

Grounds of Appeal

1. Introduction

This appeal is against the refusal by the London Borough of Bromley of a planning application for demolition of existing bungalow and replacement building comprising 5 x 2 bedroom apartments and off road car parking at 74 Madeira Avenue, Bromley BR1 4AS. The application reference is DC/14/05019/FULL1.

A copy of the application as submitted to the Council is appended to this statement (Appendix 1).

The planning application was reported to the Council's Plans Sub-Committee on 19th March 2015. A copy of the Committee report is at Appendix 2.

The Chief Planner in his report, having fully considered the development plan and all other material planning considerations as required by section 38(6) of the Planning Act, **recommended that conditional planning permission be granted**. This is not surprising as the pre application meeting and the Council's response had been taken on board in the submission of the application. The pre application letter is included in Appendix 1.

It should be noted that the pre application discussion about the site had started with a proposal to accommodate 6 apartments on the site. The main issues were considered to be the principle of development; the layout, siting and design; standard of accommodation; trees; traffic/parking; lifetime homes standards/wheelchair housing; refuse storage and cycle parking; impact on neighbours and residential amenity. As is clear from the letter the main concern raised was the adequacy of onsite parking for 6 units. A suggestion was made that a 5 unit scheme would address this concern. The applicant readily took this on board and reduced the scheme to 5 units.

At the appellant's request, I spoke at Committee in support of the recommendation that permission be granted. There was a speaker against the application from the Ravensbourne Valley Preservation Society on behalf of those objecting.

Cllr Michael Rutherford one of the three Ward Members spoke against the application as a visiting Member. He was not a Member of the Committee and did not have a vote when the decision was made but urged the Committee to refuse permission and reject any proposal for flats.

The Plans Sub Committee did not accept the Chief Planner's recommendation and decided to refuse permission for the following reason:

The proposal would, by reason of its scale, height, massing, density, site cover and type of housing proposed, constitute an overdominant and incongruous form of development, out of character with neighbouring development, and harmful to neighbouring amenity by reason of loss of overlooking and privacy; and, if permitted, would be likely to set a pattern for similar undesirable development along this part of Madeira Avenue which is made up of individual family houses, contrary to Policies BE1 and H9 of the Unitary Development Plan.

A copy of the decision notice is attached (Appendix 3).

It should be noted that the decision notice as drafted by the Council refers to the proposal being "harmful to neighbouring amenity by reason of loss of overlooking and privacy". On the assumption that the intention was to refer to overlooking and loss of privacy, the appeal will address this issue.

2. Site and Context

The application site is located on the north-east side of Madeira Avenue, Bromley. The site slopes upwards with the rear garden currently assessed by climbing several steep steps. The rear garden contains mature trees and landscaping.

There is an existing bungalow on the site although the bungalow is tired and has reached the end of its useful life. The property will be replaced. It is simply a matter of what will replace it. Provided the redevelopment is sustainable, compatible with the area and in accordance with development plan policy, permission can be expected.

The property is not within a Conservation Area, or Area of Special Residential Character in the development plan. The demolition of the existing property is not therefore within the local planning authority's control.

Madeira Avenue is a long road with a variety of house types of varying ages. Some of the more recent redevelopments have resulted in town houses replacing older properties. These town houses typically have garaging and surface parking at street level to the front as proposed in the appeal scheme.

There are blocks of flats at the junction of Madeira Avenue with Highland Road. There are other flats in converted Edwardian properties in Madeira Avenue. There are maisonettes. There are detached, semi detached and terraced properties.

In summary, this is a residential area with a mixture of housing style and types of varying age.

3. Planning Policy

The Development Plan

The Planning Acts require a planning application or appeal to be determined in accordance with the adopted development plan for the area, unless material considerations indicate otherwise. The Development Plan for the area is the London Plan and the saved policies of the Bromley Unitary Development Plan (UDP).

