



Appeal Decision

Site visit made on 13 June 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 JULY 2023

Appeal Ref: APP/G5180/W/22/3307913

169 High Street, Orpington BR6 0LW

- 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 Yellow Bridge Partners LLP against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/03035/FULL1, dated 16 June 2021, was refused by notice dated 5 August 2022.
 - The development proposed is the demolition of the existing building and construction of a new four storey building with 2 ground floor retail units and 16 apartments above with associated refuse, cycle storage and amenity spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The third reason for refusal related to the absence of a mechanism to secure carbon off-setting and monitoring measures; early and late stage viability reviews; and a monitoring fee. A legal agreement in relation to these matters has been submitted as part of the appeal process. I return to this issue later.

Main Issues

3. The main issues are therefore the effect of the proposed development on a) the character and appearance of the area; and b) the living conditions of future occupiers and neighbouring residents.

Reasons

Character and Appearance

Design and Massing

4. To the front, facing onto the High Street, the main façade would ostensibly appear as three storeys but with a recessed fourth storey above. At ground level two retail units would be provided and each served by their own entrance. The shopfronts themselves would have modern, glazed frontages that provide a coherent, symmetrical appearance and would allow for open and active window displays that would be commensurate with other, newer shopfronts in the vicinity. A central door within the façade would provide the main entrance to the residential units.
5. The first and second storeys would have a pale off-white brick finish punctuated by four full height windows at each level. Unlike the existing

building whose highest point is positioned centrally, the new building would extend across the full width of the site. Although the finished brick would be lighter than that used in the recently redeveloped neighbouring building at Nos. 173-175 High Street, the overall appearance would not be dissimilar. The use of stone banding and aluminium planter boxes would assist in helping to break up the mass of the building. It would not appear unduly out of keeping with other buildings in this part of the High Street.

6. The proposed fourth floor would be recessed from the front elevation, similar to the neighbouring building. The fourth storey on this recently completed building has been finished in a darker cladding, as is often the case in such situations, to minimise the effect of the upper storey. For the proposed building, it is intended to continue through with the brick finish, giving a greater expression to the building's height and overall prominence.
7. Despite its set back positioning, from certain viewpoints on the High Street the top floor to Nos. 173 – 175 is clearly visible. It seems to me that the proposed fourth storey would, given its height and position relative to the existing neighbouring buildings, together with its finish, be more visible than its neighbour when viewed from the High Street.
8. However, there is variety in building heights and finished materials within this part of the High Street. Whilst the top floor would be visible from the High Street, its positioning would ensure that it would not be particularly dominant or appear incongruous. I am therefore satisfied that the additional height and associated scale and massing of the building would not be out of keeping with the wider street scene.

Site Layout

9. The site would be laid out with the residential accommodation on the first, second and third floors. The flats would be provided in two blocks (Block A to the front of the site and Block B to the rear). They would be separated by a central area that provides gardens to the first-floor flats.
10. The rear block would be four storeys in height and thus the central gap between the two blocks would largely be hidden from wider public view. The principal access to both Blocks would be via the front of the building and onto the High Street. Given the nature of the layout and position of neighbouring buildings, it would no doubt be difficult for the casual observer to know from the High Street that there were two blocks.
11. Indeed, it seems to me that the layout would neither result in the rear block being seen as isolated or disconnected from the High Street nor reduce the significance of the front of the building. This approach clearly helps to maximise the use of the site. In terms of site layout, there is no substantive reason before me as to why such an approach should in itself be resisted in this case.

Conclusion

12. The proposal is to replace an existing building with one that is taller, deeper and in places wider. The proposed changes in terms of appearance, height and mass of the building would therefore be clear to see. The replacement building would have a greater presence within the High Street. However, I have not found this difference to be harmful to the wider character and appearance of

the area. Furthermore, I have not found the site layout to detract from the site's relationship with the surrounding area, and in particular the High Street.

13. Accordingly, I do not find the proposal to be harmful to the character and appearance of the area. As such, it would accord with Policies D3, D4 and D6 of the London Plan and Policies 4 and 37 of the Bromley Local Plan 2019 which, amongst other things, seek to ensure that developments and their design contribute to the street scene and complement the qualities of the surrounding area.

