
Appeal Decision

Hearing held on 10 August 2022

Site visit made on 10 August 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2022

Appeal Ref: APP/G5180/W/22/3297995

153-155 High Street, Penge, London SE20 7DS

- 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 Mr R Kasmani, Winstable Ltd against the Council of the London Borough of Bromley.
 - The application Ref 21/02096/FULL3, is dated 20 April 2021.
 - The development proposed was originally described as 'change of use B1(a) use and delivery of seven flats on upper floors'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the planning application form. However, the agreed Statement of Common Ground ('SoCG') gives the description as 'elevational alterations to front, side and rear, partial demolition to first and second floor, internal alterations and change of use from offices to 7 no. residential flats with balconies to front and side within footprint of building'. The existing use of the building is a matter of dispute between the main parties. Nevertheless, the SoCG is agreed between the parties, and the description used within it reflects that entered by the appellant on the appeal form and on which interested parties were consulted. I have therefore considered the appeal having regard to this description.
3. The 'existing' and 'proposed' plans submitted with the planning application illustrate some changes to glazing at the third floor of the appeal building. However, Part 7 of the planning application form states that the proposal affects only the first and second floors, and the appellant confirmed at the hearing that the development applied for does not include any changes to the third floor of the building. I have determined the appeal on this basis.
4. After the appeal was submitted but before the hearing took place, the appellant submitted a revised '(First and Second) Proposed Layouts & Elevations' plan. The revised plan shows changes including to provide for cycle storage both within secure external bike sheds to the rear of the building and within the building's ground floor level. Given the resulting fairly large reduction in the area indicated as currently forming part of a commercial unit on the site, I consider that there could be implications in terms of the operation of that unit and that the revised plan would materially alter the development proposed. In

addition, the external storage would not be within the red line boundary of the appeal site. While the appellant indicated that there is a right of access over the area where the storage is shown, I saw at my visit that it appears to be shared with other High Street occupiers. Furthermore, I saw plant equipment to the rear of the building which already impacts on the passable width of the access somewhat. Because this equipment is not shown on the submitted plans, it is also unclear whether or not it would remain, and whether or not there would be sufficient width to provide for suitable access along the rear of the site.

5. The revised plan has not been subject to consultation, and I cannot be sure that potentially interested parties would be aware of the changes shown. Furthermore, the plan illustrates alterations to the third floor level of the building including a new mansard roof and the provision of 3 additional flats over and above those indicated in the appeal proposal. Given the degree of change shown, I am therefore concerned that there would be insufficient clarity over the extent of the development proposed. For these reasons, I consider that potentially interested parties could be disadvantaged if I were to have regard to the revised plan. In the interests of fairness and with regard to the 'Wheatcroft' principles¹, I have therefore determined the appeal on the basis of the plans that were before the Council at the time the appeal was made.
6. The appellant confirmed at the hearing that the '(First and Second) Existing Layout & Elevations & Section AA' plan submitted with the application showed the development currently on the site, and this was not disputed by the Council. However, it became apparent at my visit that the internal layout of the building did not reflect that shown on the plan, and that there were also some differences in fenestration. The status of application reference 14/04626/RESPA made for 'change of use of first floor offices from Class B1(a) office to Class C3 dwellinghouses to 1 three bedroom and 2 one-bedroom flats' ('the 2014 application') is also a matter of dispute between the main parties.
7. I have had regard to the evidence that is before me regarding the status of the existing development on the site so far as it is material to my consideration of this appeal. However, it is not within my remit as part of the current appeal to formally determine the lawful status of the existing development on the site, and regardless of the outcome of this appeal, my determination here does not dictate any future determinations under the Town and Country Planning Act 1990 ('the Act').

Main Issues

8. The main issues are:
 - i) whether or not living conditions for future occupiers of the development would be acceptable, having regard to outlook, privacy, the quality of external amenity space, and noise and disturbance; and
 - ii) whether or not the proposal would make adequate provision for cycle storage.

