The Planning Inspectorate

Appeal Decision

Site visit made on 9 November 2020

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2021

Appeal Ref: APP/D5120/W/20/3250639
104-106 Welling High Street, Welling DA16 1TJ

- 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 Portman Homes against the London Borough of Bexley Council.
- The application Ref 18/00576/FULM, is dated 12 March 2018.
- The development proposal is for demolition of the existing building and the erection of a new four storey building, with a commercial unit comprised of A1/A2/A3 use on the ground floor and residential on the three floors above.

Decision

1. The appeal is dismissed and planning permission for demolition of the existing building and the erection of a new four storey building, with a commercial unit comprised of A1/A2/A3 use on the ground floor and residential on the three floors above is refused.

Main Issues

2. Based on the submitted policies, my site visit and the representations from the appellant, consultees and local residents, I find that the main issues are:

   - affordable housing provision; and
   - the living conditions of neighbouring residential occupiers, with specific reference to outlook and light.

Procedural Matters

3. Prior to validation of the application a revised site application plan, including the access road to the rear of the appeal property, was submitted to the London Borough of Bexley Council (the Council) at their request. Following validation on 5 April 2018, a revised Certificate of Ownership Notification-Certificate B (Certificate B) relating to the inclusion of the access road was submitted by the appellant on 24 April 2018.

4. On this revised Certificate B, the address used for MRI Estates Ltd., the owner of the access road, was incomplete by lack of a street address. MRI Estates Ltd. have, however, made a submission for the purposes of this appeal for non-determination of the planning application. Even if MRI Estates Ltd. were not able to engage fully at the start of the planning process, their views are now known and can be taken into account. For this reason, they have not been

prejudiced in their ability to engage properly in the planning process for land in their ownership.

Reasons

Affordable Housing

5. The appeal site is located on the southern side of Welling High Street, a busy local high street, which, in this part, consists of buildings in a variety of designs but similar scale. Similar to the existing building, many are from the early 20th Century with retail/commercial use at ground floor level and residential or office use above. To one side the appeal site is neighboured by a building that reaches four stories with a supermarket at ground level and residential above.

6. The proposal replaces the existing commercial and residential building on the site, with a five storey brick and render building with commercial units in A1, A2 or A3 use at ground level with 10 residential units above in the form of one and two bedroom flats. Access to the residential units would be from the high street and from the parking area at the rear of the property, which accommodates 5 parking spaces.

7. The proposal is in an area suitable for this form of mixed use commercial and residential development and would provide a valuable addition to the ongoing national housing shortage, as well as to the borough's housing stock of dwellings for smaller households.

8. Policy 3.11 of the London Plan (2016) (the LP), states that 60% of the affordable housing provision should be for social and affordable rent and 40% for intermediate rent or sale. With Priority accorded to the provision of affordable family housing. Policy 3.12 of the LP states that the maximum reasonable amount of affordable housing should be sought when negotiating on individual private residential and mixed use schemes and policy 3.13 of the LP states that boroughs should normally require affordable housing provision on a site which has capacity to provide 10 or more homes.

9. Similarly, policy CS10 of the Bexley Core Strategy Council's Core Strategy (2012) (the CS) sets out the Council's aspiration to achieve 50% affordable housing as a proportion of all provision, over the plan period. It states that the Council seeks the maximum reasonable amount of affordable housing in residential schemes of ten units or more. With a minimum of 35% of units to be affordable on all residential schemes of ten units or more. Of this provision, the Council's target is for of 70% social rented tenure and 30% intermediate housing. Where a developer suggests that site viability does not permit full provision at the level required by the policy, this is to be demonstrated through a full financial appraisal.

10. Paragraph 64 of the National Panning Policy Framework (the Framework) requires that major development with housing provision should have at least 10% of the homes available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. None of the four exemptions to this 10% requirement listed in the Framework apply to this proposal.

11. As the proposal includes the provision of 10 residential units, it is in excess of the policy requirements set out above for the inclusion of affordable housing.

Although it is clear from the documents before me that affordable housing provision did form part of the pre-application discussions, the Planning Statement submitted with the application makes no mention of the proposals position in relation to affordable housing policy. However, the appellant did submit a Viability Report in March 2019, which concludes that both on-site and in lieu off-site affordable housing provision would render the proposal unviable.

12. Although the Council state in their appeal statement that no viability appraisal was submitted by the appellant, they received a report dated August 2019 from their own consultants reviewing the appellants Viability Report of March 2019. As a result, the Council concluded that a payment of £580,000 for in lieu off-site affordable housing provision would be reasonable. As there is nothing before me to indicate otherwise, I find that this demonstrates that the council regarded the appellant's Viability Report as the required Affordable Housing Viability Assessment (AHVA).

