



Appeal Decision

Site visit made on 20 May 2019

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2019

Appeal Ref: APP/G5180/W/19/3221236

The Chelsfield, 1 Windsor Drive, Orpington BR6 6EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Punch Partnerships (PML) Ltd against the Council of the London Borough of Bromley.
 - The application Ref DC/18/04573/FULL1 is dated 12 October 2018.
 - The development proposed is the demolition of existing building and redevelopment to create a replacement public house and landlord accommodation; A1 convenience store; 10x residential apartments; reconfiguration of the car park and bin/cycle storage.
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Decision

1. The appeal is dismissed and planning permission for the demolition of existing building and redevelopment to create a replacement public house and landlord accommodation; A1 convenience store; 10x residential apartments; reconfiguration of the car park and bin/cycle storage at The Chelsfield, 1 Windsor Drive, Orpington BR6 6EY is refused.

Application for costs

2. An application for costs was made by Punch Partnerships (PML) Ltd against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Procedural Matters

3. This appeal is against the non-determination of a planning application for the proposal detailed above. The Council has resolved that it would have refused the application and provided reasons for refusal.
4. Amended plans were submitted with the appeal which removed the top floor of accommodation and reduced the dwelling numbers by one. However, the changes proposed are not insignificant and the Council has objected to my consideration of them. Furthermore, there is a high number of interested parties and if I were to consider the amended plans, this could lead to possible prejudice to other interested parties. Therefore, in applying the Wheatcroft Principles, the proposed amendment should not be considered, and I will decide the appeal on the basis of the proposal as set out in the application originally submitted to the Council.
5. A Unilateral Undertaking (UU) was submitted during the appeal process, which I have had regard to in the Decision.

6. Policies from the draft London Plan are referred to in the Council's statement of case. However, the draft London Plan remains subject to Examination and I have very little information regarding any unresolved objections to these policies. As such, I give them no weight in the decision.

Main Issues

7. Based on the submitted policies, my site visit and the representations from the appellant, Council, consultees and interested parties; I consider the main issues to be:
- i) The effect of the proposal on the character and appearance of the area;
 - ii) Whether the proposal would provide an adequate replacement public house;
 - iii) The effect of the proposal on the vitality of Orpington town centre;
 - iv) The effect of the proposal on protected species with specific reference to bats;
 - v) Whether The Chelsfield is a non-designated heritage asset, and if it is, what would be the consequences of its loss;
 - vi) Whether the proposal would provide adequate affordable housing; and,
 - vii) Whether the proposal would provide adequate waste storage;

Reasons

Character and appearance

8. The site is located at the top of Windsor Drive, in a suburb of Bromley, close to the Chelsfield railway station and near to the junction with Warren Road and Station Approach. It currently contains a purpose built 2/3 storey 1930's suburban public house named The Chelsfield. It is constructed from red brick with a hipped roof, with 2 tall and imposing chimney stacks to both ridge ends. It contains bay windows under 2 projecting hipped details to the front and painted timber sash windows to other openings, all a similar glazing design. Surrounding developments are predominantly 2 and 3 storeys high.
9. The Chelsfield is considerably set back from Windsor Drive by around 9.5m, with a substantial outdoor seating area for patrons to the front. The land slopes down from the north east, such that the car park is set at a lower level to the rear and side. Opposite The Chelsfield is an area of landscaped open space with established mature trees.
10. The Chelsfield's positioning within the street is such that the building's set back from the other buildings on Windsor Drive, coupled with the landscaping and layout of surrounding development, brings a sense of openness and relief at the elevated road junction. Yet, despite this, the building's massing and form is prominent, conspicuous from both the front and roads to the sides.
11. The overall building quality is high and represents a well-preserved example of 1930's architecture, positively contributing to the suburban character and setting. Therefore, I agree with the Council that the building is a key local landmark.

