



Appeal Decisions

Hearing held on 12 October 2022

Site visit made on 12 October 2022

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

21 November 2022

Appeal A Ref: APP/G5180/W/21/3285586

66-70 High Street, Bromley, BR1 1EG

- 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 Matterhorn Capital against the decision of London Borough of Bromley.
 - The application Ref 19/04588/FULL1, dated 7 December 2019, was refused by notice dated 26 April 2021.
 - The development proposed is described as 'demolition of existing buildings (No.66 to 70 High Street), construction of 12 storeys to provide 256.4 square metres retail floorspace on the ground floor and 47 residential units above with associated disabled car parking spaces, cycle parking and refuse storage area.'
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Appeal B Ref: APP/G5180/W/21/3288856

66-70 High Street, Bromley, BR1 1EG

- 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 Matterhorn Capital against London Borough of Bromley.
 - The application Ref DC/21/03231, is dated 16 July 2021.
 - The development proposed is described as 'demolition of existing buildings (66-70 High Street) and erection of a part 13 and part 16 storey building to provide 559 sqm retail floorspace (Use Class Ea) and 68 residential units with associated disabled car parking spaces, cycle parking and refuse storage area.'
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Decision

1. Appeal A is allowed and planning permission is granted for development described as 'demolition of existing buildings (No.66 to 70 High Street), construction of 12 storeys to provide 256.4 square metres retail floorspace on the ground floor and 47 residential units above with associated disabled car parking spaces, cycle parking and refuse storage area at 66-70 High Street, Bromley, BR1 1EG in accordance with the terms of the application, Ref 19/04588/FULL1, dated 7 December 2019, subject to the conditions set out in the attached schedule.
2. Appeal B is dismissed and planning permission is refused.

Preliminary Matters

3. The descriptions of development I have set out above have been taken from the appeal forms in each case since they are the most accurate and take account of changes to each scheme made during the time they were under deposit with the Council.

4. It became clear through discussion at the hearing that the Council were content, the matter of affordable housing tenure aside, that other developer contributions detailed in the two completed planning obligations accompanying each appeal set out an acceptable level of developer contributions in response to both the requirements of the development plan and the scale of the development in each case. In addition, the appellant has provided details which show how sufficient waste and recycling facilities can be accommodated in regard to appeal B. The Council agreed that such details could be secured by planning condition.

Main Issues

5. With the above in mind, and in terms of appeal A, the main issue is the effect of the proposed development on the character and appearance of the area with particular regard to the significance of the Bromley Town Centre Conservation Area (CA).
6. This is also the first main issue in regard to appeal B and includes whether or not the appeal scheme would represent the unacceptable loss of a non designated heritage asset. The remaining main issues in regard to appeal B only are whether the proposed development would provide acceptable living conditions for future occupiers; and make adequate provision for a) affordable housing, b) the urban greening factor and biodiversity net gain, and c) sufficiently accessible retail floorspace.

Reasons

Character and Appearance

7. The appeal site is, for the most part, a three storey corner building which follows the shape of the junction of High Street and Ethelbert Street. It has retail space at the ground floor and residential uses above. It is a nodal point in the street scene and the southern end of the pedestrianised section of the High Street. It is immediately outside of the CA, close to its southern boundary. It therefore contributes to the setting of the CA and is a non designated heritage asset in itself.
8. The building dates from around the early 1930s and whilst the span and size of the retail units at the ground floor have had a diminishing effect on the historic frontage quality, the upper floors have retained a strong and unaltered period feel to them. This includes well maintained original brickwork with contrasting banding, a curved parapet wall and featured windows with stone surrounds. There is a strength in the building's architectural features in both their condition and how they relate to the evolution of the High Street historically. The evidence suggests they formed part of a larger group of similar buildings and now sit in amongst a variety of replacements and redevelopments, including The Glades shopping centre, the TKMaxx building next door and the units currently occupied by Boots opposite. They bear a scale and architectural similarity to the upper floors over the Metro Bank which is to the north of Ethelbert Street and inside the CA.
9. I shall come onto the significance of the CA later, but due to its design, materials, historic relationship with the town centre and prominent position, the existing building contributes positively to the character and appearance of the area.

