
Appeal Decision

Inquiry held on 29 April - 2 May, 2 – 3 June, and 5 June, 2014

Site visits were made on 29 and 30 April 2014 (including a night time visit)

by C A Thompson DiplArch DipTP Reg Arch RIBA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 July 2014

Appeal Ref: APP/G5180/A/13/2210460
25 Elmfield Road, BROMLEY, BR1 1LT

- The appeal is under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is by Taylor Wimpey East London and the Leander Group against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/13/01202/FUL1, dated 15/4/2013, was refused by notice dated 27/9/2013.
 - The development proposed is demolition of the existing building and erection of a 16 storey mixed-use building comprising residential units and commercial floorspace (B1, A1 /A2 /A3 /A4) at ground and first floors together with associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by the Appellants against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council's third reason for refusal, regarding the provision of affordable housing, has been resolved following receipt of an independent review of the viability evidence by Deloitte. The necessary action is achieved by the Appellants' Unilateral Undertaking (UU), dated 1 May 2014, as set out in an annex to the Statement of Common Ground (SoCG) headed Economic Viability Analysis.
4. There was more than one version of the scheme proposal in the appeal documents. For the avoidance of doubt I have determined the version set out in the following drawings: 1224 0115; 1224 0120 Rev R; 1224 0121 Rev S; 1224 0122 Rev Q; 1224 0123 Rev H; 1224 0124 Rev R; 1224 0125 Rev R; 1224 0126 Rev R; 1224 0127 Rev R; 1224 0128 Rev E; 1224 0129 Rev A; 1224 0220 Rev K; 1224 0270; 1224 0271; 1224 0272; 1224 0273, and; 1224 0130.

The Site and its Surroundings

5. The site is presently occupied by an undistinguished, 3 storey building, on the corner of Elmfield Road and Palace View. The existing commercial space is poor quality and currently vacant.
6. The site is on the eastern edge of the town centre close to Bromley South Railway Station. The eastern face of the proposed, 16 storey building would be close to Kentish Way which is a raised dual carriageway separating the town centre from the nearby Palace Estate. Kentish Way defines a marked change in the character of the built form hereabouts. To the west are larger scaled commercial buildings, comprising a cluster of taller buildings, including the 10 storey Bank of America group, and to the east the relatively small scale, mainly 2 storey, houses and gardens of the Palace Estate. The site is located on a ridge of higher land which rises-up from the housing estate.

Policy and Advice

Local Policy

7. The statutory development plan (DP) includes the 2011 London Plan (LP) as well as the saved policies of Bromley's Unitary Development Plan (UDP). The Bromley Town Centre Action Area Plan (AAP) was adopted in October 2010. There is a general presumption in favour of the policies of the DP.
8. LP Policy 7.7 - Location and Design of Tall and Large Buildings – amongst other matters indicates that, from a strategic viewpoint, such development should *...be part of a plan-led approach to changing or developing an area by the identification of appropriate...locations... Such buildings ...should not have an unacceptably harmful impact on their surroundings... Important considerations for these buildings embrace such matters as only being considered ...in areas whose character would not be adversely affected by the scale, mass or bulk of the tall or large building...relate well to the form, proportion, composition, scale and character of the surrounding buildings...*
9. UDP Policy BE1, Design of New Development, emphasises that a high standard of design and layout will be expected. Identified criteria include the following *...development should be imaginative and attractive to look at, should complement the scale, form, layout and materials of adjacent buildings and areas...respect the amenity of occupiers of neighbouring buildings and those future occupants... ..*
10. UDP Policy BE17, High Buildings and the Skyline, expects *...a design of outstanding architectural quality that will enhance the skyline... Paragraph 6.47 of the UDP notes that there ...are limited opportunities in the Borough where high buildings would be appropriate...suitable locations have not been identified...but each proposal will be considered on its merits... (NB In both the LP and the UDP tall, or high, buildings are defined as those that are substantially taller than their surroundings).*
11. AAP Policy BTC19 – Building Height – indicates that *...proposals for taller buildings will be required to follow the guidance set out in the English Heritage /Commission for Architecture and the Built Environment's Guidance on Tall Buildings (2007) (CABE guide)...taking account of key views and vistas and the impact on the character of the town centre...and residential amenity... Diagram*

4.3, Views and Protected Sites, shows some possible locations for such “tall buildings”.

