



Appeal Decision

Site visit made on 28 November 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 30th December 2016

Appeal Ref: APP/G5180/W/16/3157995

Land rear of 1-5 Station Parade, Elmers End Road, Beckenham BR3 4DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Kirk Mitchell against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/05020/OUT, dated 16 November 2015, was refused by notice dated 5 May 2016.
 - The development proposed is demolition of existing building and erection of 4 storey block of 8 flats (6 x 1 bed & 2 x 2 bed) with associated car parking, refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved. I have dealt with the appeal on that basis treating the site plan, block plan, floor plans, elevations, roof plans and sections as illustrative.
3. A revised Flood Risk Assessment together with additional information which seeks to address the Environment Agency's concerns regarding the proximity of the proposal to the culverted Chaffinch Brook has been submitted with the appeal. This evidence does not alter the nature of the proposal and expands on technical detail in the draft Flood Risk Assessment submitted with the application. The Environment Agency has had the opportunity to comment on both pieces of evidence and the Council has had the opportunity to comment on the revised Flood Risk Assessment. Consequently, I do not believe that any party would be unfairly prejudiced by my determining the appeal with regards to the additional evidence and I have done so on this basis.
4. The 2015-2016 Minor Alterations (MALPs) have been prepared to bring the London Plan in line with the national housing standards¹ and car parking policy. Both sets of alterations have been considered by an independent inspector at an examination in public and were published on 14th March 2016. An updated version of the London Plan was published in March 2016 which consolidates all of the alterations made since 2011. The Mayor's Housing Supplementary Planning Guidance was also updated to reflect the national housing standards. The Council determined the application on the basis of the national housing standards and the open space standard has not altered and so neither party has been prejudiced by this change in circumstances.

¹ Technical housing standards-nationally described space standard DCLG 2015

5. The Council has clarified that they intended to refer to Policy 7.6 of the London Plan in reason for refusal 3 as opposed to Policy 7.5 and I have dealt with the appeal on this basis.
6. Since the Council determined the application it has published its proposed submission Draft Local Plan for consultation between 14 November and 31 December 2016. As the Plan has not reached an advanced stage only very limited weight can be attached to it in my Decision.

Main Issues

7. The main issues in this case are:
 - Whether the loss of employment land is justified;
 - Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding and whether the proposed houses would be safe from flooding;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of existing occupiers at numbers 1-5 Station Parade and Station Estate with specific reference to privacy and outlook; and
 - The effect of the proposal on the living conditions of future occupiers with specific reference to outdoor amenity space.

Reasons

Employment Land

8. The appeal site lies on the northern side of Elmers End Road within close proximity of the junction with Croydon Road and to the rear of properties known as 1-5 Station Parade. Station Estate, a cul-de-sac of maisonettes lies to the west of the appeal site. Clock House allotment gardens are situated to the north of the site. The site is currently occupied by a motor repair garage that is single storey.
9. Policy 4.1 of the London Plan seeks to promote and enable the continued development of a strong, sustainable and increasingly diverse economy across all parts of London, ensuring the availability of sufficient and suitable workspaces in terms of type, size and cost, supporting infrastructure and suitable environments for larger employers and small and medium sized enterprises, including voluntary and community sectors.
10. Policy 4.4 seeks to manage industrial land and premises in order to meet the future needs of different types of industrial and related uses in different parts of London, including for good quality and affordable space. The proposal would result in the loss of industrial land and the ad-hoc release of land would be in conflict with the plan, monitor, manage approach advocated by the Policy.
11. Policy EMP5 of the Bromley Unitary Development Plan (UDP) (2006) states that the redevelopment of business sites outside of Designated Business Areas will be permitted provided that the size, configuration, access arrangements or other characteristics make it unsuitable for uses Class B1, B2 or B8 use; and full and proper marketing confirms the unsuitability and financial non-viability of the site or premises for those uses. The supporting text explains that this is in recognition of the diminishing number of sites for such uses due to pressure for residential

development in the Borough and recognises the benefits of meeting the needs of local business' as well as the sustainability benefits of allowing people to work close to home.