12. The proposal is to demolish The Chelsfield, replacing it with a 4/5 storey development that would contain a public house, convenience store and 11 apartments, one being for landlord accommodation. It would be sited forward of The Chelsfield by around 6m, occupying a much greater footprint owing to the increase in depth.
13. The built frontage would be akin to the commercial properties on Windsor Road. However, owing to the changes in land levels and positioning of the building, its massing and height in this location would be dominant, conspicuous and overly imposing within the street scene, particularly on the western front corner where the land level drops away. The proposal would not complement the scale, proportion and form of adjacent buildings.
14. Furthermore, whilst the height of the building would be comparable to the top of the chimneys, it would have a flat roof. Consequently, the overall bulk and massing at the upper floors would present a solid, bulky, tall and adversely dominant 4 storey frontage with very little relief. The building would be conspicuous, overly large and wholly incongruous to this suburban setting. Lastly, there would be a lack of articulation and detailing to the elevations; and the overall approach to the design has little regard to surrounding local character and history, or indeed the public house that it would replace.
15. The density of the proposal would be around 66 units per hectare. This would be 1 unit per hectare above the appropriate threshold set out in the density matrix of the London Plan (March 2016) (LP). Although I do not find the matter of density on its own determinative, the high density does add to my concerns and findings above.
16. Consequently, the proposal would have an unacceptable effect upon the character and appearance of the area. This would conflict with Policies 4 and 7 of the Bromley Local Plan (January 2019) (BLP), which seek to ensure all development proposals are of a high standard of design and layout.
17. There would also be conflict with Policy 7.4 of the LP, which seeks to ensure buildings provide a high quality design response that has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass; and contributes to a positive relationship between the urban structure and natural landscape features, including the underlying landform and topography of an area.

Replacement public house

18. The existing public house is an important community facility and provides a wide range of activities to the residents with local groups and music bands convening on a regular basis. There are also no other public houses within walking distance of the site, the nearest being around 1.4km away.
19. The trading area for the proposed public house would increase by around 13%, which includes an increase in the size of the function room. In this regard, the replacement public house would provide a greater amount of trading area than the existing. In terms of internal floor space only, it would be reasonable to assume that the replacement public house could provide similar facilities to the existing public house.
20. However, there would be a considerable reduction in the outdoor space. The Chelsfield currently provides a large outdoor space to the front, which includes

a covered area for use in inclement weather. It is open to the street and adds a sense of vitality and activity to the frontage. The new outdoor space would be sited to the side, enclosed by boundary treatments and taking account of the steps and walkway, would provide a poorly sized replacement in comparison to the existing provision.

21. Furthermore, the public house would operate very close to the residential dwellings above. Given the existing public house operates late opening and is used as a venue for live music, this could lead to conflict between the future users and potentially changes to the licensed hours of the public house or restrictions on how the site would operate. This could compromise the operation of the new public house and have a detrimental effect upon the vitality and viability of the new facility.
22. The Noise Impact Assessment¹ (NIA) details that the highest level of measured sound reduction will apply to the façade and windows of the proposed scheme, with alternative ventilation recommended to ensure the dwellings can be ventilated without having to open any windows.
23. The nearest residential flat to the outdoor space would be landlord's accommodation, however, other residential flats would still be directly above or close to the public house. The dwellings would each have private outdoor amenity space in the form of balconies. In order to access the balconies and use them, windows/doors would inevitably need to be opened. Therefore, despite the appellant's claims that windows would be opened at the residents' discretion; enjoyment of this outdoor space may be compromised by late night loud activities taking place at the public house, particularly during summer months and at weekends. Additionally, in my opinion, using alternative ventilation in order to avoid opening windows raises concerns regarding the acceptability of the future occupants' living conditions.
24. Furthermore, the conditions suggested by the Council refer to a scheme to protect the proposed dwellings from noise arising from the activities both within and external to the adjacent commercial premises. This could lead to a restriction on the use of the public house's outdoor space or opening hours.
25. Consequently, I have significant concerns regarding the compatibility of uses, and the protection of the living conditions of future residents may severely compromise the activities and operation of the future public house, such that it would not be able to provide the same facilities and opening hours as The Chelsfield.
26. The appellant provides examples of other proposals where public houses and residential units have been allowed, yet I have very little information on the specific circumstances that led to the decisions.
27. Thus, given the evidence before me, in this instance, the replacement public house could result in the failure to retain, or diminish the operation of, the existing social infrastructure offered by The Chelsfield. To this extent, the proposed public house would not be an adequate replacement. This would conflict with Policies 20 and 23 of the BLP, which seek to ensure the provision, enhancement and retention of a wide range of appropriate social infrastructure, resisting the loss of public houses.