13. In response to the Council's review of their AHVA, the appellant's detailed rebuttal, dated November 2019, again concluded that in lieu off-site affordable housing provision was not viable. By reply, dated 14 February 2020, the Council considered points raised by the appellant and concluded that £250,000 payment in lieu would now be reasonable. This was again reviewed and the appellant in their further detailed 'rebuttal' of 25 February 2020 maintained their previous conclusion. In response to this, the Council considered the points made in this last rebuttal and updated their conclusion on viability on 16 March 20, concluding that a payment of £240,000 for in lieu off-site affordable housing provision would reasonable.

14. The appellant argues that, the reduction in the sum for in lieu off-site affordable housing provision, considered by the Council to be reasonable, demonstrates that the Council's position lacks consistency. However, I find that the various reports and correspondence relating to this matter, demonstrate a professional openness and willingness to respond positively where points raised are evidence based and reasonable assumptions. In my view, this represents a normal professional exchange.

15. In coming to their conclusion that £240,000 is a reasonable payment in lieu off-site affordable housing provision, the Council has adopted the appellant's suggested methodology using the property website Zoopla for calculating sales value, based on price and value for residential property in Welling. They have also agreed 'profit provided' evidence relating to sales price achieved for properties in the borough, which both parties have agreed at different times through their exchanges, and that I find represent a reasonable comparison in relation to the residential units proposed.

16. The Council's payment calculation for in lieu off-site affordable housing provision is based on the future capping of ground rents as indicated by Government and not on their withdrawal as suggested by the appellant, which I find a reasonable approach. The Council's calculation also removes the previously allowed value of parking space based on parking revenue, acknowledging that the property comparisons used by the parties have parking included and, therefore, already represented in the appellant's methodology for calculating GDV. The council have also agreed that the appellant's rate of 20% profit on cost is reasonable. Likewise, the appellant has agreed the Council's build cost calculation. The Stamp Duty Land Tax (SDLT) rate at 4% on Residual

Land Value used by the appellant has also been adopted by the Council. It is noted that the Government has not indicated that the current SDLT holiday, for properties costing up to £500,000, will be extended beyond the current end at of 1 April 2021.

17. The appellant has challenged the Council's 2% combined sales and marketing fee rate as being low and that a higher rate should be allowed for given the small number of units proposed. However, given this small number of units, I find the Council's argument, that a small number of units would also mean that an extensive marketing campaign, marketing suite and joint agent are not warranted, to be reasonable.

18. In their calculation of the Benchmark Land Value (BLV) the Council have adopted a Landowner's Premium of 10%, based on the income generated by the existing occupied retail unit. Whilst the appellant has not provided any further information to warrant any higher premium, there is nothing before me to indicate that this is unreasonable, and I am therefore satisfied with the Council's arrived at Existing Use Value+ used for their AVHA.

19. For these reasons I conclude that the Council's AVHA indicating that £240,000 in lieu off-site affordable housing provision is reasonable. However, despite exchanges over an extended period, no agreement on viability has been reached.

20. The appellant has been clear in their appeal statement that they are not prepared to make any payment for in lieu off-site affordable housing provision. The appellant has, therefore, submitted a signed and completed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (As Amended) for only the required Carbon Offset payment. Accordingly, I conclude that the proposal fails to secure the required affordable housing provision, which renders the proposal in conflict with the requirements of policy CS10 of the CS, policies 3.11, 3.12 and 3.13 of the LP and paragraph 64 of the Framework.

Living Conditions

21. At first floor level the proposal would appear to project some 3.8m rearward beyond the wall of the neighbouring property at 108-110 Welling High Street (No 108-110) and would be in close proximity to the windows of the upper floor flat No 108-110. Given the height, bulk and massing of the proposal it would be experienced as an enclosing and overbearing presence to the occupiers of this neighbouring dwelling. However, given the orientation of the appeal site and neighbouring properties, the proposal would not result in any significant loss of daylight or sunlight. Likewise, the proposal would not result in any significant opportunities for overlooking of the flat at No 108-110 or cause a loss of privacy.

22. As these last two points are neutral considerations, I find that, due to the enclosing and overbearing effect of the proposal, it would cause moderate harm to the living conditions of the residential occupiers of the upper floor of No 108-110. This would be contrary to policies CS01 and CS07 of the CS and policy ENV39 of the Bexley Council Unitary Development Plan (2004), in so far as they collectively seek to ensure equal access to a better quality of life through high quality, well designed, mixed use development within Welling

town centre, that does not prejudice the environment of the occupiers of adjacent property.

Other Matters

21. Although the appellant has set out their views on the advice and communication from the local authority through the planning application process, these are not matters material to my determination of this appeal as other mechanisms exist to resolve such issues. Moreover, I have considered the proposal on its own merits, which is a fundamental principle that underpins the planning system.

Conclusion

23. The moderate harm I have identified to the living conditions of the occupiers of the upper floor flat at No 108-110, would not on their own outweigh the benefits of the proposal for additional housing units for smaller households. However, when set alongside the lack of affordable housing provision, the harmful impact of the development would significantly outweigh the benefits. Accordingly, the appeal is dismissed and planning permission refused.

Victor Callister

INSPECTOR

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