noise mitigation proposed by the appeal scheme which I have assessed on its own merits.
25. The appellant has identified that the Council's Environmental Health team did not raise an objection to the planning application as a consultee. However, I note that the NIA was not before the Council's Environmental Health team as this was submitted with the appeal. In any case, the lack of objection from a consultee does not diminish the harm in relation to living conditions that I have identified or justify the inadequate mitigation proposed based on the evidence before me.

Planning Balance

26. The proposal is not in accordance with the aforementioned policies of the development plan, by virtue of inadequate noise mitigation resulting in harm to the living conditions of future occupiers and placing unreasonable restrictions on the

existing public house. For this reason, the development conflicts with the development plan as a whole.

27. However, the Council cannot demonstrate a five-year housing land supply, with the Council's officer report setting out a position of 2.96 years which is not contested by the appellant. The provisions of paragraph 11(d) of the Framework are engaged. Footnote 8 confirms in these circumstances the policies which are most important for determining the application are considered out-of-date.
28. Paragraph 232 of the Framework confirms due weight should be given to policies, according to their consistency with the Framework.
29. The importance of achieving well-designed development is a key aspect of sustainable development, as set out in section 12 of the Framework, where it is clear at paragraph 139 that development which is not well designed should be refused. Paragraph 135(f) promotes health and well-being in developments and achieving a high standard of amenity for future occupiers. Whilst paragraph 124 of the Framework seeks to make effective use of land, this is to be achieved while also safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 198 seeks to ensure that development avoids noise giving rise to significant adverse impacts on health and the quality of life, while paragraph 200 seeks to ensure that suitable mitigation is provided by the agent of change. The harms caused would be substantial and meet the threshold of paragraph 125(c) of the Framework.
30. Therefore, based on the consistency with the Framework, the conflict between the appeal proposal and Policies 4, 10 and 37 of the BLP and Policies D3, D6 and D13 of the LP carries significant weight against the scheme.
31. The Government's objective is to significantly boost the supply of housing, including through small and medium schemes. The proposal would make use of brownfield land in a sustainable urban area to provide four new dwellings, contributing towards the Council's housing land supply. It would also lead to a small and time limited economic benefit during the construction phase, as well as some limited social and economic benefits resulting from future occupiers and CIL receipts. The scheme would also be designed to M4(2) standard, and the external appearance would be visually attractive. However, given the small scale of the proposal these matters at most attract moderate weight in favour of the proposal.
32. As such, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. Therefore, in this case, the presumption in favour of sustainable development, as set out in the Framework, would not apply.

Conclusion

33. The proposal conflicts with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

C Housden

INSPECTOR