10. Whilst the overriding character to the High Street and surrounding roads is one of frontage development, scale and design varies significantly. Occupations of buildings are strongly associated with retail and services with some residential uses in upper floors. Taller buildings are located further south, the closest being Henry's House which is a modern 10 storey residential building on Ringers Road. Further south towards Bromley South station there is a collection of noticeably taller buildings in and around the St Marks development.
11. In terms of the CA, there are some modern shop fronts but there is a distinctly small and thus more traditional feel to buildings that line either side of the High Street. The scale and architectural detailing of the building on the appeal site relates positively to this character. The Churchill Theatre is a strong feature of the street scene despite being set back. Its design is very stark and monochrome but, largely as a result, exudes a strong presence in the CA in terms of its scale, its height specifically and its use of materials.
12. Views south along the High Street from in and around the area of the theatre appreciate the smaller scale of the CA against the larger and more prominent feel to the southern, non pedestrianised end. It is thus contained and distinct despite how the architecture of the appeal site's building relates well to it. Building design varies in the CA but features and materials present a clear even and continuing rhythm to them, mainly in terms of defined floors with large numbers of repeated windows. At this point one can clearly see the 10 storey building at Henry's House and also the mono pitched roof to one of the residential blocks at St Marks. For want of a better way of putting it, these buildings provide a back drop and a context of greater height for the appeal site, when viewed south from within the CA.
13. The scheme for appeal A would be the tallest building in the immediate area. Its overall effect would however be reduced by a number of factors. Firstly, as I have explained above and when considering views of the building from the southern extents of the CA, it would be (visually speaking) in amongst other tall structures. Secondly, it would retain the frontage of the existing buildings and thus, to my mind, an important historic feature of the High Street. Whilst this would only be the frontage and thus a facadist approach to design which would not normally be my preference where building conservation is concerned, their significance and positive influence in street scene terms relies heavily on their surviving frontage features, high quality materials and how they follow the shape of the street architecturally.
14. Thirdly, and leading on from the second, the retention of the existing frontage would allow the building to be stepped back from the High Street and thus, despite its overall height, have a more recessive presence in the street scene. Fourthly, and when viewed in the context of Henry's House, the proposed building would be two storeys taller which, in context, would not be significant. I accept there is a shifting line in the sand argument in response to this point and one could legitimately say that 14 storeys would then not be hugely different to 12 and so on. There is no doubt a point would come in this debate that height would be excessive but, in regard to the proposals, I do not feel 12 storeys would be so.
15. There would be wider views of the appeal building, particularly given it would be sited on a raised land level from the southern end of the High Street. It

would, as the evidence from third parties suggest, be noticeable above tree heights that sit between Queensmead recreation ground and the appeal site, to the west. Just because something may be visible however, it does not automatically follow that it would be harmful. On its own merits, the appeal A scheme would present a simple and unfussy design with a strength in repeating geometric shapes. This would be reflective of the mix in architecture locally but also how windows and large numbers of matching sized openings play a positive part in the appearance of the area. It would also exist as something of a modern take on tower block design which, owing to its width, would not appear overly narrow or 'top heavy'. The use of materials and the colour of the finish has reference in the external appearance of the theatre to the north and, over time, it would become a feature of the skyline in the neutral to positive sense, rather than the harmful one.

