The Planning Inspectorate

Appeal Decision

Site visit made on 27 February 2019

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2019

Appeal Ref: APP/A5840/W/18/3216523
7 Bombay Street, Bermondsey, London, SE16 3UX

- 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 RST Bermondsey Ltd against the decision of London Borough of Southwark.
- The application Ref 18/AP/1202, dated 12 April 2018, was refused by notice dated 26 July 2018
- The development proposed is removal of existing metal roof structure and construction of part 5 / part 6 storey building to provide 9 residential dwellings and flexible commercial space (A1, A2 and B1) at ground floor with, cycle parking and refuse/recycle storage.

Decision

1. The appeal is allowed and planning permission is granted for removal of existing metal roof structure and construction of part 5 / part 6 storey building to provide 9 residential dwellings and flexible commercial space (A1, A2 and B1) at ground floor with, cycle parking and refuse/recycle storage at 7 Bombay Street, Bermondsey, London, SE16 3UX in accordance with the terms of the application, Ref 18/AP/1202, dated 12 April 2018 and subject to the conditions listed in the Annex to this decision.

Procedural Matters

2. The appellant indicates that revised plans were submitted to the Council before the application was determined, but were not considered. The appellant has requested that these revised plans form the basis of this appeal, but that if the decision is to determine the proposal on the basis of the refused plans, that their submissions apply to either scheme. As the revised plans were not formally considered by the Council and were not subject to consultations with local residents, stakeholders and statutory consultees, I have determined the appeal on the basis of the refused plans.

3. Within the Council's decision notice and the parties appeal submissions, reference is made to the 2012 and 2018 National Planning Policy Framework (Framework). Whilst this has now been replaced by the February 2019 Framework, there has been no material change in relation to the Framework's policies that apply to the proposed development and I have therefore proceeded to determine the appeal on this basis.

Main Issues

4. The main issues are:

- whether the proposed development represents an overdevelopment of the site and its effect on the character and appearance of the area, and
- the effect of the net loss in employment space resulting from the proposed development

Reasons

Overdevelopment, and character and appearance

5. The appeal site is located within a mixed use area, where existing development varies in terms of its scale, age and design. The scale of existing development includes buildings from two to seven storeys.

6. To the north east of the appeal site is the main railway line into London Bridge Station set within an elevated position with the railway arches below occupied by various tyre/car repair and light industrial businesses. To the south is Southwark Bridge Road, with predominantly commercial uses on the ground floor and offices/residential above.

7. Adjoining the appeal site to the north west is 13 Bombay Street (Alfred Court), a modern part 5 and part 6 storey development, with employment uses on the ground floor and residential above. To the south is a two-storey building used for employment purposes, 3 - 5 Bombay Street. The latter is the subject of an application to provide a 5-storey development of commercial uses on the ground floor and residential above (reference 18/AP/3624). To the south east is a cleared site, 4 - 10 Bombay Street, which benefits from planning permission, granted in January 2018, for a part 6 part 7 storey building comprising flexible commercial space on the ground and first floor, with residential above (reference 17/AP/0296).

8. Within this context, the scale and massing of the appeal proposals, which comprise a part 5 and part 6 storey building, would not be excessive, neither would it appear overly dominant. Its overall height would be the same as that of Alfred Court and the proposed set back on the 6th floor would assist in providing an appropriate transition between the two.

9. Based on the evidence before me, the Council has accepted that this location is, in principle, suitable for development of up to 7 storeys. Whilst the planning application for a 5-storey building on 3 – 5 Bombay Street is undetermined, 4 – 10 Bombay Street lies broadly opposite the appeal site and has approval for a part 6 part 7 storey building. Both sites are part of the appeal sites immediate context and in this respect, it is notable that the approved development at 4-10 Bombay Street would be one storey higher than the appeal scheme.

10. Whilst I accept that the appeal site is narrow and constrained, the appellant has brought forward an innovative scheme to address those constraints, which maximises the potential of the site. In addition, the Council's Officers Report confirms that the appeal proposals would not result in the loss of any daylight, sunlight or privacy; that both the new residential and commercial space would secure a good standard of accommodation; that adequate provision can be made for cycling/refuse storage; that the location is sustainable; and that no highway implications arise from the development. These factors are often used to determine whether a proposal represents overdevelopment. In this case, they indicate that the proposed development would not lead to an overdevelopment of the appeal site.