12. AAP Policy BTC5, Office Development states that *...the Council will seek to retain existing office uses and to maximise the opportunities for new employment generating activity through the development of around 7,000 sq m (gross) of additional business floorspace (Class B1) on Opportunity Sites A and C... The Policy goes on to say that ...the Council will achieve these policy aims through promoting the development of the Opportunity Sites identified in the Plan, and improvements to existing premises and facilities in the BIA identified on the Key Diagram, to create a high quality business environment...*
13. AAP Policy IA2, Business Improvement Areas, states that *...the Council will seek to support existing businesses and promote new business development ...through BIA designation where...the loss of B1 office floorspace will not be permitted.... And ...the Council will work with businesses to secure improvements to premises and facilities and the appearance of the public realm to create a high quality business environment...*

National Policy

14. The National Planning Policy Framework (NPPF), which is a material planning consideration, identifies appropriate Government policy. Chapter 7 of the NPPF, covers and promotes, good design. This is acknowledged, at paragraph 56, to be *...a key aspect of sustainable development and should contribute positively to making places better for people*. Paragraph 58, under local and neighbourhood plans, notes that robust and comprehensive design policies should *...aim to ensure that developments...function well and add to the overall quality of the area...establish a strong sense of place...optimise the potential of the site to accommodate development...respond to local character and history, and reflect the identity of local surroundings...*
15. Paragraph 59 makes it clear that *...design policies should avoid unnecessary prescription or detail and should concentrate on guiding overall scale, density, massing, height, landscape, layout...and...materials...*
16. Paragraph 65 advises LPAs to *...not refuse planning permission for buildings...which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design...* However, it is clearly stated, in the preceding paragraph 64, that *...permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality an area and the way it functions.*
17. The NPPF gives strong support for economic growth but not at the expense of social or environmental considerations. Amongst other matters the planning system should contribute to *...building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation...*

Other Advice

18. The CABE guide referred to in the DP *...recommends that local planning authorities (LPAs) should...identify appropriate locations for tall buildings in...development plan documents...drawn up through effective engagement with local communities...such an approach will ensure that tall buildings are properly*

planned as part of an exercise in place-making informed by a clear long-term vision, rather than an ad hoc, reactive, piecemeal manner...

Main Issues

19. Following what I heard at the Inquiry I have identified 3 main issues in this case. These are:

- (i) Whether the appeal scheme is a good design;
- (ii) Its impact on residential amenity, and;
- (iii) Whether the proposed development would provide appropriate levels of employment floorspace.

My Reasoning

Design

20. The appeal site is in a town centre located within an AAP designated Business Improvement Area. It is a highly accessible location close to Bromley South Station.
21. Replacing the present undistinguished, small, building to make better use of this eminently accessible site is acceptable in principle. Indeed, subject to the suitability of any replacement, there is a positive need for such a more intensive mixed scheme, including housing, if the town centre is to be improved as advocated in the LP and the AAP.
22. The proposal started out as a "tall building" as identified by the DP and the CABE advice in that it would be substantially higher than its surroundings. The original scheme was a much taller, 25 storey, structure. It was reduced to 16 storeys during its design evolution.
23. The UDP does not identify any specific "tall building" sites for the town centre. Instead, whilst giving assurance that each case will be considered on its own merits, the UDP makes it clear that there would be limited opportunities for such high buildings in the Borough.
24. However, the later, and more detailed, AAP does show some possible locations for "tall buildings". Although most of these potential sites are in the south of the town centre, on the generally lower land outside the Bromley Town Conservation Area, the appeal site is not one of them. This is not necessarily fatal to the appeal scheme, which can still be considered on its own merits, but it is a distinct disadvantage in that locating any "tall building" here would not comply with any plan-led approach towards such development.
25. Nevertheless, apart from this failure, the evolution of the present proposal followed the procedure recommended in relevant policy documents. In particular there was substantial consultation with both tiers of local planning authorities and the local community was engaged.
26. The Appellants' extensive townscape analysis of the appeal scheme is supported by some excellent pictures called "accurate visual representations" (AVRs). These are the product of a computer driven technique, which superimposes a precise image onto a photograph of a particular scene, for the purpose of creating a realistic representation of the proposed changes to particular views. It is a particularly impressive technique which eliminates the