16. In the context of the CA, appeal A would have an obvious presence and be a direct contrast to its prevailing scale, to which it owes much of its significance. Again however, as a tall building, that's largely the point. The retention of the frontage of the existing buildings would assist in striking a pleasant medium between visual integration with the CA to the north (architecturally and historically speaking) and inserting a modern statement building. I appreciate that there is an argument of isolation insofar as it would be spatially separated from the larger scale of buildings to the south, but there would be some visual context for height nonetheless, particularly from Henry's House. CA's are not a snapshot in time and modern, sometimes strikingly so, development of scale has its place. The appeal site is not within the CA but any building of such a size would, without a doubt, have an effect on its setting. That said, and for the reasons I have set out above, that effect would not be a negative one. The significance of the CA would thus be preserved. In the wider sense, and referring again to my findings above, the scheme in regard to appeal A would not be harmful to the character and appearance of the area.
17. Turning then to appeal B, not only would it be of more than significant height, but due to the attached lower section, of noticeably greater mass than both appeal A and the surrounding development. The removal of the frontage building, which I have explained are of high townscape value, would also be a negative feature of the scheme, representing an unacceptable loss of non-designated heritage assets. The materials palette for the scheme would be acceptable, being slightly more 'colourful' than appeal A but remaining visually unobtrusive but this would not be sufficient to make its overall size acceptable.
18. I have alluded above to the fact that a building of height on the appeal site would not, in and of itself, give rise to harm. Noting however that there are features of appeal A which assist in the reduction of the effect of that height in the context of not only the prevailing character of the immediate area but also the more traditional scale of the CA. This assimilation would be markedly less so in the case of appeal B. The removal of the existing building would also connect the total height of the proposal to the ground, emphasising such, its forwardness and thus imposition in the street scene.
19. I have explained that the immediate area does have some height to it, including buildings associated with St Marks, Henry's House and the Churchill Theatre. Whilst appeal A would be the largest of that particular group, it would be integrated in such a way that much of the effect of the additional height would be reduced. The surroundings of the appeal site are also very varied

and as such something 'different' would be unlikely harmful purely by virtue of that fact. That said, a larger span building, on the road frontage and connected to the ground with a total of 16 storeys would, for want of a better way of putting it, push the acceptability of difference too far, to the detriment of a visually cohesive built environment.

20. The harm I have found in this manner would translate to the setting of the CA, the appreciation and experience of the scale and more traditional nature of which would be unacceptably compromised by the overall height, spread and connection to ground of appeal B and the loss of the original building detail. These harms would be, in the context of the CA as an asset, less than substantial. I am therefore required to weigh it against the public benefits.
21. Appeal B would deliver a not insignificant number of new dwelling units, and affordable housing. The contribution of which to the level of choice and mix locally would undoubtedly be worthy of some weight as a benefit to the public. As would the provision of retail space improving the local offer and how future residents could add to expenditure in the local area. In the absence of any compelling evidence to the contrary however, I am not aware that the local area is particularly struggling in that regard. The scheme would also re use a brown field site, reducing the strain on green field release and provide jobs in the construction industry, adding to local employment offer.
22. There will be other things such as electric vehicle charging, cycle storage facilities and an acceptable standard of accommodation but these are either matters that respond to the effects of the proposed development or expected minimums. Worthy of some weight though these public benefits may be, I am unconvinced that they would be sufficient (when taken together) to justify the harm I have found. Harm that would be of great substance, irreversible and long lasting.
23. Appeal B would therefore cause harm to the character and appearance of the area and fail to preserve or enhance the setting of the CA. It would also result in the unacceptable loss of a non designated heritage asset. As such, it would be contrary to those policies of which I have been provided copies. Specifically, 37, 40, 42, 47 and 48 of the Local Plan¹, D3, D4 and HC1 of the London Plan 2021 and BTC17 and BTC19 of the AAP². Amongst other things, these policies seek to ensure that development should be of a high quality and contextually appropriate design and appearance, consider the effect on non designated heritage assets, preserve or enhance the setting of conservation areas and conserve the setting of other heritage assets, ensure tall buildings are appropriate to their location and protect the quality of views and vistas and promote a high quality public realm.
24. The appeal site is within two designated areas allocated for development. These are Site 10 for the purposes of the Local Plan and Site G for the purposes of the AAP. There is recognition, in the latter specifically, that there is potential for taller buildings and whilst there was debate at the hearing as to what might have been 'tall' or 'taller' for this purpose, I am satisfied that the allocations do not rule out a building of height in the area, particularly given the numbers of residential units and other uses envisaged as part of Site 10. Both allocations require sensitive approaches to design which, as I have