12. Although paragraph 22 of the Framework seeks to avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose, I see no inconsistency between this policy and the requirements of Policy EMP5 of the UDP, which simply requires that the prospects of being used for a business use are tested. Significant weight can, therefore, be attached to Policy EMP5 in my Decision.
13. The appellant considers that the Council's evidence base is not up-to-date and points to evidence contained in the Greater London Authority Land for Industry and Transport Supplementary Planning Guidance (GLA SPG) 2012 and the Croydon Employment Land Review Update 2013 which show that employment in Class B2 and B8 uses is predicated to fall with a consequential fall in the industrial land requirement. Annex 1 of the GLA SPG indicates that Bromley should release 9 hectares of industrial land for other uses (principally housing) between 2011-2031 with an annual industrial land release benchmark of 0.5 hectare. However, I note that these benchmarks are indicative only and are subject to ongoing review in local Employment Land Reviews. The appellant considers that there is no longer a policy justification to protect poor quality industrial sites such as the appeal site or to support the policy requirement for marketing and viability evidence.
14. Although this evidence may provide an indication of general trends in the local economy, there is no evidence before me to suggest that the appeal site itself is surplus to requirement. No marketing has been undertaken of the site and whilst the existing occupier may have outgrown the site I have not been provided with any convincing reason why a wider B1, B2 or B8 could not utilise the site.
15. The appellant considers that the area is well served by designated employment areas including the Chaffinch Business Park and Tannery Close Industrial Estate. However, these are comprised of purpose built industrial warehouse/industrial units and there is no evidence before me to suggest that these serve the same market as the appeal premises.
16. The existing car hire business has relocated to another site (on the west side of Elmers End Road) although the site is still in use as ancillary storage to the main business. The appellant, therefore, contends that there has been no loss of employment as a result of this relocation. Nonetheless, the proposal would result in the loss of an employment site.
17. The appellant considers that the premises are no longer suitable for the authorised industrial use. The vehicular access off Croydon Road is restricted and is shared with residential properties. Uncontrolled parking on the access road restricts access and manoeuvring. They also consider that the open yard is too small and that vehicles are unable to turn within the site.
18. Policy EMP6 of the UDP states that it will only permit non-conforming business uses where there would be no significant adverse impact on the amenity of surrounding properties. Attention is drawn to an appeal decision in which the Inspector described the activities involved in a motor repair garage including some noisy activities such as the use of compressors etc. However, very limited details of that case are before me which limits the weight which I can attach to it in my Decision. The appellant points to the intensification of residential development in

close proximity to the site which he considers has resulted in a number of environmental health complaints and has constrained the business activities on the site. However, there is no evidence before me to support this assertion.

19. Although there may be some physical restrictions of the site and whilst residential properties are in close proximity, a business use has operated successfully for a number of years and there is no reason why some form of business use could not remain compatible. Therefore, I cannot conclude that there is no reasonable prospect of a business use on the site or that the site is unsuitable for such a use. As such the proposed development would be in conflict with Policy EMP5 of the UDP. Furthermore the proposal would be contrary to paragraph 18 of the Framework. The unjustified loss of local employment space weighs against the development and I attach this matter moderate weight.

Flood Risk

20. The Environment Agency indicates that the site is within Flood Zones 2 and 3. However, the revised FRA states that the site is within Flood Zone 1 with potential encroachment across the face of the access of Flood Zone 2. It goes on to say that the site could be encroached by Flood Zone 3 due to the proximity of the flowpath through the allotments. Consequently, a conservative approach was adopted and the FRA was undertaken on the basis that the site was within Flood Zone 3. I have determined the appeal on this basis.
21. The Environment Agency confirm that the late information submitted with the appeal addresses their concerns regarding the effect of the proposal on the culverted section of the Chaffinch Brook subject to conditions requiring a Flood Risk activity permit and also requiring that the submitted Flood Risk Assessment (FRA) be amended, prior to the commencement of any works, to include climate change allowances for the 1% AEP event using the new climate change allowance assessment approach that was published in 2016. However, further work to take account of this approach may alter the outcome of the FRA and consequently I do not consider that it is acceptable to leave this to a planning condition. As the new climate change assessment approach was published in February 2016, it is reasonable to expect this to have been reflected in the revised FRA which was undertaken in August 2016.
22. Furthermore, whilst the FRA concludes that the risk of flooding is residual and can be reduced to an acceptable level by providing safe refuge on upper floors and other design measures I cannot be certain that the full effects of climate change have been taken into account in accordance with the revised approach and that the dwellings would be safe from flooding in the longer term.
23. Applying the Flood Risk Vulnerability Classification in Table 2 of the Technical Guidance to the National Planning Policy Framework (2012) (the Technical Guide), the proposed development is classed as more vulnerable. Table 1 of the Technical Guide states that such uses should only be permitted in Flood Zone 3 if the Exception Test (and Sequential Test) is passed.
24. The appellant considers that the first part of the Exception Test is passed as the proposal meets an urgent need for additional housing in the area in a sustainable location and, therefore, provides a sustainability benefit outweighing flood risk at the site. The FRA also states that the second part of the exception test is passed as it has been demonstrated that the development will be safe for its lifetime.