The following saved Unitary Development Plan policies are relevant to the determination of this appeal:

- BE1 Design of New Development
- BE7 Railings, Boundary Walls and Other Means of Enclosure
- H1 Housing Supply
- H7 Housing Density and Design
- H9 Side Space
- H11 Residential Conversions
- NE7 Development and Trees
- T3 Parking
- T7 Access
- T18 Road Safety

Supplementary Planning Guidance 1 & 2

Policy BE1 reads as follows:

“development proposals, including extensions to existing buildings, will be expected to be of a high standard of design and layout. To those ends, proposals will be expected to meet all of the following criteria:

- (i) development should be imaginative and attractive to look at, should complement the scale, form, layout and materials of adjacent buildings and areas;***
- (ii) development should not detract from the existing street scene and/or landscape and should respect important views, skylines, landmarks or landscape features;***
- (iii) space about buildings should provide opportunities to create attractive settings with hard or soft landscaping;***
- (iv) relationship with existing buildings should allow for adequate daylight and sunlight to penetrate in and between buildings;***
- (v) the development should respect the amenity of occupiers of neighbouring buildings and those of future occupants and ensure their environments are not harmed by noise and disturbance or by inadequate daylight, sunlight or privacy or by overshadowing;***
- (vi) the development should include measures that achieve sustainable design and construction methods including, where appropriate, energy generated by on-site renewable development;***
- (vii) suitable access should be provided for people with impaired mobility. Where necessary and relevant to the development, contributions may be sought to improve accessibility around the development;***
- (viii) security and crime prevention measures should be included in the design and layout of building and public areas; and***
- (ix) applications should be accompanied by a written statement setting out design principles and illustrative material showing relationship of the development to the wider context.”***

The following explanatory paragraphs follow Policy BE1 in the UDP.

“6.9 The Council wishes to secure the creation of an attractive townscape and pleasant living and working conditions by ensuring that all new development (including extensions to existing buildings) makes a positive contribution to the area in which it is located. Good urban design including the space around and between buildings and their landscaping, contributes to the quality of the built environment and can help urban regeneration.

6.10 The design of new development should safeguard public amenity and improve the quality of life in the borough with new development relating well to the character of its surroundings. New development affects the streetscape now and in the future. By careful control, its relationship to its surroundings will encourage appropriate and sensitive designs.

The Council will prepare supplementary planning guidance on design. In doing so, and when considering the design aspects of individual proposals, reference will also be made to advice in government guidance such as "Safer Places: The Planning System and Crime Prevention" (ODPM February 2004), "By Design – better places to live" published by DETR/DTLR in association with the Commission for Architecture and the Built Environment (CABE), DOE Circular 5/94 "Designing out Crime" and PPS1 Paragraph 37.

6.11 There is a need to encourage local distinctiveness and "sense of place", particularly through the use of vernacular materials. Good modern design can be imaginative and innovative, and will be welcomed in appropriate circumstances where it contributes positively to the surrounding environment."

POLICY H9 reads as follows:

"When considering applications for new residential development, including extensions, the Council will normally require the following:

(i) for a proposal of two or more storeys in height, a minimum 1 metre space from the side boundary of the site should be retained for the full height and length of the flank wall of the building; or

(ii) where higher standards of separation already exist within residential areas, proposals will be expected to provide a more generous side space. This will be the case on some corner properties."

The explanatory text reads as follows: *"The Council considers that the retention of space around residential buildings is essential to ensure adequate separation and to safeguard the privacy and amenity of adjoining residents. It is important to prevent a cramped appearance and unrelated terracing from occurring. It is also necessary to protect the high spatial standards and level of visual amenity which characterise many of the Borough's residential areas. Proposals for the replacement of existing buildings will be considered on their merits".*

The relevant London Plan policies are:

- 3.3 Increasing Housing Supply
 - 3.4 Optimising Housing Potential
 - 3.5 Quality and Design of Housing Developments
 - 3.8 Housing Choice
 - 3.9 Mixed and Balanced Communities
 - 5.3 Sustainable Design and Construction
 - 5.13 Sustainable Drainage
 - 6.9 Cycling
 - 6.13 Parking
 - 7.1 Building London's Neighbourhoods and Communities
 - 7.2 An Inclusive Environment
 - 7.3 Designing out Crime
 - 7.4 Local Character
 - 7.6 Architecture
 - 7.21 Trees and Woodland
 - 8.3 Community Infrastructure Levy
- The Mayor's Housing Supplementary Planning Guidance.

While none of the London Plan policies is referred to in the reason for refusal, it is the case that the London plan as amended by the adoption of the Further Alterations in March 2015, is the most up to date part of the development plan.

In particular it should be noted that the March 2015 alterations increased the annual housing figure from Bromley from 500 to 641+5% per annum. The latest figures which the Borough published in September 2014 confirm that the Borough had a 5 year land supply while the annual figure was 500. It does not have a 5 year land supply now that the target figure is 641 + 5%. Over a 5 year period the shortfall will be significant.

That being the case the NPPF recognises that the UDP policies should be given less weight than London Plan policies and the guidance in the NPPF itself.