¹ Prepared by Airtight & Noisecheck Limited, dated 2 October 2018.

Vitality of the town centre

28. The proposal would create around 242 square metres of new retail space in the form of a convenience store at ground floor with additional office and storage space to the lower ground floor. Retail development is a main town centre use and owing to the location outside the main town centre of Orpington, Policy 91 of the BLP and National Planning Policy Framework (the Framework) require the application of a sequential test. I do not have a sequential test.
29. The appellant argues that a sequential test is unnecessary owing to calculations relating to asserted immaterial differences between the existing and proposed floorspace. I disagree. The proposed retail use would introduce new trading retail floor space which could affect the vitality and viability of the town centre and this falls to be assessed.
30. I have had regard to the appellant's assertions that the intended use of the site would be a local convenience store designed to serve the local community, located close to the existing shopping parade where there may be capacity for further convenience goods floorspace. I do not dispute this, and the evidence presented suggests it would be occupied by a convenience goods operator.
31. Nevertheless, without a sequential test to prove that this main town centre use could not be located in the town centre or edge of centre, I cannot be certain that the proposal would not affect the vitality of Orpington town centre. As a result, in the absence of such detail, there would be conflict with Policy 91 of the BLP which seeks to ensure the vitality of town centres.

Protected Species

32. Bats are protected by law and their presence is a material consideration in a proposal where there is a reasonable likelihood of a protected species being present and affected. The existing building is of moderate potential for roosting bats and the Initial Ecological Appraisal² sets out that 2 bat surveys are required to ascertain the presence of roosting bats.
33. I do not have such surveys. The appellant suggests a condition to require the surveys to be carried out. However, Circular 06/2005 advises that surveys should only be required by condition in exceptional circumstances.
34. This would not be an exceptional circumstance and in this regard, I must apply the precautionary principle and find the proposal could harm protected species. This would conflict with Policy 72 of the BLP and Policy 7.19 of the LP, which seek to ensure that development should wherever possible, make a positive contribution to the protection, enhancement, creation and management of biodiversity; and be resisted where they have significant adverse impact on the population or conservation status of a protected species.

Non-designated heritage asset

35. A high level of interested parties and the Council have placed an emphasis upon the significance of The Chelsfield, both in terms of its architectural and historic merit, and as detailed earlier, it is a key local landmark. The building is a good example of 1930's architecture and is well-preserved, occupying a

² Report Prepared by Adam Jessop MSc and Lyndsey McBean BSc (Hons) PGCert, dated September 2018

prominent setting. It also has a social significance and value in the area which is evidence by the high level of interested parties.

36. Whilst The Chelsfield is not identified on the Council's Local List, Policy 40 of the BLP clearly makes provision for non-designated heritage assets to be highlighted as at risk of harm from a planning application. This is what has happened in this instance, and I agree with the Council that the building has significance as a local landmark building, is of high quality and it should be considered as a non-designated heritage asset.
37. The demolition of The Chelsfield would immediately result in the total loss of the non-designated heritage asset. In terms of the benefits, the proposal would provide a new public house, convenience store, market housing and infrastructure contributions. However, given my previous findings, the replacement public house would be inadequate, and the infrastructure contributions are required to mitigate the effect of the development and could not be considered as a benefit. The dwellings proposed are market housing and whilst they would contribute towards boosting housing supply, the effect would be moderate. The convenience store could be considered a benefit to the local community, but I do not have a sequential test and thus its effect could be detrimental to the vitality of the town centre. In this regard, I place little weight on the benefit of a convenience store.
38. Therefore, in weighing up the total loss of the heritage asset against the asserted benefits, the scale of harm would not be outweighed. This would conflict with Policy 40 of the BLP which seeks to respect non-designated heritage assets.