25. However, I note that no evidence has been submitted to demonstrate that alternative sites at lower risk of flooding have been considered which would be required for sites both in Flood Risk Zones 2 and 3. Whilst the appellant considers that the Exceptions Test has been passed, paragraph 035 (Reference ID:7-035-20140306) of the Planning Policy Guidance is clear that the Exception Test should only be applied following the application of the Sequential Test.
26. Although the Environment Agency did not object to the revised FRA and the additional evidence, the PPG states that in the first place it is the Local Planning Authority's responsibility to consider if the sequential test has been satisfied, informed by evidence provided by the developer. The FRA does not define a suitable catchment for undertaking the test and neither does it provide evidence of alternative sites which have been considered. Furthermore, paragraph 033 (reference ID: 7-033-20140306) of the PPG states that the sequential approach shall be applied to all sources of flooding and this has not been undertaken. On the basis of the evidence before me I am unable to conclude that the sequential test has been undertaken in accordance with paragraphs 100-101 of the Framework or paragraph 033 of the PPG. As the Exception Test should only be applied following the application of the Sequential Test, there is no need for me to consider whether the proposal meets the Exception Test.
27. Notwithstanding the absence of an objection from the Environment Agency or the Council on this matter I am, nevertheless, required to ensure that the proposal meets the requirements of national guidance. On the basis of the evidence before me I am not satisfied that the FRA meets those requirements.
28. For the reasons stated I conclude that the proposal fails to satisfactorily apply the sequential test and that it has not been sufficiently demonstrated that the dwellings would be safe from flooding for the lifetime of the development. The proposal is, therefore, contrary to Policy 5.12 of the London Plan which states that development proposals must comply with the flood risk assessment and management requirements set out in the Framework and the associated technical guidance over the lifetime of the development. Furthermore, the proposal is also contrary to paragraphs 100-102 of the Framework.

Character and appearance

29. The application is in outline with all matters reserved, although it is accompanied by detailed plans covering most aspects of the scheme. Although the Plans are illustrative, I consider that they provide a reasonable impression of the proposal and its likely effect on the character and appearance of the area. I have, therefore, considered the plans insofar as they seek to demonstrate the acceptability of the proposal for which planning permission is sought.
30. The basement of the four storey building is proposed be set into the ground resulting in a building of a similar height to the adjacent three storey 1-5 Station Parade. The cross sections show that the overall height of the scheme would be lower than Nos 1-5 Station Parade due also to the flat roof nature of the proposed building. The cross sections show that the proposal would be marginally higher than the ridge of the roofs of adjacent properties in Station Estate. The appellant contends that the height of the proposal is acceptable given the precedent set by nos 1-5 Station Parade and no 70 Croydon Road. However, I consider that the scale of the proposal must also be considered within the context of the site and relationship with existing buildings.