possibility that the artist might distort the image to show the scheme in its best, or worst, light; either deliberately or accidentally.

27. In a number of the views agreed with the LPA as necessary, where the appeal building could be seen at all, the depicted change had little or no material visual impact (such as views 1, 3, 10+12 in Chapter 7 of core document (CD) 14). Indeed, in some key vistas, like those along Kentish Way, (see views 2+5 in CD 14 and some views depicted in CD 46) the appeal proposal would appear to bring positive improvements. For example, from the south looking up the road towards the Bank of America building, the AVRs show how the proposed new scheme would give more balance to the skyline and, from the north, they indicate how some beneficial visual closure would be provided to the view down the street.
28. Looking at the "wire outlines" (CDs 100+101) and the close-up picture of the corner of the new building at the junction of Elmfield Road and Palace View (second AVR in CD 46) it is clear that the new building would bring some very positive improvements to the street picture. Moreover it would make little difference to the overall effectiveness of the design whether the scheme were as depicted in the application plans or, as suggested in the "peer review", a red brick alternative.
29. The detailed architectural design is excellent. Particularly notable are, the fine proportions of the windows and the precise detailing of the inset balconies; the neat way the various elements of the façade are crafted and fitted together; and the high quality materials used. This all results in a scheme of the very highest quality. CD 46 in the second AVR, showing the lower part of the building from the Elmfield Road and Palace View junction, illustrates these attributes well. Also the proposed balance of mixed uses, although criticised by the LPA as having too small a commercial component, would encourage ground floor activity in the surrounding streets and make a significant contribution to local regeneration.
30. The technical studies for the new building, such as those on Air Quality, Noise and Vibration, Archaeology, and Energy, are entirely satisfactory. With regard to Daylight and Sunlight, I accept that there would be damage to natural daylight levels as perceived in the rooms of some neighbouring commercial property in Elmfield Road, especially within parts of Kingfisher House. But any reasonable redevelopment of the present very small 3 storey building, for some appropriately more intensive scheme, would be likely to have a similarly damaging impact on daylight levels in some of the internal rooms of the nearest commercial properties. Any loss of natural light in these circumstances is not critical.
31. In short this is a quality scheme. It has been designed to the highest architectural standards and would add to the overall townscape attractiveness of much of the town centre. In those regards it is a good design of the type encouraged by the DP and the NPPF.

Residential Amenity

32. Despite being acceptable as a piece of civic design the proposed "tall building" would be located very close to parts of the nearby residential Palace Estate. In this context the suggested new 16 storey building would be set against mostly small scale 2 storey residential dwellings.