¹ London Borough of Bromley Local Development Framework Local Plan 2019

² Bromley Town Centre Area Action Plan 2010

explained, would be the case in regard to appeal A. Obviously not so in the case of appeal B. That said, and in regard to both appeals, I do not consider that the principle of a building of height would be unacceptable under the aspirations of either allocation. Particularly since Site G identifies the TKMaxx site as potential for a tall building, which is next door to the appeal site.

25. The Council have expressed substantive concerns over the fact that both appeal schemes would be a piecemeal and isolated form of development, with specific regard to their height. The Council and third parties expressed concern for the lack of a masterplan for the whole of the allocated areas. Whilst this no doubt would have been helpful, there would always still be an element of reactivity to any scheme that came forward. One would always be in isolation, unless of course it came forward as part of a larger site.
26. I have set out my views on the two schemes above and explained why, within their context, appeal A would be acceptable and appeal B not so. In this regard therefore, I have undertaken an assessment of each scheme on its own merits, with regard to its own context. A context which, as I have also explained, includes other tall buildings. As such, I am satisfied that neither appeal would necessarily be isolated or take the form of piecemeal development, putting aside my concerns with the design, scale and height of appeal B on its own merits.

Living Conditions

27. In regard to appeal B specifically, there are a number of strands to the Council's concerns. In regard to the internal layout of the studio units between the 5th and 12th floors, I am satisfied that the plans showing the presence of both a bath and a double bed are indicative and do not therefore define them as being suited for double occupancy. The studio units are intended to be single occupancy and have been designed as such. Whilst there is no controlling mechanism before me to ensure that would be the case, this would be so of any double occupancy units that might be acceptable in size as such that may be, in theory, capable of accommodating a third person.
28. There is no built in storage shown but, again, the internal layouts show a possibility rather than a definite. It seems possible that the minimum required storage could be accommodated, noting that the NDSS³ provides for built storage to be included within the minimum floor area rather than as well as it.
29. In terms of outlook, sunlight and daylight for the south facing units on higher floors, and putting aside dual aspect as a potential mitigating factor, the Council appear to be concerned that appeal B should anticipate the future development of the TKMaxx site. I disagree. There is an element of which came first in this regard and any future development of the TKMaxx site, should it indeed come forward in any event, would have to have regard to the living conditions of the occupiers of the appeal site. What may happen on the TKMaxx site is, at the time I determine this appeal, conjecture at best.
30. I do however remain concerned that the outlook from some of the bedrooms of the units on the third floor as they face south would be unacceptably poor. They would look directly towards the side elevation of the TKMaxx building and at close quarters. The floor above would be marginally better and borderline

³ Technical Housing Standards – Nationally Described Space Standard 2015

acceptable as it would have some view of the sky but for the third floor, the outlook from the south facing bedroom windows would garner an oppressive experience for occupiers, feeling hemmed in and unacceptably restricted. The alternative windows in these units would face east and west and therefore offer sufficient light for the unit overall but this would not be sufficient to make up for the deficiencies in the quality of the outlook from the bedroom windows.

