



Appeal Decision

Site visit made on 24 September 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref: APP/K2230/W/19/3232576

27-28 High Street, Gravesend, Kent DA11 0AZ

- 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 Baruch Davidovits against the decision of Gravesend Borough Council.
 - The application Ref 20180388, dated 17 April 2018, was refused by notice dated 28 March 2019.
 - The development proposed is the demolition of existing ground floor and first floor retail outlet and construction of 1 no self-contained retail outlets including alterations to the shop front. Construction of first, second and third floors to form 6 no residential two-bedroom self-contained flats with the construction of external fire escape to the rear.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (i) whether the development would provide suitable living conditions for the future occupiers of the development with particular regard to outlook and the availability of light;
 - (ii) the effect of the development on the character and appearance of the area with particular regard to the High Street and Queen Street Conservation Area; and
 - (iii) the effect of the development on habitat and biodiversity at the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar Site.

Reasons

Living conditions

3. The appeal development includes residential accommodation on the first, second and third floors. The residential units are accessed from High Street via a communal lobby. At the time of my site visit construction works were underway for the redevelopment of the adjoining property (25-26 High Street) which I understand was granted planning permission by the Council under reference 20180797.
4. The Council's key concerns over the living conditions of the future occupiers of the development relate to the location of the bedroom windows facing out onto

an open communal landing and a lightwell and the location of the rear fire exit staircase in relation to flats 2, 4 and 6.

5. Flats 1, 3 and 5, which would be located on the High Street frontage, would have good sized windows to the living/kitchen area and bedroom one. However, the second bedroom for each of these flats would only have a window which would be directly adjacent to the communal landing and would face the proposed lightwell. Views from these windows would also be restricted by the rear of the main (enclosed) stairwell to all floors and the side elevation of the adjacent property. To my mind, given the location of these windows and the adjoining building, the outlook from flats 1 and 3 in particular would not provide a good outlook for the occupier of these bedrooms. In respect of flat 5, I consider that there would be at least a greater degree of outlook upwards over the top of the adjacent building (when completed) to the extent that I consider that an acceptable outlook would be possible.
6. In a similar vein to outlook from these windows, the lightwell would provide a degree of natural light, but the level of available light would be significantly less on the first floor than the third floor, particularly given the height of the adjoining building when it is completed. The relative levels of light which would be available only adds to the poor living environment for the occupiers of these bedrooms.
7. Turning to flats 2 and 4, both bedrooms for each of these flats face onto the communal landing and lightwell. With the exception of the impact of the enclosed stairwell, they have the same issues that affect the second bedroom in flats 1 and 3. In addition to that, the outlook from the windows to the living/dining area on flats 2 and 4 would be severely restricted by the external fire escape which goes across the windows serving these rooms. Whilst the fire escape would not be enclosed, views from these windows would be dominated by the metal structure and railings associated with the means of escape. It is clear to me that there would be a very poor outlook for the future occupiers of these flats.
8. Whilst the Council has also raised the fire escape concerns in relation to flat 6, I note that it would not be directly in-front of the living/dining area windows and there would be a good outlook possible from these. I also consider that the outlook from the bedroom windows of flat 6 would be broadly similar to that for flat 5 in the sense that an acceptable outlook would be possible.
9. The Appellant has set out that a pragmatic approach should be taken and that the development would effectively combine with the adjoining development currently under construction and improve the living conditions of the approved units by expanding the volume of the light well. It is also stated that the appeal development would have a similar outlook than those currently under construction and is consistent with high density flatted development in the urban area.
10. Whilst I accept that views from bedroom windows are perhaps not as important than other habitable rooms, this does not in itself provide a suitable justification for accepting a development which would provide a poor outlook for its future occupants.
11. In relation to the lightwell being combined with that in the adjoining development, this would clearly provide a greater degree of light than if the

proposal was considered in isolation. However, I cannot agree that the proposed lightwell would improve the outlook from the rooms on the adjoining development. This is particularly the case as the appeal development would result in a significantly larger building adjacent to that development which would inevitably have some impact on the availability of outlook and light from that development. It is also an inescapable fact that the current building on the appeal site would not have any significant impact on the future occupiers of the adjoining development owing to its current height.