33. Notwithstanding an undoubted ability to produce excellent and repeatable "before" and "after" pictures, showing the likely impact of proposed developments, the AVR technique (referred to above) is not perfect. Taking some finished AVRs onto site I saw that although the pictorial representations accurately show the detail of the proposed changes they do not do so precisely as the human eye would perceive things. It follows that, although the AVRs were competently produced to what I was told was the "industry standard", they show a somewhat wider-angle view than a person would see should the depicted changes actually take place. No doubt this is a compromise to enable the context of the scheme under examination better to be appreciated. This means that the size, or impact, of the proposed alterations (in this case the insertion of the new building) do not appear anything like as big, or visually assertive, in the AVR as they would when built. It follows that the real impact of the proposed change is quite significantly underplayed, and means that the AVRs, despite being a very helpful guide, must be viewed with caution.
34. The most telling of the views, in regard to the likely impact on the nearest residential neighbours on the Palace Estate, are those found at CD 102+103. They are the only AVRs appropriate to assess these concerns. The homes most at risk are those in the vicinity of the junction of Rafford Way and Palace View as well as along some parts of The Chase. So even these AVRs, which are taken further back than ideal, do not cover all the most vulnerable dwellings.
35. The Bank of America building can be seen in the "before" pictures to have already had some damaging impact on residential amenity. Accepting the change as depicted in the "after" AVR (CD 103), at its face value, the harm to my mind would be increased rather than diminished. The picture shows how the new buildings would appear to "tower" somewhat menacingly over the relatively small scale houses. Adding to this concerns about the AVRs' tendency to understate the size and impact of any proposed changes it is clear to me that the likely overbearing nature of the impact of the appeal scheme would be much worse than depicted. I find that the likely harm, both visually and psychologically, would be unacceptably damaging to the living conditions of the affected residents, destroying the attractive, intimate, small scale and domestic, outlook enjoyed by them.
36. The proposed development would not add to the overall quality of the area but represents over-development clearly resulting in damage to the living conditions of the nearby residential neighbours. The proposal would not comply with the relevant parts of the DP, especially LP Policy 7.7 and UDP Policy BE1, the residential amenity part of AAP policy BTC19 and paragraphs 56+58 of the NPPF. This loss of residential amenity is sufficient reason on its own to refuse planning permission.
37. Turning to other material considerations under this issue, although there would be some additional harm from overlooking any loss of privacy would not be a sufficient reason, on its own, to dismiss the appeal. No windows directly face one another and distances between the appeal scheme's windows, which would have a view over the houses and gardens below, would be significantly greater than the 21m normally considered sufficient to prevent any material problems. The inset design of the eastern facing balconies, framing and defining views out, is a further ameliorating factor. Notwithstanding all this the psychological perception of there being "eyes in the sky" would add to the damage caused to residential amenity. This extra emotional concern would further damage the

quality of life of those affected. This would also seem to me to conflict with LP Policy 7.7 and paragraph 56 of the NPPF and adds weight to the main reason for withholding planning permission.

38. However, it should be noted that even the local residents, who were amongst the appeal scheme's most vocal critics, were not against the principle of redeveloping the appeal site. Rather they were concerned that the present building was too tall in relation to the nearby homes.
39. I acknowledge that some of the other "tall buildings", recently granted planning permission by the LPA on AAP identified potential "tall building" sites in Bromley Town Centre, would have similar, or worse, impacts on the amenity of those affected residential neighbours. However the appeal site is not an AAP identified "tall building" location. I have determined this appeal on its own merits, in the light of relevant policies and my professional judgement.
40. I also accept that, if the town centre is to be improved as envisaged by the AAP, then some change must take place and that such change might harm the amenities of those living near the town centre. This is an appropriate redevelopment site which is available now and is suitable to support growth and innovation. However it is the extent and scale of the change that would be likely to have an unacceptably damaging impact on local residential amenity.
41. None of these other matters are sufficient to alter my conclusion that planning permission should be withheld.