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

Reasons

Background Context

9. The appeal relates to a part three, part four-storey building on High Street, Penge. From the evidence before me, the upper floors of the building were previously in office use, but at my visit I saw 4 flats at each of the first and second floor levels and access to a further flat on the third floor.
10. It is common ground between the parties that planning permission was granted in 2007 for development including change of use of the second and third floors of the building from offices to 5 flats² ('the 2007 permission'), with the approved plans indicating 2 one-bedroom and 2 two-bedroom flats at second floor level. The appellant's evidence suggests that changes were made to the development approved by the 2007 permission under Section 55(1) of the Act including a reduction in the number of flats to 4 in total, with 2 three-bedroom and 1 one-bedroom flat on the second floor. However, this does not reflect the layout of the second floor that I saw at my visit where I noted 2 two-bedroom and 2 one-bedroom flats, albeit in a layout that differs from the plans approved under the 2007 permission.
11. In light of this discrepancy and from the information submitted, I am unsure when the current arrangement was laid out. Although there is no dispute between the main parties that permission has previously been granted for 4 flats on the second floor, this limits the weight that I can give to the existing layout of the flats on this floor.
12. Turning to the first floor, the 2014 application sought prior approval for change of use of the first floor of the appeal building to 3 flats under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 1995 (as amended) ('the GPDO'). Class O has since been superseded, but it permitted development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule. The main parties disagree over the timing of the 56-day determination period that the GPDO specified applied to applications made under Class O, but the Council did not in any event issue a decision on the application, and has been unable to substantiate with written evidence its assertion that it was withdrawn.
13. Be that as it may, Class O included at O.1(b) a limitation that development is not permitted by Class O if 'the building was not used for a use falling within Class B1(a) (offices) to the Schedule to the Use Classes Order (i) on 29th May 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use'. It was also subject to the condition at O.2 that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to certain specified matters.
14. The appellant's evidence includes a ledger showing rent received between November 2010 and April/May 2011 for Flats 1, 2 and 3 said to be on the first floor of the building. The appellant advised that the flats were vacated and cleared in 2011, and the ledger indicates that rent receipts did not resume until

² Application ref 06/02474/FULL1

2016. However, no firm details have been provided to indicate that the first floor was used as offices subsequent to the flats being vacated in 2011. Moreover, the first floor layout on the 'existing' plans submitted with the 2014 application is annotated as including bedrooms, kitchens, living spaces and bathrooms which are indicative of residential use, whether or not the rooms were furnished or occupied at that time. On this basis, I cannot be sure that the building was used as offices on 29 May 2013 or when last in use before that, nor that the 2014 application was made before beginning the development. Even if the Council failed to issue a decision within the 56-day determination period, it is accordingly unclear from the evidence before me that the 2014 application development complied with the conditions and limitations of Class O so as to constitute 'permitted development'.

15. In any event, I saw at my visit that there were 4 flats on the first floor rather than 3 as applied for under the 2014 application. Furthermore, the SoCG records that an Enforcement Notice was issued alleging 'without planning permission, the material change of use of first floor offices to 2 one bedroom flats, 1 two bedroom flat and one three-bedroom flat'; that the Notice was not appealed; that prosecution for breach of the notice took place in January 2019; and that the Notice remains extant. At the hearing, I heard from the appellant that this course of events resulted from a lack of understanding of the enforcement action and its implications, and a commercial decision to plead guilty to the prosecution in order to resolve the matter. Be that as it may, these factors do not alter that the evidence before me indicates an extant Enforcement Notice relating to the change of use of the first floor of the building from offices to flats.
16. In light of the above and on the balance of the evidence before me, I find that the weight that I can give to the presence of existing flats on this floor is limited.