Policy 3.4 *"Optimising Housing Potential"* includes the following statements which are particularly relevant to this appeal.

"Strategic, LDF preparation and planning decisions

A Taking into account local context and character, the design principles in Chapter 7 and public transport capacity, development should optimise housing output for different types of location within the relevant density range shown in Table 3.2. Development proposals which compromise this policy should be resisted."

The explanatory text includes the following *“A rigorous appreciation of housing density is crucial to realising the optimum potential of sites, but it is only the start of planning housing development, not the end. It is not appropriate to apply Table 3.2 mechanistically. Its density ranges for particular types of location are broad, enabling account to be taken of other factors relevant to optimising potential – local context, design and transport capacity are particularly important, as well 7.18) and play (Policy 3.6).”*

Policy 3.5 *“Quality and design of housing Developments”* includes the following:

“Strategic

A Housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment, taking account of strategic policies in this Plan to protect and enhance London’s residential environment and attractiveness as a place to live. Boroughs may in their LDFs introduce a presumption against development on back gardens or other private residential gardens where this can be locally justified.

Planning decisions and LDF preparation

B The design of all new housing developments should enhance the quality of local places, taking into account physical context; local character; density; tenure and land use mix; and relationships with, and provision of, public, communal and open spaces, taking particular account of the needs of children and older people

D Development proposals which compromise the delivery of elements of this policy may be permitted if they are demonstrably of exemplary design and contribute to the achievement of other objectives of this Plan.”

The explanatory text includes the following

“ 3.32 Securing new housing of the highest quality and protecting and enhancing residential neighbourhoods are key Mayoral priorities.

3.34 Directly and indirectly back gardens play important roles in addressing many of these policy concerns, as well as being a much cherished part of the London townscape contributing to communities’ sense of place and quality of life. Pressure for new housing means that they can be threatened by inappropriate development and their loss can cause significant local concern. This Plan therefore supports development plan-led presumptions against development on back gardens where locally justified by a sound local evidence base.”

National Planning Policy Framework 2012.

The National Planning Policy Framework (NPPF) has consolidated national planning guidance. It is a material planning consideration in the determination of planning applications and planning appeals. Paragraph 14 of the NPPF refers to a presumption in favour of sustainable development being seen as a golden thread running through both plan making and decision taking. It goes on to say that for decision making this means approving proposals that accord with the development plan without delay.

The policies in the NPPF took effect on the day of publication in March 2012. The relationship between the NPPF and the development plan was set out in the NPPF in the following terms.

“For the purposes of decision-taking, the policies in the Local Plan (and the London Plan) should not be considered out of date simply because they were adopted prior to the publication of this Framework. However, the policies contained in this Framework are material considerations which local planning authorities should take into account from the day of its publication.”

After a 12-month period i.e. March 2013, *“due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)”*.

Para 7 states that there are three dimensions to sustainable development: economic, social and environmental.

“These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and*
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”*

Para 8 concludes that *“to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.”*

Para 10 makes clear that *“Plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas.”*

In para 17 are a set of 12 core land-use planning principles which should underpin both plan-making and decision-taking. The fourth of these reads as follows:

- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;*

4. Grounds of Appeal

The Council found the proposal unacceptable for one reason which has three elements.

Each of these matters will be assessed:

A. *its scale, height, massing, density, site cover and type of housing proposed, constitute an overdominant and incongruous form of development*

The National Planning Policy Framework (NPPF) states that planning should encourage the effective use of land by reusing land that has been previously developed (brownfield land) provided that it is not of high environmental value. The NPPF defines “previously developed land” as: *“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it*

should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure”.

London Plan Policy 3.4 states that development should optimise housing output for different types of location taking into account local context and character, design principles and public transport capacity.

The approach to the design of the proposed apartments has been to match the height and scale to the neighbouring houses and those along the road to limit the impact on the character and appearance of the street scene.

Policy H9 of the UDP is concerned with side space and states that:

‘When considering applications for new residential development, including extensions, the Council will normally require the following:

(i) for a proposal of two or more storeys in height, a minimum 1 metre space from the side boundary of the site should be retained for the full height and length of the flank wall of the building; or

(ii) where higher standards of separation already exist within residential areas, proposals will be expected to provide a more generous side space. This will be the case on some corner properties.’

The subtext at paragraph 4.48 states that:

‘The Council considers that the retention of space around residential buildings is essential to ensure adequate separation and to safeguard the privacy and amenity of adjoining residents. It is important to prevent a cramped appearance and unrelated terracing from occurring. It is also necessary to protect the high spatial standards and level of visual amenity which characterise many of the Borough’s residential areas. Proposals for the replacement of existing buildings will be considered on their merits.’

