

Appeal Decision

Site Visit made on 27 April 2021

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th May 2021

Appeal Ref: APP/G5180/W/20/3259986

8 Church Road, Farnborough, Orpington, BR6 7DB

- 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 High Elms Properties Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref 20/01771/FULL2, dated 21 May 2020, was refused by notice dated 13 August 2020.
 - The development proposed is conversion of existing vacant retail units to form 2 x 1 bedroom flats.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of 2x Class A1 retail shops to 2x 1-bedroom C3 residential flats, with associated amenity space and refuse/recycling and cycle storage at 8-10 Church Road, Farnborough, Orpington, BR6 7DB in accordance with the terms of the application, Ref 20/01771/FULL2, dated 29 May 2020, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the approved drawings: Site Location Plan and CR/06 Rev A Existing Proposed Layout.
 - 3) Notwithstanding condition 2), before the development hereby permitted is first occupied details of arrangements for bicycle parking and storage shall be submitted to and approved in writing by the local planning authority and the approved details completed. The arrangements shall be permanently retained thereafter.

Procedural Matters

2. The address and description of the proposed development in the banner heading above are taken from the application form. However, the appeal relates to both 8 and 10 Church Road so I have added "-10" in my formal decision for clarity. I have also used the description of the proposed development from the decision notice and appeal form as more comprehensively describing the proposed development.
3. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the use classes set out in the Town and Country Planning (Use Classes) Order 1987. The amendments include the creation of a new Commercial, Business and

Service use class, Class E. The new Class E incorporates previous use classes A1, A2, A3, B1, some of D1 and D2. I have determined the appeal on this basis.

4. In addition, the Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021 came into force on 21 April 2021. This inserted a new Class MA in Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The main parties have had the opportunity to comment on the implications of this amendment for this appeal and I return to this matter below.
5. During the course of the appeal, the London Plan¹ was published on 2 March 2021, superseding the London Plan 2016. The main parties were given the opportunity to comment on the implications of this publication for the appeal and I have had regard to their comments in my decision.

Main Issue

6. The main issue is the effect of the proposal on the vitality and viability of the retail environment of Farnborough Village.

Reasons

7. The appeal properties lie within a small group of commercial and residential properties a short distance from the commercial centre of Farnborough Village High Street, which offers a range of shops and services. The proposal relates to the ground floors of the properties which, from the evidence before me, previously accommodated a musical instrument shop (falling within the former A1 Use Class) but are now vacant. The upper floors have been converted to residential flats.
8. Policy 96 of the Bromley Local Plan 2019 (the Local Plan) requires the retention of Class A1 shops within designated Neighbourhood Centres and Local Parades as identified in Appendix 10.9 of the Local Plan. The Council draws my attention to a previous dismissed appeal for the conversion of the ground floors of the appeal properties into two one bedroom flats in which the Inspector considered the appeal properties to be within a Local Parade². However, the evidence before me is that the appeal properties are not within a designated Local Parade and should thus be considered as 'individual shops' in terms of Policy 96. The policy allows the change of use of individual shops where there is appropriate alternative provision within reasonable walking distance.
9. Policy 99 of the Local Plan states that the change of use of ground floor premises in shopping areas to residential uses are permitted where all of four criteria are met. As the appeal properties are not located within a designated shopping area, parade, frontage or centre, criteria a) and d) of Policy 99 which relate to 'centres' are not applicable to the appeal proposal and criterion b), which relates to shopping frontages in Metropolitan, Major or District Centres, is met. However, the policy still requires criterion c) "*vacancy of the unit can be demonstrated and that no other commercial or community use is interested in occupying the unit*" to be satisfied.

¹ The Spatial Development Strategy for Greater London March 2021

² APP/G5180/W/19/3219955

10. The appellant indicates that the properties have been vacant since 2018. A market appraisal in October 2018 concluded that the units were of inadequate size to attract retail interest. Following the previous appeal decision, the appellant contends that the units have been actively marketed by a commercial property letting agency to address the previous Inspector's concerns over the marketing of the properties. Marketing has included the distribution of the properties' details to the agency's database of potential tenants and advertising on the agency's and other websites. This has resulted in a number of expressions of interest from potential tenants, all of whom declined to pursue a tenancy further for various reasons including access, parking, location, layout and the need for a planning application for a change of use.
11. However, the marketing appears to have been undertaken through a single agency rather than through multiple commercial property agents. The appellant has not provided any evidence of the advertising of the properties on various media outlets. These were matters identified by the Inspector in dismissing the previous appeal. Furthermore, it is quite possible that the Covid-19 pandemic has discouraged potential tenants from seeking to establish a business or to view the units. The more flexible Use Class E may encourage potential tenants. Whilst these need not be retail uses, they would nevertheless be uses serving the local community.
12. Consequently, although the units are currently vacant, I am not persuaded that no other commercial or community use is interested in occupying the units given the restricted marketing exercise. The proposal thus fails to satisfy criterion c) of Policy 99 of the Local Plan. I therefore conclude that the proposal would have a harmful effect on the vitality and viability of the retail environment of Farnborough Village and would conflict with Policy 99 of the Local Plan in this respect.
13. However, as there is appropriate alternative provision in the High Street within reasonable walking distance of the appeal properties, as I confirmed during my site visit, I consider this harm would be moderate and I find no conflict with Policy 96 of the Local Plan. This finding differs from that of the Inspector in dismissing the previous appeal, but that finding was based on their understanding of the properties being within a designated Local Parade.
14. The previous Inspector referred to Policy S5 of the London Borough of Bromley Unitary Development Plan but this was replaced upon the adoption of the Local Plan and therefore no longer carries any weight. The Council has also referred to Policy E9 c 3) of the London Plan 2021. However, this requires a policy framework to enhance local and neighbourhood shopping facilities and prevent the loss of retail and related facilities that provide essential convenience and specialist shopping. It is thus not directly relevant to this appeal against the refusal of planning permission.