Living Conditions

17. The development that is now proposed on the site includes 3 flats on the first floor of the building and 4 flats on the second floor. Flat 6 would be a studio flat on the second floor of the building. All of the windows to this flat are shown to be obscured glass and high level only. In addition, the only windows to all three bedrooms and the window to the rear of the kitchen/living room of Flat 3 on the first floor would be obscured glass and high level only. Given their condition, these windows would not provide for open views or aspect, nor offer occupiers any meaningful sense of visual connection with their surroundings.
18. I acknowledge that there would be an additional door serving the kitchen/living room to Flat 3. However, this would face onto adjoining balconies for Flats 2 and 3 within a void/atrium that is proposed to be created between the appeal building and the neighbouring building at 151 High Street. Although the balconies would be open to the sky, they would be enclosed to all sides by the appeal building and No 151, and separation between the glazing onto these balconies and the facing walls would be relatively limited. In my judgement, this arrangement would result in a significant sense of enclosure that would curtail visual connection to the surrounding area, and outlook from windows onto the balconies would be severely constrained. The door onto the balcony would not therefore offer meaningful alternative outlook for the kitchen/living room to Flat 3, and there would similarly be little outlook to speak of for the

kitchen/living room to Flat 2 which would be served only by glazing onto the balconies.

19. In my judgement, the lack of suitable outlook to all of the rooms within Flats 3 and 6 and to the kitchen/living room of Flat 2 would be oppressive, and would create poor quality internal environments for future occupiers that would be detrimental to their quality of life.
20. In addition, Flats 5 and 7 on the second floor would include glazing facing onto the void/atrium. This glazing would allow for clear views onto the balconies below, as well as from the windows of Flat 7 down onto one of the bedrooms to Flat 2; and from windows to the kitchen/living room of Flat 5 down onto the kitchen/living room of Flat 3. Given the unusually close proximity at which these direct views would be possible, I find that there would be a notable sense of being overlooked within Flats 2 and 3. Furthermore, one of the windows to the kitchen/living room of Flat 2 would face onto the balcony to Flat 3 allowing for immediate views between these spaces that would be exceedingly intrusive. Taken together, these factors would result in a distinct and unacceptable lack of privacy for future occupiers of Flats 2 and 3.
21. Moreover, the degree of enclosure resulting from the buildings surrounding all sides of the balconies to Flats 2 and 3 would cause them to feel uncomfortably confined and hemmed in. The direct views onto the balconies from Flats 5 and 7 above and from the kitchen/living room of Flat 2 onto the balcony of Flat 3 further means that they would not provide for private amenity space. In combination, I find that these factors would severely constrain the attractiveness and usability of the balconies, and while they may be sheltered spaces that could include planting, I consider that their value to future occupiers as amenity space would be limited. The lack of private amenity space of suitable quality would further harmfully diminish the quality of life of occupiers of Flats 2 and 3.
22. I acknowledge the enclosure of the balconies to Flats 2 and 3 could result in some amplification of noise, and that the flats may be occupied by families with children. Even so, the balconies are not of particularly large size, and I do not consider the Council has provided compelling evidence to demonstrate how their use as part of a single dwelling would be likely to result in excessive noise or disturbance so as to cause harm to the living conditions of adjoining occupiers. In addition, the Council has not argued that levels of natural light to the dwellings would be inadequate.
23. Be that as it may, for the reasons above, I find that the lack of outlook to all rooms of Flat 3 and to the kitchen/living room of Flat 2, in combination with the lack of privacy and the poor quality of the external amenity spaces would severely compromise the living conditions of the occupiers of both Flat 2 and Flat 3. The lack of any meaningful outlook to Flat 6 would further cause significant detriment to the living conditions of future occupiers of this flat.
24. The potential for the Council's concerns about outlook and privacy for occupiers of the development to be addressed by planning conditions was a matter of discussion at the hearing, and resulted in suggested conditions being put before me. These included a condition specifying a requirement to submit details of all windows to Flats 5 and 7 adjoining the void/atrium, and the window of the kitchen/living room to Flat 2 adjoining the balcony of Flat 3, including, where appropriate, levels of obscurity. However, while I accept that

use of obscure glazing could help to address actual overlooking between these flats, I cannot agree with the appellant's contention at the hearing that this would not affect outlook for the rooms served in comparison to the clear glazing suggested by the submitted plans. Instead, it seems to me that use of obscure glazing to the kitchen/living room window to Flat 2 would further worsen the already very constrained outlook for this room. Use of obscure glazing likely to be necessary to prevent views from Flats 5 and 7 down onto the balconies and flats below would also constrain outlook from the kitchen/living rooms of both flats, and from both bedrooms of Flats 5. Given that these measures to address overlooking could raise additional considerations around outlook, I am not satisfied that it would in this case be appropriate to secure mitigation by way of a planning condition.