11. The Council have referred to the fact that the shoulder of the appeal building would be higher than that of Alfred Court. Whilst that is the case, the difference is not substantial and would be difficult to discern when viewed from street level. The set back of the proposed 6th floor would assist in mitigating any visual impact. In addition, when viewed in the context of the existing set back on the 5th and 6th floors of Alfred Court, the proposal would add further variety and intertest to the streetscene. For all these reasons, I am satisfied that the appeal scheme would sit comfortably on the appeal site and that it would respect the hierarchy of development, both existing and permitted, on Bombay Street.

12. With regard to the visibility of the appeal proposals from Southwark Park Road and in particular No.255, there is disagreement between the parties as to how much of the appeal building would be visible. Even so, these views are not sensitive and there is no specific townscape reason as to why they should be protected. I also do not share the Council's view that the proposed building would look too high, bearing in mind its context and note that the views from Southwark Park Road of the appeal scheme would not be materially different to those of the approved development at 4 – 10 Bombay Street.

13. The Council argue that the proposed materials for the new building would add to the sense of it appearing incongruous, with the front elevation being described as utilitarian and plain. I don't share those views. The proposals show the use of contrasting materials, with light and dark tone brickwork and bronze coloured metal cladding and fenestration. The dark toned brickwork, to the ground floor commercial units and central staircase, would distinguish those elements from the elevations to the residential units. Combined with the other proposed design features, this palette of materials would provide relief and add interest to the streetscene.

14. The use of this palette of materials and the overall design of the appeal building, would also contrast well with the light brown brickwork and plainer elevation to Alfred Court. Also, with the approved development at 4 -10 Bombay Street, which the appellant's visuals show as being constructed in a similar light brown brick.

15. The Council also contend that the overdevelopment of the appeal site is reflected in its excessive density, which, to be justified, would require an exemplary design, which they argue, the appeal scheme is not.

16. In its reason for refusal the Council refer to saved Policy 3.13 of the Southwark Plan (2007) (Southwark Plan). This simply states that regard should be had to the density of development within the area. Saved Policy 4.1, which is not referred to in the reason, but was included with the Council's Questionnaire, contains the density range for Urban Zones, of up to 700 habitable rooms per hectare, that the Council do refer to in their Appeal Statement. Whilst both parties also make reference to the housing/density policies of the adopted and emerging London Plan, no extracts have been provided.

17. The density policies of the Southwark Plan pre-date those of the previous revised version of the Framework (July 2018), which have now been brought forward in the February 2019 revision. Paragraphs 122 and 123 of the Framework emphasise the importance of optimising the potential of each site and the requirement for local plans to set minimum density standards in locations that are well served by local transport and other

infrastructure/services. In those areas, a significant uplift in the average density of residential development is to be encouraged, unless there are strong reasons as to why this would be inappropriate. For these reasons, the density policies of the Southwark Plan are not, in my view, consistent with those in the Framework and within the context of this appeal I accord them limited weight.

18. The appeal proposal would assist in boosting the supply of housing in accord with paragraph 59 of the Framework. It would meet the established need for housing in London, recognised in Policy SP5 of the Southwark Core Strategy (2011) (Southwark Core Strategy), which requires new development to provide as much new housing as possible.

19. As I have found, the appeal site is in an accessible and sustainable location and the proposed density can be secured in a development that would not harm the character or appearance of the area. The appeal scheme would also secure a well-designed high quality development and includes a good standard of work and living accommodation.

20. Against this background, I note that the appellant's submission includes reference to a number of schemes that have been approved in the locality that have exceeded the density range within the Southwark Plan. This includes a 4 – 7 storey residential scheme at 27 – 29 Blue Anchor Lane, approved by the Council in April 2013 (reference 12/AP/4049). The accompanying Officers Report acknowledges that numerical density alone does not render a scheme unacceptable and that a higher density, than that set out in planning policy, will be acceptable if the scheme is of a high quality and all the other impacts of the scheme are acceptable. This is consistent with the approach I have adopted above.