31. The prevailing building height of residential development in the area is two-storey. Whilst 1-5 Station Parade is three-storey, this is frontage development and creates a design feature at the junction with Croydon Road. The three-storey No 70 Croydon Road similarly defines the frontage of the road in the approach to the junction and the neighbourhood centre. The principal elevations of these properties face onto the road at the front and amenity space to the rear.
32. In contrast the appeal proposal would occupy a back land site in close proximity to existing residential development. There would only be 16m separating a principal elevation of the appeal proposal from the rear elevation of Nos 1-5 Station Parade. Whilst the scale of the proposal is reserved; permission is, nevertheless, sought for a four-storey block of 8 flats and I must consider the appeal on this basis. I consider that a building of this scale in such close proximity to the principal elevation of Nos 1-5 Station Parade would result in a visually awkward development which would have a dominating presence in relation to both 1-5 Station Parade and Station Estate.
33. In addition, the plans show that the proposal would occupy a high proportion of the site resulting in a building which would appear cramped and excessive in its plot. I note that Policy H9 requires that a minimum side space of 1 metre is provided from the site boundary and this requirement would be met. However, this requirement only relates to side spacing and I consider that the proximity of the front and rear elevations to the site boundaries would result in a cramped appearance taking into account the height and mass of the proposal. Although appearance is a reserved matter, I am not persuaded that a proposal of this scale could be accommodated on this site without appearing unduly cramped. In addition, whilst landscaping is a reserved matter, with the exception of the western boundary, the proposal would offer little scope for landscaping to soften the proposed built development.
34. Furthermore, the illustrative plans show a large monolithic wall with virtually no articulation which would be an undesirable design feature on a principal elevation. The proposed design of this elevation seeks to avoid privacy/overlooking issues given the close proximity to 1-5 Station Road. Notwithstanding that appearance is a reserved matter and that the design could be amended, I am not persuaded on the basis of the illustrative plans that a satisfactory design could be achieved which would satisfactorily resolve concerns regarding both appearance and privacy/overlooking.
35. Taking these factors in combination, I consider that a proposal of this scale on a restricted site in such close proximity to existing development would be a dominant and incongruous feature in the context of the surrounding area. Moreover, the proposal would be highly visible from surrounding properties and from the allotment gardens.
36. I, therefore, conclude that the proposal would harm the character and appearance of the area. There is nothing to indicate that the development which has been applied for could be designed in a different way so as not to cause similar harm. The proposal would, therefore, be contrary to Policy 7.4 of the London Plan which states that buildings, streets and open spaces should provide a high quality design response. The proposal is also contrary to Policy 7.6 of the London Plan which requires buildings and structures to be of the highest architectural quality.
37. Furthermore, the proposal is contrary to Policy BE1 of the UDP which requires all development proposals to be of a high standard of design and layout. The

proposal would also conflict with Policy H7 of the UDP which requires the site layout, buildings and space about building to be designed to a high quality and recognise as well as complement the qualities of surrounding areas. Moreover, conflict also arises with the Council's Supplementary Planning Guidance No 1 General Design Principles 2004 which requires new development to have a quality and character of its own whilst at the same time respecting the character of its locality.

Living Conditions of Existing Occupiers

38. Ground floor residents of Nos 1-5 Station Road currently have an outlook along their rear gardens to the garage building. However, residents of the upper floors have an outlook from habitable rooms over the existing garage building towards the allotment gardens. Contrary to the assertion that the proposal would enhance their outlook, residents would instead be faced with a large solid brick wall with virtually no articulation in close proximity to the rear elevation of their properties. Whilst the Design and Access Statement (DAS) shows that some oblique views towards the allotments may still be possible due to the tapering of the building and notwithstanding the potential for a 'living wall' the proposal would, nevertheless, appear dominant and overbearing and residents' outlook would be significantly reduced.
39. The illustrative plans show a wrap around terrace on the upper floor in order to provide amenity space for future occupiers. However, I consider that this would result in significant potential for overlooking to the rear gardens of Station Estate given the close proximity of the proposal to the detriment of the privacy of existing occupiers. Whilst the proposal would maintain the existing separation distance it would, nevertheless, increase the number of storeys and hence the potential for overlooking. Whilst the proposal is in outline I am not persuaded that these matters could be satisfactorily addressed at reserved matters stage given the scale and location of the proposal or without a consequential loss of private outdoor amenity space. Furthermore, there is nothing to indicate that what has been applied for could be designed in a different way so as not to cause similar harm.
40. I, therefore, conclude that the proposal would have a harmful effect on the living conditions of existing occupiers of 1-5 Station Road and Station Estate with regards to privacy and outlook. The proposal would, therefore, be contrary to Policies 7.4 and 7.5 of the London Plan and Policies BE1 and H7 of the UDP.

Living conditions of future occupiers-amenity space

41. Amenity space is provided on the first and second floors by virtue of balconies on the rear north facing elevation onto the allotments at 2m² and 1m² respectively. A wrap around terrace is provided for the third floor flats facing north, east and west.
42. Criteria iv of Policy H7 of the UDP requires that new housing developments provide adequate private or communal spaces to serve the needs of the particular occupants. Policy 3.5 of the London Plan requires all new housing development to, amongst other things, provide public, communal and open spaces.
43. Further guidance is provided in the Mayor's Housing Supplementary Planning Document. Standard 26 states that a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings and an extra 1m² should be provided for each additional occupant. Standard 27 states that the minimum depth and width for all balconies and other private external spaces should be 1500mm. The

proposal balconies fall short of this requirement in terms of the overall size and depth.