25. Furthermore, the windows to the rear of the building serving Flats 3 and 6 face towards properties on Raleigh Road. I consider that alterations to the indicated high level and obscured glass windows here under the auspices of a condition would be likely to result in prejudice to the interests of neighbouring occupiers given that the process would not involve consultation with interested parties. I do not therefore consider that the unacceptable outlook that I have identified would be afforded to Flats 3 and 6 could be mitigated by a planning condition.
26. The appellant also suggested at the hearing that the balconies to Flats 2 and 3 could be omitted from the development, thereby avoiding concerns about the quality of the space. Whether or not the internal areas of the flats would exceed relevant floorspace requirements though, it would seem to me that this would be a material change from the development proposed. I do not therefore consider that this is a matter that could appropriately be dealt with by way of a planning condition on the appeal.
27. For these reasons, I find that the overall standard of accommodation offered by Flats 2, 3 and 6 would cumulatively be very poor, and I conclude on this main issue that living conditions for occupiers of these dwellings would be wholly unacceptable. The proposal would therefore conflict with Policies 4, 37 and 97 of the Bromley Local Plan 2019 ('BLP') and Policy D6 of the London Plan 2021 ('LP'). Together, these policies broadly seek a high standard of design and high quality housing development that provides a satisfactory living environment and standard of accommodation. They also identify requirements for development including that it respects the amenity of future occupants, providing healthy environments and ensuring they are not harmed by inadequate privacy; and that it provides sufficient external private amenity space that is practical.
28. At the hearing, the appellant advised that the dwellings would be privately rented, and argued that occupiers would have a choice whether or not to rent the flats with rent levels likely to vary according to the nature of the accommodation provided. However, I note comment within the Mayor of London's Housing Supplementary Planning Guidance 2016 that the commitment to increase housing supply in London must not be met at the expense of quality. While there may be occupiers who would rent the flats and I do not dispute that there is a general need for housing, I do not consider this a compelling justification to allow development that would provide for unacceptable living conditions in conflict with the development plan.

Cycle Storage

29. The proposed plans indicate communal cycle stores on each of the ground, first and second floors of the building. These are annotated as providing a sufficient number of spaces to meet the minimum standards for cycle parking specified within Policy T5 of the LP. However, Policy T5 also stipulates that cycle parking should be designed and laid out in accordance with the guidance contained in the London Cycling Design Standards document 2014 ('LCDS').
30. The Council's evidence highlights that the spacing shown between cycle stands and access aisle widths would not meet standards within the LCDS; that no provision is shown for adapted cycles; and that doorways and lifts to reach the stores on the upper floors would be of insufficient width. The appellant does not dispute that the submitted development would fail to accord with the LCDS. I see no reason to take a different view, and find that the indicated arrangements would be impractical, and would not comprise fit for purpose and well-located cycle parking as sought by Policy T5.
31. The appellant's Transport Note dated 29 July 2022 refers to a revised proposal including cycle parking within a secure room to the ground-floor level of the building and within lockers to the rear. I have concluded that it would not be appropriate to accept the revised '(First and Second) Proposed Layouts & Elevations' plan submitted prior to the hearing which includes this provision as part of this appeal. I have nevertheless considered whether a planning condition could instead require satisfactory provision for cycle parking.
32. However, I have already noted that the external storage suggested on the revised plans would be located outside of the red line boundary of the appeal site; that it is unclear whether plant equipment present to the rear of the building which already impacts on the width of the external access way would remain; and that the indicated provision for cycle storage would materially alter the development proposed from that set out in the application. Given these factors, I consider that there would be a requirement for full consideration of the changes shown including consultation with interested parties, and there are no firm details before me to demonstrate that suitable cycle parking can otherwise be provided within the scope of the appeal development to meet requirements.
33. I acknowledge that Part E of LP Policy T5 indicates that boroughs must work with developers to propose alternative solutions which meet the objectives of the standards where it is not possible to provide adequate cycle parking within residential developments. However, I have not been provided with firm details to suggest that alternative parking solutions to meet the objectives of LP Policy T5 could feasibly be provided in this case.
34. In these circumstances, I cannot be confident that any condition to require cycle parking would be effective, or reasonable. Accordingly, I am not satisfied that this issue could in this case be reasonably deferred to be addressed through a planning condition.
35. I therefore conclude on this main issue that it has not been demonstrated that the proposal would make adequate provision for cycle storage. As a consequence, I find that there would be conflict with Policy 30 of the BLP and Policy T5 of the LP which require, amongst other things, the provision of appropriate levels of cycle parking which is fit for purpose and well-located.