21. Accordingly, I find that the proposed development would not represent an overdevelopment of the site and would not harm the character and appearance of the surrounding area. It would, therefore, be compliant with saved Policies 3.2, 3.12 and 3.13 of the Southwark Plan, Policies SP12 and SP13 of the Southwark Core Strategy, and the corresponding policies of the Framework. These policies seek to ensure that new development secures a high-quality design and environment for people to live and work in, that the scale, massing and design of development is appropriate for its context, that it does not dominate it surrounds, that it has regard to the pattern of development and the relationship between buildings and the streetscene.

Net loss of employment space

22. Although it was not possible to see into the appeal site on my visit, the evidence before me confirms that it comprises an open yard, which is partly covered by a large metal canopy. The appellant indicates that the yard is leased, on a temporary basis, to the business that occupies 3 -5 Bombay Street.

23. Both parties have referred to the appeal sites allocation within the Southwark Plan, covered by saved Policy SP20 and Site Ref. 46P. No extracts were included with the Council's Questionnaire and whilst I made a request to be provided with copies, no further information has been forthcoming. I have, therefore, determined this issue on the evidence before me.

24. The appellant indicates that the existing yard comprises approximately 217 square metres, whereas the proposals include some 115 square metres of flexible A1, A2 and B1 floorspace on the ground floor of the new building. The net loss of employment space, in simple numerical terms, would not, therefore, be significant.

25. I do not concur with the appellant's view that the yard does not generate any employment. It clearly has a function in supporting the business that takes place from 3 – 5 Bombay Street and, therefore, the jobs that that business generates. In comparison, the proposals would provide modern commercial space, in a flexible format, with the potential to support a number of new jobs. It would also provide an active frontage enhancing the vitality of this part of Bombay Street. For these reasons, the employment implications of the development would, as a worst case scenario, be neutral.

26. The appellant has referred to the Council's approach to the loss of employment space on similar allocated sites nearby. In response, the Council have argued that each application should be considered on its merits. Whilst I agree with the latter, the flexible approach adopted by the Council on nearby sites cannot be ignored, and is an important consideration. This evidence shows that in some cases the Council have accepted a level of replacement employment space less than that required by the policy allocation, and in other cases they have accepted no replacement employment space at all.

27. The appellant also refers to the emerging Southwark Local Plan, which they indicate does not intend to retain the appeal sites allocation (Site Ref. 46P). Again, I have not been provided with any extracts from this draft Plan. However, in acknowledging this, the Council argue that as this draft Plan has not been adopted, the Southwark Plan allocation is still relevant and the proposals should comply with its requirements. I am not persuaded by that argument and even if it was correct, there is no evidence before me to show that any significant harm would result from the small amount of net employment space that would be lost through the appeal scheme.

28. Accordingly, I find that the principle of development is acceptable and that the net loss of employment space would not be material and would not conflict with saved Policies 1.4 and 1.5 of the Southwark Plan and Policy SP10 of the Southwark Core Strategy. These policies seek to make appropriate provision, within new developments, for new employment uses and small businesses.

Conditions

29. The Council has suggested a number of conditions which I have considered against the advice in the Framework and the Planning Practice Guidance (Guidance) on the use of planning conditions.

30. I am satisfied that conditions relating to the time limit, approval of a Service Management Plan, control over drainage and piling and the provision of the approved cycle and refuse storage facilities are necessary and reasonable in order to secure a high-quality sustainable development, to reflect the details of the permitted development and to prevent unacceptable risks to groundwater and Controlled Waters. Conditions seeking to ensure appropriate internal noise levels for the residential units, sound insulation for the commercial premises and to restrict noise emissions from any plant/ducting, are also reasonable and necessary in order to protect the living conditions of future occupiers.

31. Conditions relating to details of hard and soft landscaping are not necessary as the appeal proposals do not include any provision for landscaping and there are no existing/proposed trees.

32. Pre-commencement conditions requiring the submission and approval of the materials to be used and security measures, are necessary and reasonable to ensure a high-quality development that integrates well with the character and appearance of the area, and which also has regard to community safety and crime prevention.

33. A pre-commencement condition requiring the submission and approval of an assessment to address the risk of site contamination is also necessary and reasonable given the current employment (industrial) use of the site and to ensure that any risks from contamination to future users and neighbours are minimised.

34. I have also added a condition requiring compliance with the submitted plans for clarity, edited some of the conditions and deleted any that replicate others, all for consistency and to reflect the advice in the Framework/Guidance.

