



Appeal Decision

Site Visit made on 14 September 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/G5180/W/20/3264001

156 Main Road, Biggin Hill TN16 3BA

- 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 Peter Bowles, BH Falcon Investments Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/20/02360/FULL2, dated 23 June 2020, was refused by notice dated 11 November 2020.
 - The development proposed is change of use of ground floor from retail to residential apartments.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from retail units to 1 two bedroom and 1 one bedroom flat with front terraces and landscaping at 156 Main Road, Biggin Hill TN16 3BA in accordance with the terms of the application Ref DC/20/02360/FULL2 dated 23 June 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) Unless otherwise amended under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 100 P1, 0500 P1, 0501 P1, 0505 P1, 0510 P2, 0511 P2 and 0520 P2.
 - 3) Details of the materials to be used for the external surfaces of the development, including wall facing materials and cladding, door and window frames where appropriate, shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. The development shall be carried out in accordance with the approved details.
 - 4) Before the development hereby permitted is first occupied, details of hard and soft landscape works to include planting plans; written specifications and schedules of plants noting species, plant supply sizes and proposed numbers and densities; means of enclosure and retaining structures; materials including any hard surfacing and seating; and a scheme of management and maintenance of the landscaping at the site shall be submitted to and approved in writing by the Local Planning Authority.

The landscaping works shall be carried out in accordance with the approved details before the development is first occupied, and shall thereafter be managed and maintained in accordance with the approved scheme of management and maintenance.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. However, the Council's decision notice describes the proposal as 'change of use of ground floor from retail units to 1 two bedroom and 1 one bedroom flats with front terraces and landscaping'. This is also the description used by the appellant on the appeal form, and I consider it a more accurate description of the proposal. I have therefore used it in my formal decision.
3. The Town and Country Planning (Use Classes)(Amendment)(England) Regulations 2020 came into force on 1 September 2020 and amended the Town and Country Planning (Use Classes) Order 1987. However, I have determined the appeal by reference to use classes as specified in the Schedule to the Use Classes Order as at 31 August 2020 in accordance with Regulation 4 of the Regulations.
4. In the period since the appeal was submitted, the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were given the opportunity to comment on any implications for the appeal of this change, and I have had regard to the representations made.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the vitality and viability of the Biggin Hill Local Centre shopping frontage; and
 - iii) whether or not living conditions for future occupiers of the development would be acceptable with particular regard to light, outlook and ventilation.

Reasons

6. The appeal site is located within a shopping frontage of the Biggin Hill Local Centre as defined by the Bromley Local Plan 2019 (LP) and includes a building with commercial space at ground-floor level and dwellings above. At my visit, the commercial space was vacant, but the main parties indicate that it could be occupied for either Class A1 (retail) or Class A2 (financial and professional services) purposes, and as either 2 units or a single unit. As part of the appeal, the ground floor of the building would be converted to provide 2 dwellings with terraces to their front that would be enclosed by a wall topped by railings, with attached planters and seating to the front.

Character and Appearance

7. The building line along Main Road is irregular, with steps of varying depth as a result of differences in the positions of adjacent properties relative to the pavements, and in response to changes in the alignment of the street. I also observed examples of parking, seating and display of goods taking place to the front of a number of buildings, in some cases with planters or low retaining walls marking the spaces. Near to the appeal site, this included space to the front of the closest units of the neighbouring parade at 160-166 Main Road which at the time of my visit was in use for parking, as well as at 154A Main Road to the other side of the site where there was outdoor seating.

8. The development would project forward of the neighbouring parades which are currently set back from the pavement a similar distance to the ground-floor level of the appeal building. However, the difference would be fairly modest, and would not be inconsistent with other parts of the Local Centre where buildings similarly step forward of one another, including in some cases at two-storey level or greater height than the enclosure to the terraces proposed on the site. The relationship would not therefore be conspicuous or uncharacteristic. Planting proposed to the front of the terraces would also help to soften the visual impact of the development, and would be in keeping with planters present to the front of some other buildings nearby. Given these factors and in view of the irregular building line overall, I do not consider that the projection forward of neighbouring properties would be unduly prominent or obtrusive. I am also satisfied that the alterations proposed to the appeal building itself, including to fenestration, would be sympathetic to its overall appearance and the mixed character of the area.
9. I therefore conclude on this main issue that the proposal would not cause harm to the character and appearance of the area, and I find no conflict with Policies 37 or 99 of the LP insofar as they seek design in keeping with the character of the centre in which it is located and development that complements its surroundings. Similarly, I find no conflict with requirements within the Framework that broadly seek good design and the creation of high quality buildings and places.

Vitality and Viability

10. Within shopping areas, Policy 99 of the LP additionally specifies requirements for change of use of ground floor premises to residential uses, including at part (a) that development would not undermine the retail vitality and viability of the centre; and at part (c) that vacancy of the unit can be demonstrated and that no other commercial or community use is interested in occupying the unit.
11. At the time of my visit, the ground floor of the building was vacant. The appellant has submitted details indicating that the commercial space on the site has been marketed continuously since December 2018, with the marketing updated in 2019 to take account of permission granted allowing for Class A2 use. I note some discrepancies in the marketing information highlighted by the Council, including the details available at certain times and online. However, having regard to the appellant's explanation and the evidence before me as a whole, I am not persuaded that these instances undermine the overall marketing exercise or render it inadequate, and I have no firm reason to doubt that marketing of the site over a prolonged period has resulted in very limited interest for the permitted uses.
12. I accept that the future impact of the COVID-19 pandemic on local centres is likely to vary according to location. Nevertheless, LP Policy 99 does not stipulate a requirement to take longer-term prospects into account in considering the vacancy of units and interest by potential occupiers. It seems to me that there is little realistic prospect of commercial occupation of the appeal site at the current time, and whether or not the appellant's commentary of the situation affecting the retail sector is a simplification, I can have little certainty of the duration or nature of any impacts on local centres. In this context, I do not consider that it would be reasonable to delay a decision, and

with regard to the apparent sustained lack of demand for the site, I find that the proposal would comply with part (c) of Policy 99.