31. I am satisfied that, in regard to the matter of the 'winter gardens' that was discussed at the hearing, these labels were provided in error, and they would represent outdoor terrace areas in addition to private balconies. The Council do not appear to have concerns about the quantum of private outdoor space for appeal B and following this clarification, neither do I. I am also satisfied that the extent of children's play space is sufficient in its size and whilst its location on the roof of a section of the building would be unorthodox, it would not be unusual or necessarily of insufficient quality for that reason. Specifically given that appeal B would be a dense residential complex in a town centre location.
32. The proximity of the play space to one of the units on the 13th floor could give rise to some noise disturbance or loss of privacy. That said, the closest windows thereto would be protected by a walled garden area and occupiers would have a balcony on the north elevation. The remainder of the play space would mainly abut a stairwell, plant rooms and lift shafts. In addition, the building would be within a central urban area where tranquillity, for want of a better way of putting it, would not exactly be the order of the day. Measures to ensure its final quality, surveillance and usability could, in my view and as discussed at the hearing, be subject to conditions.
33. The Council have also expressed substantive concerns over there being one dwelling unit being on its own on Levels 1 and 2. They state that such an arrangement is not conducive to social integration and would do little to foster a sense of community for future residents. The occupants of these units would reside in relative isolation detached from the benefit of incidental interaction associated with communal living.
34. Whilst not part of the upper floors of appeal B, this unit is the same as the remainder insofar as it would still be a self contained and independently occupied unit of accommodation. Such an arrangement is not unusual and no different to a single flat above a ground floor commercial use. Or indeed a single conventional dwelling house. I am not therefore convinced that any occupation of this unit would be any more 'isolating' than others.
35. On the whole, appeal B would provide adequate living conditions for its future occupants and, as a result, there would be some compliance with the development plan. However, and in regard to my findings in paragraph 30, it would fail to provide an acceptable outlook to the bedrooms of south facing units on the third floor. This would have an unacceptably adverse effect on their living conditions. As such, and in regard to this main issue, appeal B would conflict with those policies of which I have been provided copies. Specifically, Policy 37 of the Local Plan and Policy D3 of the London Plan 2021. Amongst other things, these policies seek to ensure that development respects the amenity of occupiers of neighbouring buildings and those of future occupants and deliver appropriate outlook, privacy and amenity.

36. The Council allege that the proposals would also, in regard to this main issue, fail to comply with the advice in the Supplementary Planning Guidance set out by the London Housing and London Pay and Informal Recreation documents. I have not been passed copies in the evidence. However, I am satisfied that the content of the above mentioned policies are sufficient for me to make a determination on whether or not appeal B complies of conflicts with them.

Affordable Housing

37. The crux of the Council's concerns in regard to this main issue appear to stem from a lack of information to justify the absence of social or affordable rent provision as part of appeal B. The planning obligation which accompanies appeal B seeks to provide the required level of units on site, but on a shared ownership basis.
38. Whilst, to a degree, this matter falls away as I am dismissing appeal B on other grounds, there are a number of constraints which led to this specific tenure being explored for appeal B. This mainly stems from the fact that the proposed development is centred around a single core building which, according to the appellant, is practically unfeasible for registered providers since they require stock to be served by their own core and not mixed with private homes. This is mainly due to the practical separation of maintenance, service and welfare responsibilities to occupiers. There would be obvious, and it seems significant, costs to exploring a dual core construction for appeal B given the size and locational constraints of the appeal site.
39. Whilst the Council did not specifically offer a counter debate to this point at the hearing, they did question whether the appellant had explored Mayoral grant funding or other public subsidies to assist in a solution to the affordable housing tenure mix. Whilst a possibility, the appellant's evidence suggests that it is unclear as to the level that would be available at the time of a scheme being before a decision maker. In any event, I accept the clear practical constraints that exist to exploring alternative affordable housing tenure and that any funding would unlikely change that, given what the scheme itself proposes.
40. The level of provision of affordable housing for appeal A, whilst not complying with the percentage requirements of Policy 2 of the Local Plan, has been arrived at through negotiations with the Council and the Greater London Authority, taking into account independently reviewed viability assessment. The appellant has taken the same, albeit extrapolated, approach for appeal B. Given they are the same type of building on the same site, this seems reasonable. The approach was endorsed at the time of appeal A going before the Council's planning committee and the Council is a signatory to both of the planning obligations for ten and eleven shared ownership units for schemes A and B respectively. Indeed, both planning obligations before me set out an affordable housing contribution for shared ownership only. This was not a contentious matter for the Council in respect of appeal A.
41. With all of the above in mind, I am satisfied that appeal B would make an acceptable provision for affordable housing. It would not conflict with Policy 2 of the Local Plan since it allows for negotiations on levels of provision on qualifying developments. It would however conflict with the explicit splits on affordable housing tenure as set out by Policy H6 of the London Plan but, as I have explained above and tacitly accepted by the Council in regard to appeal A,

there are material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan in regard to this main issue and appeal B.

Urban Greening Factor (UGF) and Biodiversity Net Gain (BNG)

42. Policy G5 of the London Plan 2021 considers urban greening and recommends a score of 0.4 for developments that are predominantly residential. Appeal B would yield a score of 0.2. Whilst this would be short of G5's requirements, it is expressed as a target and not a minimum expectation. I am also mindful that as a previously developed and entirely hard surfaced site at present, appeal B would in fact yield a betterment regardless. The Council raise the point that the proposed green roof specification is yet to be assessed in regard to the UGF and as such this could improve the score. Even if it were to remain at 0.2 however, for the above reasons, I would consider this sufficient against G5's requirements.
43. Policy G6 of the London Plan 2021 explains that development proposals should manage impacts on biodiversity and aim for BNG. The appellant provided ecological information in the shape of bat surveys, which demonstrated there was no activity. As above, I am acutely aware that as a central urban location, the biodiversity credentials of the appeal site are very limited, and some minor betterment will be provided by the intended green roof. I am also mindful that G6 sets out BNG as an aim rather than a fixed minimum requirement. With this in mind, I am satisfied that appeal B would not conflict with the broad aims of Policy G6.

Accessible Floorspace

44. In regard to this main issue and appeal B, the Council express substantive concerns over the internal layout of the retail space and how such may be inclusive for all users. Whilst I accept this concern, the internal layout of the retail units, including servicing arrangements therefore, are shown as indicative and would be rearranged to suit the end user. A user which, it would seem reasonable, would have to comply with the relevant accessibility legislation through the building regulations process in any event.
45. The appellant has explained that the proposed retail unit would not be likely to generate any more servicing trips than the existing three retail units and therefore an additional loading bay is not required to specifically serve the retail element of the proposed development. This, to me, seems eminently reasonable an assertion to make. The scheme also proposes a loading bay on Ethelbert Road. It would result in the loss of one parking space, which is subject to a five-minute maximum duration of stay. The bay could be managed to ensure that cars could use it during evenings and on Sundays. The latter for the benefit of the nearby church. Further, I am satisfied that the appellant's highways advice, which includes track path analyses, demonstrates that the three proposed disabled bays can be accessed without the need for multiple manoeuvres.
46. I am therefore satisfied, in regard to this main issue, that appeal B would comply with the provisions of those policies of which I have been provided copies. Specifically, Policy 37 of the Local Plan and Policy D3 of the London Plan 2021. Amongst other things, these policies seek to ensure that

development if of a high quality that has suitable access for mobility impaired people and achieve safe, secure and inclusive environments.