44. The appellant suggests that the combined area of the balconies/winter gardens would exceed the minimum standard although it is not clear how this has been calculated. Nonetheless, Standard 26 applies to each dwelling and paragraph 2.3.31 of the SPG also states that the resultant space should be of a practical shape and utility and care should be taken to ensure the space offers good amenity. I, therefore, consider that by virtue of the limited size and depth of the proposed balconies and terrace that the proposal would not make sufficient provision for private, useable outdoor open space. Conflict would, therefore, arise with Policy 3.5 of the London Plan, the SPG and Policy H7 of the UDP.
45. Whilst the proposal is for one and two bedroom flats the two bedroom flats could be capable of accommodating a family. Furthermore, the one bedroom flats are double bedrooms and could accommodate two people. In any event the London Plan and Housing SPG expect one bedroom properties to meet the minimum requirement for open space standard of 5m² for the benefit of all future occupiers.
46. Attention is drawn to open space in the area including the South Norwood Country Park; however, reaching this park would involve crossing a busy road. I also note that open space to the north east of the site is separated from the proposal by the railway line which would most likely result in a protracted route through a housing estate. The presence of these open spaces does not, therefore, negate the need to provide sufficient private outdoor amenity space for future occupiers.
47. Paragraph 2.3.32 of the SPG states that in exceptional circumstances where site constraints make it impossible to provide private open space for all dwellings a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of the private open space. I note that with the exception of 2 flats, the proposed flats would exceed the internal space standard. I also acknowledge that the proposal is in outline and that adjustments could be made to the detailed design in order to provide more internal space to the 2 flats which do not have additional internal space. Nonetheless, the SPG is clear that this exemption should only apply in exceptional circumstances and the appellant has not demonstrated what, if any exceptional circumstances apply to the appeal proposal.
48. Although the proposal is in outline and the plans before me are illustrative, I consider that the appellant has failed to demonstrate that a proposal of this scale on this site could provide sufficient private outdoor amenity space and thus provide acceptable living conditions for future occupiers. There is nothing to indicate that what has been applied for could be designed in a different way so as not to cause similar harm.
49. I, therefore, conclude that the proposal would provide unsatisfactory living conditions for future occupiers due to insufficient useable private outdoor amenity space. The proposal is, therefore, contrary to Policy 3.5 of the London Plan and policies BE1 and H7 of the UDP. Conflict also arises with the Housing SPG.

Planning Balance

50. The appellant draws attention to the lack of a five year supply of housing sites in the Borough as determined in a recent appeal Decision² and also the existing

² Appeal reference: APP/G5180/W/16/3144248

under-delivery of housing in London as a whole. Whilst there is only limited evidence before me relating to housing land supply the Council does not dispute this assertion. Attention is also drawn to Policy 3.3 of the London Plan which seeks to increase housing supply and which seeks to exceed minimum housing targets. Reference is made to case law^{3 4} which I have had regard to in my Decision.

51. Paragraph 49 of the National Planning Policy Framework (the Framework) states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of housing sites. There is very limited evidence before me as to whether the relevant policies are policies for the supply of housing in the context of paragraph 49 of the Framework. I acknowledge that the proposal would have some benefits in terms of the provision of housing, albeit limited, in a sustainable location. However, even taking into account the scale of any shortfall, this matter would only attract limited weight, bearing in mind the limited contribution that would be made by the 8 dwellings proposed.
52. Furthermore, I have concluded that there would be an unjustified loss of employment land. In addition I have concluded that the proposal does not comply with national planning policy regarding flood risk and that it has not been demonstrated that the development would be safe from flooding for the lifetime of the development. Moreover, I have concluded that the proposal would cause significant harm to the character and appearance of the area and have a harmful effect on the living conditions of existing and future occupiers. The proposal would, therefore, be contrary to paragraphs 17, 18, 56 and 100-102 of the Framework.
53. Consequently, the proposal would not constitute sustainable development as required by paragraph 14 of the Framework. Furthermore, the totality of the harm arising from the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

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

Caroline Mulloy

Inspector

³ Hunston Properties Limited v. (1) Secretary of State for Communities and Local Government and (2) St. Albans City and District Council [2013] EWHC 2678 (Admin)

⁴ St Albans City and District Council v (1) Hunston Properties Limited and (2) Secretary of State for Communities and Local Government [2013] EWCA Civ 1610