Employment Floor Space

42. In the relevant reason for refusal (RR4) it was contended by the LPA that the proposal would make inadequate provision of employment floor space. Policies BTC5 and IA2, of the AAP, were identified. They seek the retention (or prevention of loss) of existing office uses and floorspace within the BIA and the encouragement of a high quality business environment.
43. This scheme, which is inside the BIA but not part of any specified Opportunity Site, would increase both the quantum and quality of existing B1 office floorspace. Indeed, the proposed development would provide some additional non-B1 commercial space and help to create a high quality business environment, as well. The extra areas of floorspace would not be large but there is no requirement for any additional provision outside the identified Opportunity Sites. Therefore this point has no impact on the appeal scheme's DP Policy compliance in regard to RR4.
44. All the scheme's attributes support economic growth and it follows that the appeal proposal must be in general conformity with the relevant thrust of the DP and the NPPF under this issue. The identified policies do not, as the Council's case sought to prove, seek to maximise the opportunity for new employment generating activity in the BIA outside the Opportunity Sites.
45. It follows that RR4 no longer has any relevance and must fall away. But the removal of this impediment to development does not overcome the identified residential amenity reasons for withholding planning permission.

Overall Conclusion

46. The scheme has many advantages. It would produce an intrinsically well designed building, improve some key town centre vistas, provide inward investment, protect existing levels of employment floorspace and provide much needed housing. But this is not a situation where concerns about incompatibility with existing townscape have been mitigated by good design. It is one where the proposal's excessive height would result in an unduly overbearing new building that would damage, unacceptably, the living conditions of nearby residents. It is on this limited, but important, ground that the appeal is dismissed.

Colin A Thompson

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr W Upton, of Counsel	Instructed by the London Borough of Bromley
He called	
Mr K Munnely BA(Hons) DipTP MRTPI	Planning witness – renewal
Ms K Hughes BA(Hons) DipArch RIBA FRSA MAPM	Architect and design witness
Mr M Ibbott MA Mphil MBA MRTPI AIEMA	Planning witness - policy

FOR THE APPELLANTS:

Mr J Strachan, QC	Instructed by Montagu Evans
He called	
Mr A Mortimer Degree+DipArch RIBA	Architect and design witness
Dr C Miele MRTPI IHBC	Planning witness – townscape
Mr W Edmonds BA(Hons) MRTPI	Planning witness - policy

INTERESTED PERSONS:

Mr K Gallagher	Surveyor representing objectors at Kingfisher House
Cllr N Dykes	Ward Councillor
Mr J Harvey	Residents' Association chairman
Mr S Holloway	Local resident
Mr White	Local resident
Mr Harris	Local resident
Mr C P Davis	Local resident
Mr Strickland	Local resident

DOCUMENTS

Doc 1	LPA comments on the draft UU dated 28 April 2014
Doc 2A	Letter of notification of the inquiry and the list of persons notified
Doc 2B	Public notice
Doc 3	Ringer's Road scheme
Doc 4	HG Wells Centre design and access statement
Doc 5	Bundle of, post Inquiry opening, correspondence
Doc 6	Signed UU on behalf of the Appellants
Doc 7	List of suggested conditions
Doc 8	Addendum to Mr Davis' statement
Doc 9	CD additions, CD 48A and CD 99 – CD 108
	48A Drawing 1224_0092 Amenity Analysis
	99 Nick Bowles MP written statement on new homes
	100 Proposed views along Elmfield Road
	101 Ditto

	102	Existing view of site from Palace View
	103	Proposed as above
	104	Drawing 1224_0096 Distances Analysis
	105A	Saxon Court & Roseberry Mansions
	105B	Ditto
	106	CABE Review
	107	Ringers' Road
	108	Clarendon Business Centre (Kingfisher House, floor plans)
Doc 10		Signed SoCG including Addendum – economic viability analysis
Doc 11		Bromley Civic Society representations – 1 Westmoreland Road, and the Cathedral, schemes
Doc 12		Tesco Stores v Dundee City Council
Doc 13		HM Government's Statement on Help to Buy
Doc 14		Statement from Mr K Gallagher BA(Hons) MRUP MRTPI on behalf of the owners of Kingfisher House
Doc 15		Statement of Mr C Davis
Doc 16		Statement of Mr S Holloway
Doc 17		Photomontages from Mr Harris
Doc 18		Closing submissions of the LPA
Doc 19		Closing submissions of the Appellants