13. Turning to consider the retail vitality and viability of the centre, the proposal would result in a break in a relatively central part of the Biggin Hill shopping frontage. However, and irrespective of the projection of the development forward of the existing building, the width of around 17m would in my view be fairly modest against the overall spread of the frontage. The spacing between some of the buildings within the Local Centre also varies, and in my judgement the extent of the break would not lead to a distinct interruption to the retail character or function of the area, nor to appreciable fragmentation of the frontage. In any event, at my visit I saw a broad mix of units and uses present near to the site, and no compelling evidence has been provided to demonstrate how the proposal or break in the frontage would cause actual detriment to the vitality or viability of either the shopping frontage or the Local Centre.
14. For these reasons, I conclude on this main issue that the proposal would not unacceptably harm the vitality or viability of the Biggin Hill Local Centre, and I find no conflict with LP Policy 99.

Living Conditions

15. The study to the two-bedroom flat would not have a window. The Council also suggests that the window to the home office of the one-bedroom flat would be substandard in size, although the appellant advises that it would meet building regulation requirements. In any event, I note that both dwellings would have internal areas exceeding the relevant minimum standards by some way. Given this and that the study and home office would not provide for primary living accommodation which occupiers would necessarily need to rely on to offer a suitable standard of living, I do not therefore find that the arrangement would result in unacceptable harm to the living conditions of future occupiers.
16. The bedrooms of the two-bedroom flat would be served by windows that would face onto a parking area at the rear of the building. Any vehicle parked in the closest disabled space would be likely to obscure part of the immediate outlook from the windows, with the deep flank elevation of the adjacent building further enclosing views along the boundary of the site. Separation to fencing along the rear of the site would be sufficient to allow for some more open views to the rear, and I find outlook would not be unacceptably oppressive. Even so, the resulting degree of enclosure would still be undesirable. In addition, the close proximity of the wall enclosing the terraces would limit outlook from these spaces and facing windows to the front of the building.
17. While some direct light would also be likely to be restricted, from my observations the rooms and terrace would still be likely to benefit from a reasonable level of light. Landscaping would also provide for some separation between the rear windows and the closest disabled parking bay, with greater distance to other spaces. Given also the fairly small size of the parking area, the overall level and frequency of vehicle movements would be unlikely to be significant. As a consequence, I do not consider that the proximity of the windows to the parking area would lead to fumes, noise or other disturbance at a level that would unacceptably harm the health or living conditions of occupiers of the development. Furthermore, there is little firm evidence to suggest that the occupiers would not have access to adequate natural ventilation, including through air flow through the flats.

18. Taking account of the overall size of the dwellings and the nature of the impact, I consider that the constrained outlook would result in only modest harm to the living conditions of occupiers. Even so, it would conflict with Policies 4 and 37 of the LP which, amongst other things, seek to ensure a high standard of design and the amenity of occupiers of development.

Other Matters

19. My findings above reflect the specific circumstances of the appeal site. I have had regard to concerns that the proposal could lead to similar development elsewhere within the Local Centre, but no directly similar sites have been put forward, and each application and appeal must be determined on its individual merits. I do not therefore consider that a generalised concern of precedent would justify withholding permission in this case.

Planning Balance

20. The Council is unable to demonstrate a 5 year housing land supply, and refers to a current supply of around 3.31 years. The presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is therefore engaged. This provides that planning 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.
21. While I have found no harm to the viability, vitality character or appearance of the Biggin Hill Local Centre, outlook for occupiers of the development would be unsatisfactory, and would result in conflict with Policies 4 and 37 of the LP. Insofar as they seek a high standard of design, these policies are broadly consistent with the expectations of the Framework which includes a requirement that development provides a good standard of amenity for existing and future users. The weight that I afford to the conflict with these policies is therefore reasonably significant. However, the harm to living conditions for future occupiers would in my view be modest given the overall accommodation offered by the dwellings.
22. Conversely, the Framework seeks to significantly boost the supply of housing, and further recognises that residential development often plays an important role in ensuring the vitality of centres. The proposal would make use of the currently vacant ground floor of the appeal building, adding 2 dwellings to the supply and mix of housing within an existing built-up area. The scale of the development means that the contribution towards the supply of housing would be small. Nevertheless, with regard to the advice within the Framework and the housing undersupply position, it is an important benefit, and I afford it great weight. I also find that the provision of seating along the front of the site would support users of the Local Centre, albeit that the benefit and the weight that I afford to it would be limited.
23. In the context of paragraph 11(d) of the Framework, I find that the adverse impacts of the proposal would be significantly and demonstrably outweighed by the benefits when assessed against the policies in the Framework taken as a whole. The proposal would therefore benefit from the presumption in favour of sustainable development within the Framework, and I find that there are thus material considerations which indicate that the appeal should be allowed, notwithstanding the conflict with the development plan.

Conditions

24. I have considered suggested conditions having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary, or for the sake of consistency, brevity or clarity.
25. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. In order to ensure a satisfactory appearance, a condition to control external materials is necessary. However, given that the appeal relates to an existing building, the suggested requirement for details to be approved prior to commencement of above ground works may prevent any works taking place. I have therefore altered the Council's condition to require that details of materials are approved before they are installed. The Council's evidence also raises concerns regarding the detail and maintenance of planting proposed to the front of the development, and I have attached an additional condition to require further details of landscaping at the site in the interests of the character and appearance of the area.

Conclusion

26. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR