
Appeal Decision

Site visit made on 18 August 2015

by **Claire Victory BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **23/09/2015**

Appeal Ref: APP/M5450/W/15/3027406

395 Belmont Service Station, Kenton Lane, Harrow, Middlesex HA3 8RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by W E Black Ltd against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3598/14, dated 17 September 2014, was refused by notice dated 3 February 2015.
 - The development proposed is the erection of a building to provide 2 x 1 bed self-contained flats and 13 x 2 bed self-contained flats with front and rear balconies and terraces and associated parking, amenity areas and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by W E Black Ltd against Harrow Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in the appeal are:
 - the effect of the development on the vitality and viability of Belmont Local Centre;
 - whether the development should make provision for affordable housing; and
 - whether the development would provide satisfactory living accommodation, with particular regard to privacy and noise and disturbance.

Reasons

Vitality and Viability

4. The appeal site previously comprised a single storey building and forecourt area providing an MOT testing station, but the building has been demolished and the site is now cleared. It lies within the Belmont Local Centre, but outside of the primary shopping frontage. Belmont Community Hall and a nursery are located to the south of the appeal site, and there is a parade of shops opposite,

also within the local centre. Residential properties are located opposite and to the south of the community hall and nursery.

5. The appellant contends that the proposal would not result in the loss of ground floor retail frontage. However, there is an extant planning permission for a mixed use scheme with retail at ground floor level and 8 residential units on upper floors¹. The appeal site has been cleared and the main parties agree that this planning permission has been implemented. I have therefore assessed the appeal on this basis.
6. Belmont Local Centre has a low level of vacant units. At the time of the site visit appeared to be operating successfully, and no compelling evidence is before me to demonstrate the contrary. Although the retail floorspace permitted by Ref.P/2652/2 is relatively modest at 370 sqm, the proposed residential use at ground floor level would interrupt the continuous commercial and civic ground floor frontage within the Local Centre. Consequently it would undermine the coherence of the centre, harming its role and function.
7. The appellant contends that a larger retail unit would have a detrimental effect on the local centre, but the National Planning Policy Framework (the Framework) confirms that planning has a role in promoting the competitiveness of town centres, which provide customer choice and a diverse retail offer, and thus the availability of retail units in a variety of different sizes within the centre is not considered to be sufficient reason to justify the loss of retail floorspace in this location.
8. Moreover, the Council, at the time of granting planning permission in 2012 considered that the retail floorspace at ground floor level would have a positive impact on the vitality and viability of the centre. No evidence has been presented that would justify a departure from the Council's development plan, which seeks to protect the role and function of designated town and local centres, in line with the Framework, or that the health of the local centre has altered significantly since the planning permission was granted.
9. For these reasons I conclude that the development would harm the vitality and viability of the Belmont Local Centre. It would conflict with DMP Policies DM39, DM38 and DM40 of the *Development Management Policies Local Plan (DMP) (2013)*. DMP Policy 39 states that residential use of ground floor premises within town centres will not be permitted under any circumstances. DM 38 indicates that residential is not an appropriate use of ground floor premises in neighbourhood parades and non-designated frontages of town centres and such uses will be resisted. DM40 supports mixed use development within town centres, having regard to the role and function of the centre, amongst other things. These policies are consistent with the Framework, insofar as it seeks to recognise town centres as the heart of their community and pursue policies to support their vitality and viability.

Affordable Housing

10. Policy CS1.J of the Core Strategy (CS) (2012) requires 40% affordable housing on sites of 10 units or more, and states that the Council will seek the maximum reasonable amount of affordable housing on all development sites, having regard to a number of factors including development viability and the site

¹ Ref.P/2652/2

circumstances and other scheme requirements. The appellant submitted a financial viability assessment with the application which concluded that the site could not support any level of affordable housing. The Council's disputes this conclusion, based on the findings of its consultant.