Other Matters

36. The appellant is dissatisfied with the Council's handling of the proposal and other applications and pre application requests on the site, and I appreciate their frustration that they have been unable to respond to and address the Council's concerns until a late stage in the process. However, the Council's communication and administration of proposals for the site are not matters for me to address as part of this appeal. My remit is focused on the planning merits of the proposal on which I have, as required, made my determination.
37. It is common ground that the Council is unable to demonstrate a 5 year housing land supply, and the appellant has not disputed the Council's evidence that the current supply position is 3.99 years. The presumption in favour of sustainable development test set out in paragraph 11(d) of the National Planning Policy Framework ('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.
38. The appellant's position at the hearing was that the proposal would not deliver an increase in the number of dwellings on the site, but that it would regularise the position and result in improvements to the quality of housing. However, I have found that the overall standard of accommodation offered by Flats 2, 3 and 6 would be very poor, and that living conditions for occupiers of these dwellings would be wholly unacceptable. While the development would include lift access to the building, there is little substantive evidence before me to demonstrate that the proposal would result in an overall improvement to living conditions on the site. My uncertainty over the status of the existing dwellings on the site would further limit the weight that I afford to any improvements, and I do not find the appellant's argument that the proposal would provide for quality housing to be compelling.
39. Even if I were to find that the proposal would result in a net gain of 3 dwellings on the site in comparison to those previously permitted as is the Council's position, the very small contribution to housing supply means that the extent of the benefit would be limited. Moreover, while I acknowledge the current housing undersupply and clear objectives within the Framework including to significantly boost the supply of housing, the Framework also includes requirements for development to provide a high standard of amenity for future users. For the reasons set out above, I do not find that the proposal achieves those aims, and the unacceptable quality of 3 of the dwellings proposed limits the weight that I afford to the provision of additional dwellings on the site.
40. There is also no substantive evidence before me to demonstrate that ensuring compliance with fire regulations at the appeal site or modernisation of the building could not be achieved in the absence of the development, which limits the weight that I afford to these factors as benefits of the proposal. Similarly, I saw at my visit that windows to the rear of the building serving dwellings were typically at least partly obscured, and I have no firm evidence to show that the proposal would address current unacceptable overlooking to neighbouring properties such that this would be a significant benefit weighing in favour of the development.
41. Against the benefits of the proposal, I attach significant weight to the considerable harm that I have found would be caused to living conditions for

future occupiers of Flats 2, 3 and 6 by the failure to provide accommodation of suitable standard. The failure to make adequate provision for cycle storage contrary to requirements within the Framework broadly that opportunities to promote sustainable transport modes and cycling are pursued would be likely to deter future occupiers from cycling, and further weighs against the proposal.

42. Taken together, I find in the context of paragraph 11(d) of the Framework that these adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development within the Framework.

Conclusion

43. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations including the Framework do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Janine Banks

Harte Planning

Brett Littlewood

Apex Strategies Ltd

FOR THE LOCAL PLANNING AUTHORITY:

David Bord BA(Hons) PGDip MRTPI Principal Planner, London Borough of Bromley

INTERESTED PARTIES:

Sandra Jones

Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Screen Shot dated 8 August 2022 of Planning – Application Summary page for application ref 14/04626/RESPA, submitted by the appellant.
- 2 Updated list of Suggested Planning Conditions as agreed between the LPA and the appellant 8 August 2022 to include additional conditions 11 and 12 to be agreed between the LPA and the appellant 10 August 2022.

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

- 3 Email agreeing to the imposition of Pre-Commencement conditions, submitted by the appellant.