Living Conditions

Outlook

14. Rooms to the front of Block A would have an acceptable outlook across the High Street. Outlook from the rear of Block B would be out across the service area of Dryden Way and towards the Walnuts Shopping Centre building. Other buildings in the vicinity also appear to have residential units looking out across Dryden Way. The proposal would have more windows and greater proximity to the Shopping Centre than other residential buildings. However, whilst the outlook would not be particularly attractive, there is also nothing to indicate that it would be particularly harmful to future residents.
15. Given the layout of the site, the rear of Block A would face the front of Block B. At their closest the buildings would be 7.9m apart although the distances are greater at other points. By virtue of neighbouring buildings to the north and south of the site, outlook from rooms near these boundaries would be more limited, especially at the lower levels.
16. However, this is tempered by the fact it is at this point where Blocks A and B are generally at their furthest from each other. I also note that most of the windows on the rear of Block A serve bedrooms, where residents might be expected to spend less time than the main living areas. Also, these rooms are within flats that have a dual outlook.
17. However, Flats A3 and A6 both have a single outlook and both their bedroom and living areas face directly towards Block B, at the closest points between the two blocks. The gap to Block B from these rooms would be 7.9m and 8.5m respectively. That they would face towards a green wall and not habitable room windows would not mitigate for the limited outlook.
18. Whilst Flat A3 would benefit from a garden and so on occasions would have the benefit of a slightly wider outlook, this opportunity is not available to Flat A6. Occupiers of these two flats would in general have a particularly restricted and poor outlook.
19. Both these flats also appear to require side windows to their bedrooms and living areas, that although shown as being obscure, face directly onto a neighbour's balcony. They may be necessary to help achieve light into the rooms but appear to be a somewhat unneighbourly feature that reinforces the limited outlook which can be provided to these two flats in particular.

Privacy/Overlooking

20. The main parties disagree over whether the crucial distance is window to window or balcony to balcony. Even taking the greater of the two, habitable

room-to-habitable room window, the distances are not extensive. Whilst in most cases this involves bedroom-to-bedroom windows, this is countered by the fact that the gardens/balconies on the rear of Block A would be accessible via these bedrooms.

21. Whilst in itself having access to the balcony/garden through a bedroom is not inherently objectionable, the rear elevations to these rooms are almost entirely glazed. Presumably this is because they access onto the garden/balcony. This situation would serve to increase overlooking and reduce the sense of privacy when in these rooms.
22. The window-to-window distances proposed are greater than the corresponding distances between the front and rear blocks on the adjacent site, at Nos. 173-175 High Street. I note that a similar type of development was approved for Nos. 165 – 167 High Street, although the Council advises that permission for this site is no longer extant.
23. However, I do not know how matters were argued in those particular cases. I do note that the current development plans appear to post-date those decisions. There is generally an increasing policy emphasis on design and quality of housing than hitherto. Having regard to the current development plan policies and the objective of generally not harming living conditions, the issue comes down to one of planning judgement. Therefore, whilst I am cognisant of these other decisions and the scheme implemented at No. 173-175 in particular, they do not amount to a precedent that I have to follow.
24. The South Elevation drawing for Blocks A & B indicates that a 1.8m high boundary fence in slatted timber would run between the two blocks. This would largely negate any overlooking that might occur from the units or gardens of Flats A2 and B3 towards the flats at Nos. 173-175. Similarly, on the floorplans for the second floor, a privacy panel is shown to the southern side of the balcony to Flat A5. This would help to limit some of the overlooking from this balcony and the bedroom window. The implementation and retention of both the fence and privacy panel could be controlled by condition.
25. However, proposed Flats B6 and B8 would have bedroom windows close to the boundary with the building at Nos. 173-175. Although at a slight angle, these windows would nevertheless respectively offer uninterrupted views towards Bedroom1 of Flat 4 on the second floor together with its balcony area; and Bedroom 2 of Flat 5 on the third floor.
26. I acknowledge that the neighbours' light would not be adversely affected by the proposal. However, the additional built form together with the additional overlooking that would occur would diminish how these rooms and balcony area were experienced by these neighbours. In my judgement, they would clearly become less attractive areas in which to spend time.
27. Whilst I acknowledge that this neighbouring scheme is a recently constructed development, the levels of overlooking that occupants already experience is high and to further compromise the occupants' environment in the way proposed would not be acceptable.
28. I have considered whether the harm from Flats B6 and B8 could be addressed by condition. However, even if I were to assume that the overlooking could be overcome, it seems to me that there might be several ways of going about it.

It would therefore be difficult at this stage to conclude with any certainty both the exact results and any consequences of what would come forward. As such, there is not sufficient certainty for me to conclude that a condition would be a reasonable option.

29. Overall, whilst the level of privacy afforded to future residents would not be extensive, it is the harm arising to the neighbouring scheme which causes the greater level of harm.

Garden/Balcony Areas

30. Fifteen of the sixteen flats would all have access to their own outdoor space either in the form of a garden or a balcony. The close proximity of the two Blocks to one another would limit the privacy afforded to the outside spaces in this area but total privacy would not be expected in a setting such as this one.
31. The unit which would have no such provision is Flat A6, on the second floor. This is one of the two flats with the poorest outlook. I understand that the absence of a balcony to serve this flat is the adverse effect it would have on daylight to a neighbouring unit.
32. It is noted that communal space on the top floor would be available to all residents. The appellant also suggests that some of the space could be allocated to the occupant of Flat A6. However, Flat A6 is identified as a wheelchair accessible flat. That the only access to outside space within the site for this occupier would be on the floor above does not suggest that this aspect of the scheme would be particularly attractive for occupiers or would necessarily function well. I am unsure how space on another floor would be a more practical or accessible option than the flat having its own balcony.
33. Although the appellant disputes the appropriateness of having children's play equipment on site, the officer report indicates that such provision would be required, and that the communal area would be where it should be located. Were this to be necessary, it would further reduce the effectiveness of this space for the occupants of Flat A6.
34. I note that the existing residents do not necessarily benefit from private amenity space but the provision of the existing accommodation no doubt pre-dates current standards and requirements. The expectation of current policy is that all units would achieve a minimum standard.
35. The appellant notes that changes of use allowed through the General Permitted Development Order (GDPO) to residential uses do not have a requirement for outside space. However, the GDPO is not applicable in this instance. Furthermore, as noted above, there are development plan policies to which I must have regard that require the provision of such space.

Conclusion

36. The proposed units would appear to meet the Nationally Described Space Standards and sufficient levels of daylight and sunlight would be achieved. However, the outlook and the levels of privacy would be compromised and, in my judgement, generally fall below policy expectations.
37. However, the harm would be particularly acute for the future occupiers of Flats A3 and A6 in terms of outlook. That these are both allocated for wheelchair

users is particularly unfortunate. Furthermore, failing to provide Flat A6 with any private amenity space because to do so would compromise the daylight to another flat exemplifies the difficulties in accommodating this particular proposal onto this site without adversely affecting living conditions. It is the poor living conditions of Flats A3 and A6 which in particular weigh significantly against the scheme.

38. A further consequence of the proposal and which also weighs heavily against the scheme is the overlooking that would occur to the nearest neighbouring residential units at Nos. 173-175. That this development has units positioned close to one another and occupants already experience a high degree of overlooking does not in itself provide a reason for it being subject to further overlooking.
39. I acknowledge that for some town centre sites a balance might need to be struck between competing factors, often arising from the site's location, constraints or opportunities. However, the harms I have identified above arise from the proposed development rather than directly from the site's location.
40. I am also mindful that future occupiers can choose where they live and those who wish to live in a town centre may have different expectations from other people and so would be prepared to accept standards which for example do not perfectly align with development plan objectives. However, I do not consider that this would excuse the significant harm I have identified to the living conditions of future occupiers of Flats A3 and A6 nor to those of the neighbouring occupants.
41. Therefore, I find the proposal would be harmful to the living conditions of future occupiers and neighbouring residents. As such, it would be contrary to Policies D3, D4 and D6 of the London Plan and Policies 4 and 37 of the Bromley Local Plan 2019. These require developments to be designed so that they deliver, amongst other things, appropriate outlook, privacy and outside space, that not only complements adjacent buildings but also protects the living conditions of future occupiers.

Other Matters

42. The appellant has provided a signed and dated legal agreement. It has been demonstrated that the scheme cannot viably provide a contribution towards affordable housing. However, in line with London Affordable Housing and Viability Supplementary Planning Guidance the agreement secures early and late stage viability reviews, to ensure that any surplus can be contributed towards affordable housing. The agreement also provides for a carbon offset contribution of £35,703 and a £1,500 contribution towards monitoring the agreement.
43. I am satisfied that the agreement would meet the relevant tests and is an appropriate mechanism to provide for the various initiatives. I have taken all the obligations within the agreement into account in reaching my decision.
44. There are a number of matters which the appellant identifies as not being in dispute. Whilst this provides helpful background and context, these matters do not in themselves diminish the harm I have identified.
45. There are clearly similarities between the neighbouring development and that which is before me. The appellant has also drawn my attention to other sites in

the area where not dissimilar developments have been permitted. However, for the reasons I have already set out, the neighbouring scheme does not form a precedent that I must follow. Furthermore, each case must be considered on its own merits, which is what I have done in this appeal, having regard to the specific circumstances of the site and its surrounds.

Planning Balance

46. The absence of a five-year housing land supply engages paragraph 11(d) of the Framework. Consequently, planning permission should be granted unless any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies in the Framework taken as a whole.
47. The Government's objective is to significantly boost the supply of housing and the proposal would accord with the Framework's support for windfall sites. Therefore, the provision of an additional 15 residential units with good access to services would attract considerable weight.
48. The scheme would have some time-limited, economic benefit during the construction phase, which may give rise to extra local employment. There would also be some longer term economic support to the town centre, once the new residential and retail units were occupied. In this respect I note the support of the Council's Regeneration Manager.
49. Although I have found the building as a whole not to cause harm to the character and appearance of the area, this aspect would be neutral in the overall balance.
50. Conversely, I have found harm in relation to the effect of the proposed development on the living conditions of future occupants particularly in the cases of Flats A3 and A6. There would also be consequential harm to some neighbouring residents from Flats B6 and B8. The need to avoid such harms is perennial and in direct compliance with the Framework.
51. As these harms would be considerable and long lasting, they are, as a consequence, worthy of substantial weight. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. The proposal would not therefore be sustainable development.
52. Whilst there would be some beneficial aspects of the scheme, considered overall the development would cause harms which would conflict with the development plan when taken as a whole. There are no other material considerations, including the Framework, which lead me to determine the appeal other than in accordance with the development plan.

Conclusion

53. For the reasons given above, I conclude that the appeal should not succeed.

Stewart Glassar

INSPECTOR