Conclusion

35. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR

Annex - Conditions

1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

2) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), details of security measures shall be submitted and approved in writing by the Local Planning Authority and any such security measures shall be implemented prior to occupation in accordance with the approved details which shall seek to achieve the 'Secured by Design' accreditation award from the Metropolitan Police.

3) Before the first occupation of the building hereby permitted a Service Management Plan detailing how all elements of the site are to be serviced shall be submitted and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approval given and shall remain for as long as the development is occupied.

4) The dwellings hereby permitted shall be designed to ensure that the following internal noise levels specified by BS 8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings are not exceeded due to environmental noise:

Bedrooms - 35dB LAeq T†, 30 dB LAeq T*, 45dB LAFmax T *
Living rooms- 35dB LAeq T†
Dining rooms - 40 dB LAeq †
* - Night-time 8 hours between 23:00-07:00
† - Daytime 16 hours between 07:00-23:00.

5) A scheme of sound insulation for the commercial premises shall be designed by a suitably qualified expert and installed to provide reasonable resistance to the transmission of sound sufficient such to ensure that NR25 is not exceeded in residential rooms sharing a party wall or floor with the commercial premises. Any measures required to ensure compliance with this standard shall be implemented prior to the commencement of the use hereby permitted and shall be permanently maintained thereafter for the duration of the use.

6) No drainage systems for the infiltration of surface water drainage into the ground are permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to Controlled Waters.

7) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted and approved in writing by the Local Planning Authority:
a) The Phase 1 site investigation (desk study, site categorisation; sampling strategy etc.) ref: J16306 dated January 2017 was submitted to the Local Planning Authority before the commencement of any intrusive investigations. The subsequent Phase 2 site investigation and risk assessment shall be conducted in accordance with any approved scheme and submitted to the Local Planning Authority for approval prior to the commencement of any remediation that might be required.
b) In the event that contamination is present, a detailed remediation strategy to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared and submitted to the Local Planning Authority for approval in writing. The scheme shall ensure that the site would not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme (if one is required) shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.
c) Following the completion of the measures identified in the approved remediation strategy, a verification report providing evidence that all work required by the remediation strategy has been completed shall be submitted and approved in writing by the Local Planning Authority.
d) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority, and a

scheme of investigation and risk assessment, a remediation strategy and verification report (if required) shall be submitted to the Local Planning Authority for approval in writing in accordance with a) – c) above.

8) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

9) Before the first occupation of the building hereby permitted, the refuse storage arrangements shown on the approved drawing referenced L(--)002 Rev. L shall be provided and made available for use by the occupiers of the premises and the facilities provided shall thereafter be retained and shall not be used or the space used for any other purpose.

10) Before the first occupation of the building hereby permitted the cycle storage facilities as shown on drawing L(--)002 Rev. L shall be provided and thereafter such facilities shall be retained and the space used for no other purpose and the development shall not be carried out otherwise than in accordance with any such approval given.

11) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), material samples/sample-panels/sample-boards of reconstituted stone, bricks and mortar (1 sqm) and metal cladding to be used in the carrying out of this permission shall be presented on site and approved in writing by the Local Planning Authority; the development shall not be carried out otherwise than in accordance with any such approval given.

12) The Rated sound level from any plant, together with any associated ducting shall not exceed the Background sound level (LA90 15min) at the nearest noise sensitive premises. Furthermore, the Specific plant sound level shall be 10dB(A) or more below the background sound level in this location. For the purposes of this condition the Background, Rating and Specific Sound levels shall be calculated fully in accordance with the methodology of BS4142:2014.

13) This permission relates only to the following drawings as received by the Local Planning Authority:

L(--)001 Rev. A – Site Location Plan
L(--)002 Rev. L – Proposed Level 0
L(--)003 Rev. G – Proposed Level 1
L(--)004 Rev. F – Proposed Level 2
L(--)005 Rev. F – Proposed Level 3
L(--)006 Rev. F – Proposed Level 4
L(--)007 Rev. G – Proposed Level 5
L(--)008 Rev. C – Proposed Roof Plan
L(--)009 Rev. H – Proposed Northeast Elevation
L(--)010 Rev. E – Proposed Southwest Elevation

L(--)011 – Proposed Section AA
L(--)013 Rev. F – Proposed Contextual Elevation
L(--)014 Rev. C – Proposed Block Plan
L(--)016 – Proposed Section AA

End of Annex