
Appeal Decision

Site visit made on 29 November 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 13th December 2016

Appeal Ref: APP/G5180/W/16/3157432
35-37 High Street, Orpington, BR6 0JE

- 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 Mr Keith White against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/05488/FULL3, dated 16 December 2015, was refused by notice dated 2 March 2016.
 - The development proposed is proposed change of use of ground floor from A1 retail shop to 2 no 1 bed self contained flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - The effect of the proposed change of use on the vitality of Orpington centre; and
 - The effect of the proposal on the living conditions of future occupiers with specific reference to internal space, privacy and outlook.

Reasons

Vitality of Orpington Centre

3. The appeal site is a two storey commercial property formed from two separate units, interlinked by a small internal door. It lies within a terraced row of six commercial units located to the northern end of Orpington High Street and is the last retail unit on the eastern side of the High Street. The ground floor of the properties is currently in use as a show room and retail outlet of a double glazing firm. The first floor residential units are accessed by an external staircase, with car parking to the rear. The site is within the Orpington Priory Conservation Area (Conservation Area).
 4. Orpington High Street is designated as a Major Town Centre, however the appeal site lies just outside of the designated secondary shopping frontage. The premises are, nevertheless, situated within a small parade of shops and hence Policy S5 of the Council's Unitary Development Plan (UDP) (2006) applies which relates to local neighbourhood centres and shopping parades. Policy S11 of the UDP relates to the change of use of ground floor premises in
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- shopping areas to residential uses where the proposed use would not undermine the retail vitality and viability of the retail area and where there has been a long term vacancy and no demand for a commercial or community use.
5. The property is flanked by residential uses to the north-west and an IT company and barbers to the south east. The shopping parade is comprised of a variety of uses including shops, cafes and hot food takeaways. Taking account of the block upon which the appeal units lie together with the adjacent block of 6 commercial properties there were no vacancies and only three properties in residential use at ground floor level. Consequently, I consider that the level of commercial activity in the parade is healthy. I noted that footfall was low at the time of my site visit (0900). However, due to the location of the shops on a main pedestrian thoroughfare to the town centre, it is likely that footfall would increase significantly during the day.
 6. Both Policies S5 and S11 allow for the change of use of a shop unit where it can be demonstrated that units have been vacant for a significant period of time, where there is no demand for commercial use and there is no reasonable prospect of it being let for a retail use. Applicants would need to be able to demonstrate that the vacant premises have been appropriately marketed for retail use.
 7. The appeal unit is currently occupied although the existing occupiers may wish to relocate to other commercial premises. However, there is no evidence before me to suggest that the units have been marketed for retail or commercial uses or that attempts have been made to secure another A1 or other appropriate use. Consequently, there is no cogent evidence before me to demonstrate that the appeal unit would not be viable for A1 retail use or that a business occupying the premises for A1 or other town centre use would not be forthcoming in the future. I am, therefore, unable to concur with the appellant's argument that there is no realistic prospect of demand to use the site for continued retail use.
 8. The appellant points to new retail developments at the other end of the High Street including a large supermarket and a cinema complex which he contends has resulted in this parade being less desirable for retail use. However, no evidence is submitted in support of this assertion and the number of commercial units within this and the adjacent block would indicate to the contrary.
 9. For the reasons stated, I consider the loss of the A1 retail unit and loss of active frontage would harm the retail function and vitality of this parade of shops. The proposal would, therefore, conflict with Policies S5 and S11 of the UDP.

Living Conditions

10. The proposal would involve the reconfiguration of the internal area to form two self-contained flats each comprising a living room, bedroom, shower room and kitchen/diner. The Council points to the national technical housing standards¹ which require a double bedroom to be 11.5m². These standards are reflected in the Mayor's Housing Supplementary Planning Guidance (SPG) (2016). The bedroom of unit B would be 10m² and would not, therefore, meet the required

¹ Technical housing standards-nationally described space standard DCLG 2015

standard. The appellant has submitted an amended plan showing how the internal partition could be moved in order to increase the size of the bedroom to 12.6m². However, given the very small shortfall against the required standard I do not consider that this in itself would cause material harm to future occupiers of the proposal.

11. The bedroom windows to the rear of the units would look out onto the narrow alleyway created by the rear projections. The outlook from these rooms would, therefore, be dominated by the flank walls. Furthermore, the external staircase provides access to the upstairs flats and people utilising those stairs would have direct views into the bedrooms resulting in a loss of privacy. Whilst louvres on the windows would improve privacy they would not satisfactorily address the issue of outlook.
12. For the reasons stated the proposal would harm the living conditions of future occupiers by virtue of loss of privacy and outlook. The proposal would, therefore, be contrary to Policy BE1 of the UDP which expects all development proposals to be of a high standard of design and layout. The proposal also conflicts with Policy H7 of the UDP which expects the site layout, buildings and space about buildings to be designed to a high quality. Conflict also arises with Policy 3.5 of the London Plan which seeks to ensure that housing developments are of the highest quality.

Other matters

13. The proposal is situated in the Orpington Priory Conservation Area. It is proposed to remove the existing modern shop front at no 35 and replace it with shorter windows and a new doorway. I consider that these alterations would preserve the character and appearance of the Conservation Area.
14. The appellant contends that there would no loss of jobs as a result of the proposal as the existing occupier would relocate. Nevertheless, the proposal would result in the loss of an A1 retail unit which could be utilised by another business.
15. The proposal may have some benefits in terms of the provision of additional housing, albeit limited. However, I consider that this benefit would be outweighed by the significant harm which I have identified.

Conclusion

16. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector