



Appeal Decision

Site visit made on 11 July 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2022

Appeal Ref: APP/G5180/W/21/3285217

Penceat Court, 17 Bourdon Road, Penge, Bromley SE20 7SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, [Part 20, Class A, Paragraph A.2] of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Amit Mass against the decision of the London Borough of Bromley.
 - The application Ref DC/20/04900/NDFLAT, dated 22 December 2020, was refused by notice dated 15 June 2021.
 - The development proposed is described as the construction of two additional storeys to residential building to provide 2 no. studio flats and 8 no. one bedroom flats with balconies and associated development. (56 day application under Class A, Part 20, Schedule 2 to the General Permitted Development Order, 2015 (as amended) with regards to transport and highways impacts, flooding risk, air traffic and defence assets impacts, contamination risks, external appearance of the building, provision of adequate natural light to habitable rooms, impact on existing and neighbouring residential amenities and impact on protected views).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision referred to superseded London Plan policies despite the current London Plan (an updated version of the cited Publication London Plan) having been adopted in March 2021. Additionally, the appellant has referred to the previous iteration of the National Planning Policy Framework (the Framework) which was revised in July 2021. On both counts the main parties have had opportunity to update their policy position and comment. I will therefore reference the revised policies and Framework in my decision.

Policy Context and Main Issues

3. It is common ground that the appeal scheme meets the requirements of part 20, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) such that it would constitute development permitted under Class A, subject to the prior approval of certain matters. For permitted development under Class A, namely the construction of 2 additional storeys of new dwellinghouses on a purpose built detached block of flats, prior approval is required in respect to several matters, set out in paragraph A.2.
4. Those contested relate to the external appearance of the building, specifically in relation to the character of Bourbon Road; and the impact on the amenity of

the existing building and neighbouring premises, specifically outlook and privacy in relation to neighbouring properties.

5. Post the submission of the prior approval application to the Council a further two matters have been introduced to Part 20, Class A.2 of the GPDO. On 30 December 2020 the requirement to consider the fire safety of the external wall construction of the existing building if it is 18m or more in height (criterion i). On 1 August 2021 the second additional matter was added which required that where development meets the fire risk condition¹ there is a requirement to consider the fire safety impacts on the intended occupants of the building (criterion j). Although criterion i was introduced prior to the refusal being issued, it is not evident that the Council considered it. Nonetheless from the details before me the existing building is not taller than 18m and would not meet the fire safety condition, so neither criterion i nor j would be applicable.
6. Therefore the 2 main issues are the effect of the proposed development on a) the external appearance of the building, with specific regard to the character of Bourdon Road; and b) the living conditions of occupants of neighbouring premises relating to outlook and privacy.

Reasons

External appearance

7. The external appearance of the building is not an isolated matter, and its relationship with the prevailing character of its surroundings is a material consideration. The appeal site constitutes a 3-storey 1970s purpose built flat block on a site almost entirely covered in hard standing. It is situated at the junction of Bourdon Road with Worbeck Road where the prevailing character is that of 2-storey detached, semi-detached and terraced residential properties of a traditional form and style.
8. The appeal property is at a lower ground level to its surroundings, which means, although 3-storeys, it appears at a similar height to the properties surrounding it. It has an angled frontage and a flat roof but its set back position within the appeal site ensures it is not obvious within the more traditional and regular pattern of development along Bourdon Road.
9. The proposed increase in height would alter this relationship of the appeal building with its surroundings by extending above the 2-storey roof scape of Bourdon Road. This would increase its presence within the street scene making it a dominant feature. Because of this it would need to be of a high quality design which can either successfully integrate with the surrounding character and street scene or be of such architectural merit as to become a focus without detriment to the road's traditional character.
10. The appellant has stated that the design of the proposal would mimic the valued features and characteristics of the existing building and locality. The existing building is a representation of the functionally designed vernacular of its time. The proposal would update the property by the inclusion of 2 additional storeys in a bid to modernise and upgrade the overall building.

¹ The fire risk condition is set out in Class A, Part 20, paragraph C (3) of the GPDO and references paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

However, I did not see obvious similarities in the proposed design with the surrounding locality during the site visit.

11. The additional 2 storeys would be set back from the front elevation and orientated toward the road without regard to the saw-tooth profile of the existing frontage of the building. The juxtaposition between existing and proposed would be further emphasised by the inclusion of terraces and Juliet balconies, and the dominant use of metal cladding to the upper part of the extension. These features are not currently present on the existing building nor common features within the Bourdon Road area. Their inclusion within this scheme would clearly show a disparity between existing and proposed and further accentuate the lack of cohesion between it and its traditional, smaller scaled surroundings.
12. As such, from the evidence before me, the proposed design is not so imaginative or of such a level of architectural design quality as to constitute a unique and enhancing addition to the street scene. Therefore, along with its overall height, the proposal would create a building which would dominate the locality and draw attention to its incongruous design in relation to the traditional character and 2-storey scale of Bourdon Road.
13. The appellant has stated that 5-storey development is common in the area. I could not find any evidence of this in the immediate vicinity of Bourdon Road but appreciate along Elmers End Road, to the east, there were some taller buildings. However, Elmers End Road is a main throughfare and has a mix of commercial and residential uses along it, so is characteristically different in use and appearance to Bourdon Road.
14. The Framework does promote the effective use of the land and an increase in height can be a way that a residential use can be intensified. Although a potential benefit of the scheme before me, it would not override the harm found as the Framework also makes clear that good design is a key aspect of sustainable development.
15. Consequently, the proposed external appearance of the building would cause unacceptable harm to the character of Bourdon Road. This is evidenced by its lack of compliance with Policy D4 of the London Plan and the Bromley Local Plan (2019) (Local Plan) Policy 37, insofar as they relate to design and the character of the surrounding area, and Local Plan Policy 47, insofar as it relates to the quality of design for tall buildings (noted within the supported text as a building that exceeds the general height of its surroundings, which in this case is 2 storeys).
16. The Council has also assessed the proposal against London Plan Policy D9, which deals with tall buildings. Although there is some flexibility for each Borough to define what is considered a tall building, the policy minimum is a building not less than 6 storeys or 18m. The proposal does not reach the minimum requirement of this policy therefore I have not referred to it above.

Living conditions

17. The existing property comprises 23 flats over 3-storeys. The layout is such that the windows for main living spaces are in the front or rear elevations. Windows facing sideways are limited to secondary uses such as hallways and bathrooms, with some bedrooms in the west elevation. Immediately to either side of the

appeal site are a series of 2-storey residential dwellings. The set back location of the appeal building means that, in part, it bounds the rear gardens of these properties. Consequently, the properties on either side are overlooked by a total of 3 flats above first floor level.

18. The proposal would increase the number of flats by 10, 8 of which would have main living space windows in the side elevations, and in one case a reasonable sized balcony, along with additional bedroom windows. This along with the height of the proposed new floors would mean that occupants of the 8 proposed flats would have unfettered views of the rear gardens of the properties on either side of the appeal site. This would significantly increase the degree of overlooking, reducing the privacy of the rear elevations and gardens of those properties causing unacceptable harm to the living conditions of their occupants.
19. The proposed use of obscure privacy screening on the balconies is noted and this could be secured by condition. Nevertheless, this feature would not overcome the overlooking from the proposed side windows.
20. The proposed additional floors would only be set back along the frontage and the east side of the existing building. The property, immediately to the west of the appeal site, 19 Bourdon Road, would therefore have a 5 storey building closely located to its rear elevation. With an already compromised outlook due to the existing building, the increase in height would further harm the living conditions of the occupants of No 19 by enclosing and dominating the side boundary and creating an oppressive mass immediately to the rear of that property. Although I am satisfied the proposal would not further compromise the outlook from any other neighbouring properties, the impact of the proposal on No 19 would be unacceptable.
21. For the above reasons, the proposed development would cause unacceptable harm to the living conditions of occupants of neighbouring premises relating to outlook and privacy. This is evidenced by a lack of compliance with Local Plan policy 37, insofar as it relates to neighbouring property living conditions.

Other Matters

22. I note there was some public support for the proposed development. Nevertheless, for the foregoing reasons, those matters are insufficient to outweigh the clear harm that would result.
23. The appellant has also referred to the potential improvement of the local area, alteration to the occupant mix, and increase in housing supply as benefits of the proposal. However, as this appeal has been made under the terms of the GPDO, I am limited to deliberations relating to a finite list of matters as set out in the Policy Context above.
24. I have noted the previously dismissed appeal on the site (reference APP/G5180/W/15/3003342). The policy context was different, the proposal was a single additional storey, and it was an appeal against a planning application. Nevertheless, the Inspector drew similar conclusions to mine in relation to the general effect on the surroundings and neighbouring properties, and I do not consider the scheme before me overcomes my colleagues previous concerns.
25. The 4 examples submitted by the appellant have also been considered. Notwithstanding that they are considered under different application regimes

(planning applications and other parts of the GPDO), the matters of consideration within those examples are different. Greenacres (DC/21/00712/12/ASDWEL) and Knoll Rise (DC/20/03201/FULL6) constituted single storey upward extensions on single storey dwellings so are not comparable in terms of massing and bulk. Nor is Maple Road (DC/21/02558/FULL1) which constitutes a small single storey upward extension to facilitate access to the roof of a terraced property. Benjamin Court (DC/20/04009/FULL1) is a purpose built flat block, however the approved single storey upward extension would bring the host building up to the same height as surrounding taller buildings, so is in a location which is not comparable to that of the scheme before me.

Conclusion

26. For the reasons set out above, the appeal is dismissed.

RJ Redford

INSPECTOR