Affordable housing

39. Policy 2 of the BLP seeks affordable housing on all housing developments capable of providing 11 residential units or more. This proposal would provide 11 residential units, yet one of these would be landlord accommodation. Whilst it would not be accessed directly from the public house and there is very little to distinguish it from the other residential dwellings; the UU submitted secures the landlord accommodation exclusively for this use. As a result, it would not be an open market dwelling.
40. Therefore, in this regard the proposal would provide 10 open market dwellings. This would not be over the threshold set out in Policy 2 of the BLP and there would be no conflict and no requirement to provide affordable housing.
41. Policy 3.13 of the LP states boroughs should normally require affordable housing provision on a site which has capacity to provide 10 or more homes. In this regard, there would be a conflict. However, since Policy 2 of the BLP was adopted after the LP and having regard to Section 38 (5) of the Planning and Compulsory Purchase Act 2004 (as amended); the conflict between the policies must be resolved in favour of Policy 2 of the BLP. I also find this would outweigh the conflict with the Framework which seeks to secure affordable housing for developments of 10 or more homes.
42. Lastly, having regard to the above findings, there would be no conflict with the Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance (August 2017), which provides guidance on affordable housing and

viability; and the Council's Planning Obligation Supplementary Planning Document (December 2012).

Waste storage

43. The location for waste storage for the residential units and public house would be to the rear of the site, located in separate areas. Given this arrangement, I am satisfied that the waste storage areas for both residents and the public house could be identified by signage or other means to ensure there was no conflict between future users.
44. The distance from the road to the waste storage area is around 30m and there would be a reliance upon a management company to collect the waste bins and move them to the front of the site on collection days. Although this is a moderate distance, if a management company were in place, I am satisfied that this could be accomplished; and a condition requiring details of waste management could be imposed. Furthermore, the footway would be wide enough to accommodate the waste bins awaiting collection, such that it would not detriment pedestrian flows.
45. Waste from the commercial area would be contained within the ground floor area, and the appellant asserts that an external refuse store has not been provided in accordance with the intended end user's request. Therefore, whilst the Council contend that the internal layout is compact, I have little evidence to find it would be inadequate.
46. Consequently, the proposal would provide adequate waste storage. This would be compliant with Policy 113 of the BLP and Policy 5.16 of the LP, which require new development to include adequate space to support recycling and efficient waste collection.

Planning obligation

47. The UU obliges to pay on commencement of development an education contribution of £3,180, a healthcare contribution of £23,403 and a carbon offsetting contribution of £14,256. It also requires the landlord accommodation to be used solely for that purpose.
48. The Council set out that these contributions are necessary to make the development acceptable, mitigating the effect upon Education, Health and carbon offsetting. However, the Council also sets out it is necessary to link the Education and Health contributions to specific projects in the Borough to ensure that pooling regulations are complied with.
49. However, the contributions are not linked to any specific projects and I have no information regarding whether any pooling has occurred. Therefore, despite the evidence substantiating the amount of monies required, I cannot be sure that the obligation would be compliant with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs). Therefore, I give little weight to these elements of the UU.
50. Furthermore, very little evidence, save for it would be replacement accommodation, is presented to explain why the provision in the obligation to secure landlord accommodation would be necessary to make the development acceptable in planning terms. Therefore, the UU in this regard would not comply with the tests set out in the Framework or the CIL Regs. As such, I give

this element of the UU no weight; but as it is signed and executed as a deed, it would be enforceable by the Council and thus my conclusions on affordable housing would not change.

Conclusion

51. The proposal would provide adequate waste storage and would be compliant with affordable housing policy. It would also moderately boost housing supply. However, the level of harm I have found on all other main issues would substantially outweigh these matters.
52. For the reasons set out above, I conclude that the appeal should be dismissed.

Katie McDonald

INSPECTOR