

IN THE MATTER OF:

50 ASHGROVE ROAD, BROMLEY BR1 4JW

OPINION

I. BACKGROUND

1. I am asked to advise Northstar 2000 Ltd in respect of their proposed residential development (“**the Proposed Scheme**”) at 50 Ashgrove Road, Bromley, BR1 4JW (“**the Site**”). The local planning authority is Lewisham Borough Council (“**the Council**”).
2. By a decision notice dated 3 August 2017, the Council refused an application for planning permission for residential development (2 two bedroom maisonettes and 2 four bedroom houses) in respect of the Site (reference DC/17/100897). The second reason for refusal stated (emphasis added):

“The accessway into the site, by reason of its length and limited width would fail to provide sufficient space for two vehicles to pass, whilst the width of the pedestrian footpath would be inadequate. Subsequently, the proposal would create potential pedestrian and vehicular conflict, and would fail to provide sufficient access for a fire emergency vehicle, contrary to Policy 3.5 Quality and Design of Housing Development of the London Plan (adopted March 2015, incorporating March 2016 Minor Alterations), Policy 14 Sustainable movement and transport of the Core Strategy (2011), and DM Policy 29 Car parking, DM Policy 30 Urban design and local character, and DM Policy 33 Development on infill sites, backland sites, back gardens and amenity areas of the Development Management Local Plan (November 2014).”

3. My advice is sought on the inclusion of the justification that “[t]he accessway ... would fail to provide sufficient access for a fire emergency vehicle”. In particular, I am asked to advise whether a reason for refusal in respect of the Proposed Scheme, which relied on a similar justification, would be sound.
4. In my view, the inclusion of such a justification in a reason for refusal in respect of the Proposed Scheme would be unsound for the reasons below. Further, I consider it very likely that an appeal to the Secretary of State would succeed in respect of this issue.

II. DISCUSSION

5. The starting point is to consider whether sufficient access for a fire emergency vehicle is in fact possible, as a matter of fact. I have been provided with two documents which bear on this question:
 - (a) A design note from BB7 dated 26 July 2018 (“**the BB7 Note**”). This note deals with Site Layout at section 3 and explains that all proposed dwelling houses and flats within the Proposed Scheme will be provided with a sprinkler system in accordance with British Standards. On this basis, the BB7 Note concludes that the development would comply with BS 9991, notwithstanding the fact that a fire engine would not access the accessway beyond 20 meters of the junction with Ashgrove Road.
 - (b) A letter from the London Fire Brigade dated 16 August 2018. This letter is from the Assistant Commissioner (Fire Safety Regulation) and deals with the London Fire Commissioner’s responsibility for enforcing the Regulatory Reform (Fire Safety) Order 2005. As noted in the letter, the BB7 Note (and accompanying material) has been reviewed by the Commissioner in this capacity. The letter states that the Commissioner, in his role under the 2005 Order, “*is satisfied with the proposals*”.
6. In light of these documents, and in the absence of any countervailing evidence, the only conclusion can be that the Proposed Scheme, designed in accordance with the BB7 Note, is acceptable in terms of fire safety, in particular on the issue of fire emergency vehicle access. I note that this information does not appear to have been available to or considered by the officer preparing the report in respect of the previously refused scheme.
7. Further, it is well established that where the use of a development will be subject to separate control regimes, planning decisions should assume that those regimes will operate effectively: see, for example, para. 183 of the NPPF (2018) in respect of pollution control regimes. Here, building control and the 2005 Order are such an alternative control regime. Accordingly, it should not be necessary for the Council to consider the matter of fire safety; rather it should be assumed that this regime will operate effectively. However, even if the Council were to consider the operation of

this regime, it is clear from the documents noted above that such a regime has been satisfied and that the access is suitable (and as such any consideration of this issue in planning terms, for example under para. 110 of the NPPF (2018), would conclude that the Proposed Scheme was acceptable).

8. I am instructed that the same approach (use of sprinklers on a backland residential development where a fire emergency vehicle could only reach a certain proximity to the development) has been applied recently at Rear of 101 - 131 Springbank Road, Hither Green, London SE13 6ST. This approach was also approved by the London Fire Brigade and was also within the Council's area *qua* local planning authority. I am unsurprised by this: for the reasons above, such an approach is entirely permissible and lawful.
9. Finally, whilst it is unnecessary for the reasons above to consider the provisions of the development plan in respect of this issue, I note the following in respect of the policies cited in the above reason for refusal.
 - (a) Policy 3.5 of the London Plan does not consider emergency service access and therefore does not apply to this issue.
 - (b) Core Strategy Policy 14 does not consider emergency service access and therefore does not apply to this issue.
 - (c) DM Policy 29 considers car parking. DM Policy 30 considers urban design and local character. DM Policy 33 considers development on infill sites. None of these policies deals with emergency service access and therefore does not apply to this issue.
10. It follows that because none of the policies cited in the reason for refusal actually deal with the issue of emergency service access, it cannot be said that the Proposed Scheme would not be in accordance with the development plan in this regard.

III. CONCLUSION

11. I have nothing further to add as currently instructed, but would be pleased to advise further or answer any questions.

10th September 2018

SASHA WHITE QC

Landmark Chambers

180 Fleet Street

London, EC4A 2HG