Other Matters

47. The Council are currently unable to demonstrate the supply of housing sites as required by the Framework. Since I have found there to be no harm arising out of the main issues in the case of appeal A, I have not considered it in light of this situation any further. However, and in regard to appeal B, the circumstances of the case take me to paragraph 11 of the Framework and, as well as considering the most important policies as out of date, I would grant planning permission unless the application of policies therein that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. In this case, I have found that appeal B would cause harm to the setting of the CA that would not be outweighed by public benefits. With this in mind, appeal B would not be sustainable development for which the presumption in favour applies.
48. The appellant has provided a completed planning obligation for appeal A. It is in the form of a bilateral agreement with the Council. It seeks to provide agreed affordable housing units on site; commuted sums in regard to energy, highways and children's play space; the establishment of a car club and a restriction on the application by future residents for parking permits. The latter two provisions are in response to the town centre location of the appeal scheme and that it is advanced as a car free development.
49. I am satisfied, based on what I have seen in the evidence and from what was discussed at the hearing, that the contributions set out in the obligation satisfy the three tests of the Framework in that they are (having regard to the scale, type and location of the proposed development) necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
50. In regard to section 2, paragraph 2.1 of the obligation and the matter of restricting occupiers from applying for parking permits, reference is made to the relevant sections of the Local Government Act 1972 and Greater London Council (General Powers) Act 1974, within which sufficient and relevant powers exist for such, given Section 106 of the Town and Country Planning Act 1990 requires restrictions or controls to be land use based. I am therefore satisfied that the content, provisions and schedules of the obligation are acceptable, and I have thus taken them into account in my decision.
51. Some concerns have been expressed regarding whether the schemes will overlook other residential properties in the High Street. Whilst there may be some lines of sight, particularly from the lower floor levels, such would be separated by the local roads which would, in essence, not make the existing situation any worse. The angle of views from upper floor windows would not be conducive to direct views into other neighbouring properties. There would be views of surrounding gardens from the highest parts of each building, but distance will be a mitigating factor to any loss of privacy that might be felt.
52. I am not aware of any specific local issues concerning transport infrastructure capacity nor have I seen any detailed evidence pertaining to pressures on local doctor's surgeries or education provision. Appeal A does however seek to

provide a number of contributions including highways improvements and children's play space. Under the auspices of the London Plan 2021, the development is also liable for payments made under the Community Infrastructure Levy for which the appellant has provided a commitment.

Conditions

53. I have had regard to and discussed at the hearing the conditions set out as appendix 4 in the statement of common ground for appeal A. I have imposed the following for the reasons I have given, making some changes to the wording in the interests of clarity and enforceability. For ease of reference, I have followed the same order as they appear in the statement.
54. I have imposed conditions pertaining to the timescale for the commencement of works and set out the approved plans for certainty and enforcement purposes. In the interests of function and the living conditions of local occupiers, I have required a construction environmental management plan to be agreed. Given what this entails, such details would need to be agreed prior to the commencement of development.
55. For biodiversity and protected species reasons, and further to ecology work at the time of the planning application, a further emergence survey for bats is required so any mitigation therefore is appropriately secured. For practical reasons, this detail will also be necessary prior to the commencement of development. In order to secure an end result of sufficient quality and in response to the specific merits of appeal A, a programme of protection measures for the retention of the frontage building should be provided. Since this involves methods of demolition, the detail to satisfy this condition should be provided prior to the commencement of development.
56. The external materials and finishes should be pre agreed, in the interests of a high quality development. It would be sufficient to have this detail agreed prior to any works above ground level. In the interests of the living conditions of occupiers, a scheme for their protection from traffic noise also needs to be agreed. This can also be sorted prior to any development above ground level since it is more reliant on the end product than its commencement. For safety reasons, a fire statement should be submitted and agreed which would also be a fundamental element of the proper functioning of the proposed development. It would be sufficient for this detail to be agreed prior to any works above ground level.
57. For clarification, I have set out for details of the specification for the air source heat pump systems to be agreed at an appropriate and practical time, as well as a scheme for the additional water infrastructure requirements. Development should also be carried out in accordance with the approved energy and sustainability assessments, having regard to the requirements of the development plan. In regard to sound insulation and in the interests of residents' living conditions, I have imposed a condition requiring adherence to specific standards through an agreed scheme. It would be sufficient for such detail to be submitted and agreed prior to works above ground level.
58. Should any piling be proposed, details should be first submitted to and approved in writing in the interests of the quality and occupation of the local environment. Practically speaking, such detail needs to be agreed prior to the commencement of any works. Plans for parking management and servicing

need to be agreed, for functioning purposes, prior to the occupation of the development. All cycle and car parking needs, again for appropriate functioning purposes, to be laid out on site prior to occupation, as should an appropriate scheme for waste storage and collection.