11. There are only minor differences between the parties in terms of the assumptions made on certain inputs, including ground rent yield, professional fees, and purchaser's costs, but key areas of dispute remain, relating to demolition, site and groundwork costs, and the benchmark land value of the site. Although demolition costs have been included within the appellant's financial viability appraisal, the site has already been cleared, and it is unclear from the appraisal whether this has been factored into the purchase cost of the land. Furthermore, although the *Desk Top Study and Site Investigation* sets out the need for site investigations and remediation, it confirms that the fuel tanks have already been removed.
12. Further to the above, the Existing Use Value (EUV) provided in the appellant's financial viability appraisal is based on the former use as a garage, but the Planning Practice Guidance states that viability assessment in decision-taking should be based on current costs and values, and that planning applications should be considered in today's circumstances. The appellant has confirmed that planning permission ref. P/2652/12 has been implemented by way of the demolition of the garage. It is therefore reasonable to consider the EUV on the basis of the current situation, rather than an historic use, and the cost of demolition and remediation that may have already been carried out should not be factored into the current land value if it has already been accounted for. Insufficient evidence has been provided to confirm if this is the case. In addition, no details have been provided to support the estimates given in relation to demolition, site investigations and remediation costs.
13. I conclude that there is insufficient information provided in the appellant's *Financial Viability Assessment* to demonstrate that the proposal cannot support any affordable housing. The development would therefore be contrary to CS Policy CS1.J. It would also fail to accord with DMP Policy DM24, which seeks to provide an appropriate mix of housing on site and DMP Policy DM50, which states that planning obligations will be sought on a scheme by scheme basis to secure the provision of affordable housing in relation to residential development schemes.

Living conditions

14. The Council's third reason for refusal concerns the perceived lack of a defensible buffer between windows to habitable rooms in the front elevation, and what was described as a communal pathway to the front of the proposed building. The submitted plans show that the pathway referred to by the Council is in fact a proposed terrace at third floor level serving Flats 12 and 15. The main entrance would be positioned centrally within the front elevation, with landscaped areas on either side of a path providing pedestrian access from Kenton Lane. A set back of approximately 5m from the back edge of the footpath to the front elevation, and proposed boundary treatment of railings would provide an appropriate buffer to avoid undue overlooking.
15. I therefore conclude that the development, by reason of its design and layout, would provide satisfactory living accommodation, and would comply with the

design and amenity objectives of DMP Policy DM1, and the *Residential Design Guide (2010)*.

Other Matters

16. The appellant contends that the appeal scheme would be more visually compatible with existing properties within Belmont Circle than the approved scheme. I do not have the full details of that scheme, but in any case, an absence of harm in relation to the scheme's design would not overcome the harm that I have found in relation to the effect on Belmont Local Centre and the lack of robust evidence as to the need for affordable housing contributions.
17. Since the application was determined, *Further Alterations to the London Plan (FALP) (2015)* have been adopted. I note the acknowledged demand for housing in London and that the provision of additional residential units would make a contribution to supply in the Borough. However, whilst the Core Strategy highlights limited opportunities to accommodate new homes in the Kenton and Belmont sub-area, the appellant has not provided any evidence to demonstrate that Harrow cannot meet its housing requirement. Moreover, it is probable that this site, with planning permission for 8 residential units, has been accounted for, at least in part, in the Council's 5 year housing land supply data. In this instance I consider that the harm that would be caused in respect of the first two main issues would outweigh the modest benefit of the additional housing that would be provided.
18. I have also had regard to the appellant's contention that the greater flexibilities introduced by the Government's Prior Approval process, to allow the conversion of certain uses to residential use should be considered as a fallback position, but the appeal proposal does not fall within the specified criteria set out in Class M and Class N of the *Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015)*, relating to use class, floorspace and location. In particular the GPDO 2015 contains a number of safeguards that allow determination by the local planning authority of the impact of proposed changes of use, particularly within 'key shopping areas'. I consider that a designated Local Centre falls within this definition. Accordingly I do not consider this is a genuine fallback position.

Conclusion

19. Although I have found that the development would provide a satisfactory standard of accommodation, it would have an adverse effect on the vitality and viability of Belmont Local Centre, and there is insufficient evidence to demonstrate that a contribution to affordable housing could not be made in relation to the appeal proposal.
20. For the above reasons I conclude that the appeal should be dismissed.

Claire Victory

INSPECTOR