The proposed development would comply with Policy H9 as the dwellings are located with a 1m side space on either side of the property.

The design is generally in keeping with the surrounding street scene and the architectural detail of the property has been taken from the neighbouring properties to maintain continuity of design and blend in with the street scene.

Policy 3.5 of the London Plan states the minimum internal floorspace required for residential units on the basis of the level of occupancy that could reasonably be expected within each unit. Table 3.3 of the London Plan requires a Gross Internal Area of 61sqm for a two bedroom three person flat. All the proposed flats exceed the minimum figure as set out below:-

Flat 1 – 71.7m²

Flat 2 – 69.8m²

Flat 3 – 71.7m²

Flat 4 – 69.8m²

Flat 5 – 124m²

In density terms the site equates to approximately 65 dwellings per hectare which would be in line with the London Plan. Table 3.2 of the London Plan advises that in suburban locations such as this a residential density should be within the range of 70-76 dwellings per hectare. The proposed development is therefore slightly below an optimum density but in character with the area. It is not contrary to either policy BE1 or H9.

Taking all these material considerations and policy into account, the proposal is in scale, of similar height and massing to others in the road, at a density slightly below the minimum appropriate in the area according to the development plan. Therefore it is not appropriate to describe the proposal as an overdominant and incongruous form of development. It is surprising that the type of housing proposed, flats, is particularly singled out as being incongruous bearing in mind that there are properties converted into flats in Madeira Avenue and flatted redevelopment at the junction of Madeira Avenue with Highland Road and in adjoining roads.

B. out of character with neighbouring development, and harmful to neighbouring amenity by reason of loss of overlooking and privacy

Unitary Development Plan policies BE1 and H9 seek to protect neighbouring residential properties against the loss of amenity resulting from reduced daylight, sunlight and / or overshadowing.

The proposal complies with these policies and windows in the flank elevations protect the privacy of adjoining properties. The additional size of the proposed building compared with the existing particularly to the rear is addressed by mature landscaping to both boundaries and the design respecting 45 angles from both adjoining houses.

As required by the Mayor's design guidance, this new residential scheme provides sufficient amenity space to meet the needs of residents.

C. if permitted, would be likely to set a pattern for similar undesirable development along this part of Madeira Avenue which is made up of individual family houses, contrary to Policies BE1 and H9 of the Unitary Development Plan.

This part of the ground of refusal is factually incorrect on two counts. Firstly Madeira Avenue is not made up purely of individual family houses and secondly there is nothing in the policies quoted or in the development plan or NPPF which would support the contention that 5 flats in a building of sympathetic design to its surroundings are undesirable development. However it reflects the objections submitted by third parties.

Ravensbourne Valley Preservation Society in their letter characterise Madeira Avenue and the surrounding roads as two storey semi detached and detached properties. At best this could be described as only a partial description as the site visit will reveal.

The parking space to the front is described as "bare paving like nothing else in the road." The town houses have exactly the same frontage treatment. However should it be considered that some low level planting could usefully add to the character of the paved area. I attach at Appendix 4 a copy of an image of how this would look. This does not reduce the number of spaces or restrict access to the

garages. I confirm that the appellant would be happy to accept a condition requiring details to be submitted to the Council for approval.

The proposed building is complimented by the following comment “the design and impression may be of a large house” which in view of the RVPS characterisation of the road might make one assume that the design is considered in keeping. However it is then criticised “viewing the building once built would lead anyone to the conclusion that the building comprised flats.” No explanation is offered as to why this “large house” in flats is unacceptable when there are Edwardian properties converted to flats which are very similar to this proposal. The objection to flats being out of character is clearly unsustainable.

5. Conclusions

The appeal application was properly considered and assessed by the Council. The Committee report considered the development plan and all other material planning considerations including the NPPF and comments received from consultees and third parties as required by section 38(6) of the Planning Act. In this appeal statement, the appellant has done the same and arrived at the same conclusion.

The advice in National Planning Policy Guidance is that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission unless it is founded upon valid planning reasons. There is no such justification in this case as the pre application letter, the applicant’s Design and Access Statement and the committee report makes clear. The appellant finds the conditions suggested in the committee report to be reasonable and appropriate and asks that planning permission is granted accordingly.

Appendices

1. A copy of the application as submitted to the Council
2. A copy of the Committee report
3. A copy of the decision notice
4. Low level planting on the forecourt