12. Notwithstanding that, even with the combined lightwell, I consider that the outlook from the proposed flats and the levels of light to the proposed flats would not be good, and this provides a clear and compelling reason to withhold planning permission for the development before me.
13. I have also had regard to potential privacy issues for the future occupiers of the development. The Council have provided very little detail of their concerns in this respect and from the evidence before me, there is a similar arrangement of habitable room windows to a shared access on the adjoining development which has been accepted by the Council. Whilst I consider that this is not an ideal arrangement and could lead to some privacy issues, I consider that this is not a determinative factor in this case.
14. For the above reasons the development would not provide suitable living conditions for the future occupiers of the flats 1, 2, 3 and 4 and would conflict with Policy CS19 of the Gravesham Local Plan Core Strategy (2014) (CS) which amongst other matters seeks to ensure that new development is designed and constructed to safeguard the amenity, including privacy and daylight and sunlight of its future occupiers. It would also be at odds with the design aims of the National Planning Policy Framework.

Character and appearance

15. The appeal site is located within the High Street and Queen Street Conservation Area (HSQSCA) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
16. The Council's concern appears to stem from the lack of a streetscene elevation showing the adjoining buildings, and how the proposed building would fit into the streetscene. That said, the Council did not seek such additional information from the Appellant. Whilst such a streetscene elevation would have been highly beneficial, given that the Council possess the details for both developments I consider that such detail is not necessary.
17. Regardless of that, I must consider the overall effect of the development on the character and appearance of the area. From my site visit I saw that land and building levels along High Street generally rise as you go further away from the river. The current streetscene has a variety of building heights and there is not a uniform design to the streetscene.
18. The appeal development would clearly result in a much higher frontage to High Street than the current situation, and from the evidence before me, would be of a similar height to that currently under construction at Nos 25-26.

19. In terms of the overall design concept and the height of the building I am of the opinion that, subject to the details which the Council has recommended in their suggested conditions (should I be minded to allow the appeal), the development would enhance the appearance of the HSQSAC and the surrounding area in general.
20. To that end, I find that the proposal would enhance the HSQSAC and the character and appearance of the area in general and would accord with Policies CS19 and CS20 of the CS and Policy TC3 of the Gravesham Local Plan First Review (1994) which amongst other matters seek to preserve and enhance Gravesend's heritage assets, is visually attractive, and conserves and enhances the character of the local built and historic environment. It would also accord with the design and heritage aims of the Framework.

Special Protection Area & Ramsar site

21. From the evidence before me the appeal site is located within 6Km of the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar Site. There is evidence to suggest that recreational activity is causing disturbance to the important biodiversity that the SPA accommodates. Consequently, any intensification of these activities could lead to further disturbance.
22. With that in mind, the Appellant has provided a signed Unilateral Undertaking which provides for a financial contribution to the Council to ensure that appropriate mitigation is implemented. The Council have confirmed that this is acceptable to them.
23. Notwithstanding that, I am conscious of the requirement to undertake an 'Appropriate Assessment' of the effects of the development on the SPA. However, given that I have found harm in relation to the future living conditions of the occupiers of the development, unless there is another material planning consideration which suggests that permission should be granted, it is not necessary for me to consider this matter in any further detail.

Planning balance

24. The Framework indicates that planning decisions should apply a presumption of sustainable development. For decision taking, where Development Plan policies which are the most important for determining the application are out of date¹, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. The Appellant has set out that the Council cannot demonstrate a deliverable five year supply of housing and indicate that the 'tilted balance' set out at paragraph 11d) of the Framework should apply. The Council have not disputed this claim and I have no reason to disagree with the Appellants position in this regard.
26. In this case, I have found that the proposal would not provide suitable living conditions for its future occupiers and as a result would be contrary to both the relevant Development Plan policies and the Framework. To my mind, this weighs heavily against allowing the proposed development.

¹ Footnote 7 includes situations where the local planning authority cannot demonstrate five year supply of deliverable housing sites.

27. The Appellant has outlined that the proposal would provide much needed cost-effective new housing in a sustainable central location close to services and facilities, as well as providing modern new homes which minimise waste and provide measures to adapt to climate change. The development would also provide new, fit for purpose, retail accommodation. It is clear to me that all of these factors can be considered to be a benefit of the development and this must weigh in favour of the proposal. However, these benefits can only be considered to be minor.
28. I have also taken into account that the provision of an additional six residential units would be unlikely to have any significant effect in reducing the deficit to the housing land supply in the administrative area of Gravesham.
29. Taking all of the above into account, I consider that the harm identified significantly and demonstrably outweighs the minor benefits when assessed against the policies in the Framework when taken as a whole. The proposal cannot therefore be considered to be sustainable development.

Conclusion

30. Taking all matters into consideration I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR