



Appeal Decision

Site visit made on 9 April 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 MAY 2024

Appeal Ref: APP/G5180/W/23/3328086

240A High Street, Orpington BR6 0LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr A Cotonou against the decision of the Council of the London Borough of Bromley.
 - The application Ref is DC/22/04369/FULL1.
 - The development proposed is described as a double story rear extension and an increased roof height to the existing building to accommodate 1 two bedroom flat and 2 one bedroom flats (one of which is existing). The existing commercial unit located on the ground floor is to remain largely the same with some minor layout alterations. The front elevation (as viewed from the High Street) will be altered to match in with the existing block the building adjoins to. The main bulk of the materials will match the existing. Green roofs are proposed on all flats roof areas.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would provide adequate living conditions for future occupiers, with particular regard to light, outlook, and the provision of private amenity space.

Reasons

3. The appeal site comprises a two-storey end terrace property, which has a commercial premises to the ground floor and an existing residential flat above. Pedestrian access to the existing first floor apartment is gained between the appeal site and 238 High Street (No.238) and via an external staircase on the rear elevation. To the rear of the property is an enclosed yard.
4. The surrounding area is characterised by a mix of two and three storey properties, which have predominantly commercial uses at ground floor with residential accommodation above, it is a mixed-use area.
5. The proposed development comprises the erection of a second-floor extension, removing the existing pitched roof and replacing it with a flat roof, with alterations to the fenestration on the front elevation. The proposal also involves a two-storey brick-built, rear extension. The extensions would occupy virtually the whole site area and would provide a total of three residential properties. These would be accessed from High Street via a narrow passageway to the side of the existing ground floor commercial unit which would be covered by a glazed canopy. The ground floor retail unit would be retained.

6. Flat 1 would be located within the proposed two-storey rear extension and its accommodation would be spread across two floors. It would provide two bedrooms with an open plan kitchen, living and dining room and a separate shower room. It would also have access to a small area of outside space.
7. Flat 2 which is the existing flat has a bedroom which faces onto the High Street, a central living and dining area which is served by an obscure glazed window, and a separate kitchen which is served by a single window, both of these windows face towards the flank wall of No.238. At the rear of the property there is a bathroom which has a window which overlooks the existing rear yard. This property would be reconfigured to provide a bedroom, an open plan living, kitchen and dining room and separate shower room. However, the shower room would be repositioned to the middle of the flat creating a larger open plan living, dining, kitchen area to the rear of the property.
8. Flat 3 would be located within the second-floor extension and would provide one bedroom, an open plan living, kitchen and dining room and separate shower room. This flat would have direct access to a communal area of external amenity space, located on the roof of the proposed extension. An external stairway would be provided between the existing building and the extension to access this flat.
9. Although the proposal would involve the creation of three flats, the Council's reason for refusal in relation to outlook and light relates only to Flat 1 and Flat 2, and in relation to private amenity space solely to Flat 1. The Council's reason for refusal has raised no specific concerns in relation to Flat 3 and based on the evidence before me I see no reason to disagree.
10. Policy D6 of the London Plan 2021 states that housing development should be of high-quality design and provide adequately sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners.
11. Policy 4 of the Bromley Local Plan adopted 2019 (BLP) requires new development to ensure a good standard of amenity. Policy 37 of the BLP states that development will be expected to respect the amenity of future occupants, providing healthy environments, and ensuring they are not harmed by noise and disturbance, inadequate daylight, sunlight, privacy or by overshadowing.
12. In respect of Flat 1, the open plan kitchen, living and dining room would have a full height window opening to the rear of the property. However, this would face towards a blank elevation of a single storey, brick-built building, and the boundary of the site, which is currently a low-level metal fence. Both of these built features would be in very close proximity and as a consequence would dominate the outlook from this window. As this would be the only window within the main living accommodation that would have any form of outlook, the standard of outlook would be poor, even in an urban setting such as this. Whilst a secondary high-level window would provide additional light into the space, it would not provide any outlook. I therefore find that the proposed development would not provide a satisfactory outlook for future occupants of Flat 1.
13. I have been provided with some limited evidence, in the form of a diagram, which shows that the ground floor, full-height window would pass the '25

degree test¹. However, the proposal is not supported by any comprehensive technical evidence to demonstrate that adequate levels of daylight and sunlight would be achieved throughout the ground floor of the proposed dwelling.

14. Even if adequate light could be provided, this would not overcome my concerns regarding the level of harm that would occur to the living conditions of future occupiers of this property by virtue of the poor outlook. Consequently, in respect of Flat 1, I find that the proposal would fail to provide adequate living conditions for future occupiers with regard to outlook and light.
15. In respect of Flat 2, the internal layout of the existing flat would be reconfigured with the bedroom located at the front of the property, it would have two large windows overlooking the High Street. The primary living accommodation would have three windows. Whilst this would represent an improvement on the existing situation, the outlook from two of these windows would be directly towards the side wall of No.238 and the third window would face towards the proposed extension. Neither of these views would provide a satisfactory outlook for the future occupants of the flat.
16. The proposed extension would occupy most of the rear yard, which is already surrounded by existing buildings. As a consequence, future occupants of this property would be likely to experience a strong sense of enclosure and limited outlook.
17. Furthermore, taking into account the constraints of the site, and the proximity of the windows in Flat 2 to existing buildings, I have not been presented with any substantive evidence that the flat would benefit from adequate amounts of daylight or sunlight to the primary living accommodation. I therefore find that the proposed development would not provide adequate living conditions for future occupiers of Flat 2 with particular regard to outlook and light.
18. The proposal would involve the creation of a small courtyard area, which would be the only private amenity space for the occupiers of Flat 1. Policy D6 of the London Plan states that where there are no higher local standards, a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings and an extra 1m² should be provided for each additional occupant, and it must achieve a minimum depth and width of 1.5m.
19. Although small, the evidence provided indicates that the area would be capable of meeting the minimum size standard required by Policy D6 of the London Plan. Nevertheless, the area would have a very limited depth and would be adjacent to a rear access (footpath). Furthermore, the minimum size standard is just one relevant consideration, the supporting text to Policy D6 also states that private outside space should be practical in terms of its shape and utility, and care should be taken to ensure the space offers good amenity.
20. Due to the limited depth of the space to be provided and the protrusion of the bay window, there would be very little usable space for future occupants to enjoy. I have also been provided very limited details as to how the area would be enclosed to ensure adequate privacy for future occupants of the flat. As such it offers a limited prospect of being used by future occupiers for any other purpose other than as an external storage area. On this basis, even if the area would meet the minimum space standard, by virtue of its limited depth, sense

¹ Building Research Establishment (BRE) document 'Site Layout Planning for Daylight and Sunlight: A guide to good practice'.

of enclosure and proximity to the rear access (footpath), it would not provide a good standard of amenity for future occupants.

21. Whilst I acknowledge that the proposal would involve the creation of a communal roof terrace, this would have direct access from Flat 3. It is also only accessible from an external staircase and would provide access to a shared, not a private space. This would not therefore overcome my concerns about the poor quality of the private amenity space provision.
22. It has been brought to my attention that there is a public park in walking distance of the site that would provide access to a larger area of amenity space. However, this is a public space and not a private space and therefore it would also not overcome the shortfall in the provision of adequate private amenity space for the future occupiers of Flat 1. Therefore, for the reasons outlined above, I find that the provision of private amenity space for the future occupiers of Flat 1 would not be acceptable.
23. I have had regard to the London Plan Housing Supplementary Guidance (SPG) which states that the failure to meet one standard would not necessarily lead to an issue of compliance with the London Plan, but a combination of failures would cause concern. It also recognises that the application of the standards in relation to certain schemes, including conversions may require sensitivity and flexibility and that in some circumstances it may be justified not to apply certain standards. However, whilst I acknowledge that the SPG advises that there may be circumstances where a departure from the minimum standards is justified, for example in conversion schemes. I have not been presented with any compelling evidence to demonstrate that the minimum standards could not be achieved on this site with an alternative scheme.
24. My attention has been drawn to an appeal decision² which concerned the change of use of two ancillary work units to two residential studios. This appeal decision found that whilst there would be a breach of some of the standards, including overall size and ceiling heights, the proposed scheme would have acceptable levels of light and outlook providing a good standard of amenity. Whilst I have not been provided with full details of this scheme, it would appear to relate to the change of use of upper floors of an existing building. As such it is not directly comparable to the appeal proposal which also involves the erection of a large extension to an existing building.
25. I have also had regard to a further appeal decision³ which concerned the conversion of an existing studio flat to a one-bedroom flat. As with the above decision, the Inspector found that the specific circumstances of the case justified a departure from the minimum standards. As such, it is also not therefore directly comparable to the appeal proposal.
26. For the above reasons, I therefore conclude that the proposed development would not provide adequate living conditions for future occupiers, with particular regard to light, outlook, and the provision of private amenity space. It would therefore be contrary to Policies 4 and 37 of the BLP, which require amongst other things, new development to ensure a good standard of amenity and to ensure they are not harmed by inadequate daylight, sunlight, or by overshadowing.

² Appeal Ref: APP/G5180/W/22/3299633

³ Appeal Ref: APP/Q5300/W/17/3176904

Other Matters

27. The site is located in an area with a public transport accessibility level (PTAL) of 4 and within Orpington Controlled Parking Zone K. It is an area with very limited all day parking available. The Highway Authority raise no objection to the proposed development providing that the future occupants of the residential units would not be eligible to apply for parking permits.
28. I note the appellant states that the proposed development would be car free. However, no planning obligation has been provided and no other mechanism has been suggested to address this matter. Having regard to the Planning Practice Guidance, the planning obligation should properly be in place before planning permission is granted and there is little evidence that this is a matter that could be satisfactorily dealt with by the imposition of a planning condition.
29. I have also had regard to the appellant's statement which refers to the reduction in overall amount of development being proposed from previous schemes which have been considered by the Council. However, whilst this may be the case, this is not a matter for me to consider. I must determine the appeal based on the information before me.

Planning Balance

30. The Council has stated that their Five Year Housing Land Supply (FYHLS) figure was agreed at Development Control Committee on 2nd November 2021. The position is that the FYHLS (covering the period 2021/22 to 2025/26) is 3,245 units, or 3.99 years supply.
31. I have also had regard to an appeal decision⁴ which has been brought to my attention which concluded that the Council was unable to demonstrate a five-year land supply and highlights a significant need for new housing within the Borough. This decision pre-dates the adoption of the current local plan and therefore is not considered to be directly relevant to the proposal before me. However, a more recent appeal decision⁵, which was issued after the adoption of the local plan reached similar conclusions in that the Council could not demonstrate a five-year supply of housing sites.
32. Consequently, it is not disputed by the parties that there is a significant undersupply of housing sites and I attach considerable weight to the lack of housing supply.
33. In such circumstances, as there would be no identified conflict with policies referred to in footnote 7 of paragraph 11 of the Framework, paragraph 11 d)ii applies, which states permission should be granted unless 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.
34. The proposal would provide three flats, with a net gain of two residential units, in a town centre location, which includes previously developed land in a sustainable location. Furthermore, the proposal would be a small housing site that could be delivered quickly and add to the supply of housing in Bromley and help meet the Government's objective to significantly boost housing supply.

⁴ Appeal Ref: APP/G5180/W/18/3206569

⁵ Appeal Ref: APP/G5180/W/20/3257010

There would also be benefits associated with the construction of the development and likely benefits from the occupation of the flats.

35. Against these benefits is the harm that would be caused through the poor standard of accommodation which would be provided. Paragraph 135 states that development should create places with a high standard of amenity for existing and future users. It would also conflict with Policies 4 and 37 of the BLP and would not accord with the development plan taken as a whole.
36. There would also be potential harm to highway safety as the proposed development would not be car-free. However, the absence of a planning obligation, or other suitable mechanism was not a reason for refusal. Nevertheless, even if I was satisfied that an obligation was necessary to make the development acceptable and a suitable obligation had been provided, the obligation would weigh neutrally in the balance.
37. Accordingly, when assessed against the policies in the Framework taken as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Conclusion

38. For the reasons outlined above, the proposed development conflicts with the development plan taken as a whole. There are no other considerations, including the Framework which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

K Lancaster

INSPECTOR