Other Matters

Farnborough Village Conservation Area

15. The appeal properties lie within the Farnborough Village Conservation Area (the Area). In assessing the effect of the proposal, I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Area. The National Planning Policy Framework (the Framework) sets out that heritage assets should be conserved in a manner

appropriate to their significance and that great weight should be given to the conservation of designated heritage assets.

16. The Area is characterised by a mix of residential and commercial properties. Whilst the proposal would result in the loss of commercial units, other retail units would remain in proximity to the appeal properties. These would retain commercial footfall in this part of Farnborough and the overall mix of uses. The alterations to the properties would be sensitive to their architectural qualities and would not have a detrimental effect on their appearance or that of the surrounding area. These findings are consistent with those of the Inspector that conducted the previous appeal. Consequently, the proposal would preserve the character and the appearance of the Area.

Class MA of the GPDO

17. Under the provisions of Article 3(1) and Class MA of the GPDO development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order is permitted, subject to specified restrictions and conditions.
18. However, this has not affected my decision which relates to an appeal against the refusal of planning permission. Were planning permission to be refused, the appellant would retain the right to apply for a determination as to whether prior approval of the local planning authority will be required under paragraph MA.2 of the GPDO, although such an application may not be made before 1 August 2021.

Other considerations

19. Objections to the proposal were submitted by several local residents and the Farnborough Village Society on grounds, other than those covered above, including a need for shops, parking and a lack of outdoor space. I understand the desire for local shops, but there are a variety of shops and services in the High Street within a short distance of the appeal properties.
20. There are roads within a short walking distance of the appeal properties with unrestricted on-street parking. The appellant submitted an On-Street Car Parking Stress Survey with the previous appeal which, from the evidence before me, concluded that there would be sufficient available space in the area to accommodate additional parking demand arising from the proposal. Both the previous Inspector and the Council's Highway Engineer accepted that conclusion and the Council has not raised any highways objections to the proposal before me. I have no firm evidence to reach a different conclusion.
21. The scheme includes a communal garden to the rear of the appeal properties. Whilst this would also serve the approved flats on the upper floors of the properties, I consider that it would be of an adequate size to provide satisfactory outdoor space for all future occupiers were planning permission to be granted.
22. Concern was also raised about sound-proofing. However, I have no evidence that the proposal would be likely to give rise to excessive levels of noise. Neither this matter therefore, nor the other points raised in representations, have been determinative in this appeal.

Planning Balance

23. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. In September 2020, the supply was identified as 3.31 years. However, in an appeal decision dated 29 March 2021 for another site within the Borough to which the appellant draws my attention³, the Council assessed the supply as 3.27 years whilst the appellant in that case contended the supply was only 2.96 years. These figures were based on the increased housing target for the Borough in the London Plan 2021 of 774 units per year.
24. Even if the shortfall is as the Council contends it is very significant. In this respect, from the evidence before me, the context for the current proposal is significantly different to that which applied when the previous appeal for the site was determined. Furthermore, Policy H2 of the London Plan 2021 supports the delivery of new residential accommodation on smaller sites.
25. Given the shortfall in housing land supply, paragraph 11 d) of the National Planning Policy Framework (the Framework) is engaged and Policy 99 is deemed to be out of date. Nevertheless, the policy is broadly consistent with the Framework which requires planning decisions to, amongst other things, ensure that established shops are retained for the benefit of the community. The conflict with this policy therefore attracts moderate weight in my determination.
26. Paragraph 11 d) sets out that where a 5-year housing land supply cannot be demonstrated, planning permission should be granted unless i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or ii) the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. The Framework footnote 6 provides a complete and exhaustive list of those Framework policies to which paragraph 11 d) i) refers; there are no others. These policies include those relating to designated heritage assets but I have concluded above that the proposal would preserve the character and the appearance of the Farnborough Village Conservation Area. The policies set out in footnote 6 do not include that relating to the retention of established shops. Consequently, the application of policies under paragraph 11 d) i) do not provide a clear reason for refusing the proposed development.
28. For paragraph 11 d) ii), I have found above that the proposal would result in moderate harm to the vitality and viability of the retail environment of Farnborough Village, which would lead to moderate social and economic harm. I note that the importance of local shops has been highlighted by the Covid-19 pandemic as indicated in the "Talking Retail" article submitted by the Council.
29. However, set against that harm, the Framework sets out the Government's objective of significantly boosting the supply of homes. The site is within Orpington / Farnborough and great weight should be given to the benefits of using suitable sites within settlements for homes. The Framework recognises that small sites can make an important contribution to meeting the housing requirement for an area. The proposal would result in social and economic

³ APP/G5180/W/20/3257010

benefits from the addition of two dwellings to the Borough's housing stock and from expenditure by future occupiers.

30. I therefore conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development and permission should be granted.

Conditions

31. Other than the statutory time limit for commencement, the Council has not suggested any conditions were planning permission to be granted. However, the Council's Highway Engineer suggested a condition relating to the provision of the cycle store. I consider this necessary to encourage the use of means of transport other than the private car but have amended it slightly to be more concise and to reflect the fact that the building already exists. I also consider a condition requiring compliance with the approved plans is necessary in the interests of certainty.

Conclusion

32. I have found that the proposal would conflict with the development plan taken as a whole. However, the need for housing in the Borough and the shortfall in the supply of deliverable housing land indicate that a decision should be taken other than in accordance with the development plan in this case.
33. For this reason, I conclude that the appeal should be allowed and planning permission granted subject to conditions.

Martin Small

INSPECTOR