59. For access reasons, and prior to above ground works taking place, details of the affordable housing wheelchair units need to be agreed, as well as charging points in accordance with development plan requirements. Staying with the development plan, no development shall take place above ground level until details of measures to minimise the risk of crime and to meet the specific needs of the application site and development have been submitted and agreed.
60. In the interests of sustainable transport, and within a timescale acceptable to the main parties, a travel plan should be agreed. In the interests of the continued protection of important species, bat and bird boxes should be installed, and development should be carried out in accordance with, for functioning purposes, the approved drainage assessments.
61. To comply with the development plan, all Non Road Mobile Machinery of net power of 37kW and up to and including 560kW used during the course of the demolition, site preparation and construction phases of the development shall comply with the emission standards and to safeguard the uses of the ground floor retail units in the wider interests of sustaining the local economy, permitted development rights for changes of use will be restricted. In addition, and for both functioning and living conditions reasons, the proposed slab levels of the building should be agreed. This needs to be done prior to the commencement of development. I have not imposed a condition requiring wheel washing facilities since this would be duplication against condition 3.
62. For accessibility reasons, and the needs of all parties, swept path analyses are required for the disabled parking areas. Such detail can be agreed prior to any works above ground level. The final two conditions are required in the interests of compliance with the development plan and for appropriate operational purposes against the Greater London Authority's sustainable energy requirements.

Conclusion

63. For the reasons set out above, appeal A should be allowed, subject to the conditions set out in the attached schedule. Appeal B would give rise to multiple harms which would lead to conflict with the development plan. In that respect, there are no material considerations, including the Framework and worthy of sufficient weight, that would indicate a decision other than in accordance therewith. It should therefore be dismissed.

John Morrison

INSPECTOR

SCHEDULE OF CONDITIONS (APPEAL A ONLY)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - HSB-AA-ALL-00-DR-A-0001 Rev R3 – Site location plan dated May 2019
 - HSB-AA-ALL-XX-DR-A-0300 Rev R7 – Proposed Sections AA and BB dated November 2020
 - HSB-AA-ALL-01-DR-A-0200 Rev R11 – Proposed Ground floor plan dated December 2020
 - HSB-AA-ALL-01-DR-A-0201 Rev R10 – Proposed First floor plan dated November 2020
 - HSB-AA-ALL-01-DR-A-0202 Rev R10 – Proposed Second floor plan dated November 2020
 - HSB-AA-ALL-03-DR-A-0203 Rev R10 – Third floor plan dated November 2020
 - HSB-AA-ALL-04-DR-A-0204 Rev R10 – Fourth floor plan dated November 2020
 - HSB-AA-ALL-05-DR-A-0205 Rev R10 – Fifth to tenth floor plan dated November 2020
 - HSB-AA-ALL-00-DR-A-0206 Rev R10 – Eleventh floor plan dated November 2020
 - HSB-AA-ALL-00-DR-A-0207 Rev 10 – Roof plan dated November 2020
 - HSB-AA-ALL-XX-DR-A-0400 Rev R9 – North and east elevations dated November 2020
 - HSB-AA-ALL-XX-DR-A-0401 Rev R9 – South and west elevations dated November 2020
 - HSB-AA-ALL-XX-DR-A-0500 Rev R2 – Plans unit types dated September 2019
 - HSB-AA-ALL-XX-DR-A-0501 Rev R2 – Plans unit types dated September 2019
 - HSB-AA-ALL-XX-DR-A-0502 Rev R2 – Plans unit types dated September 2019
 - HSB-AA-ALL-XX-DR-A-0503 Rev R2 – Plans unit types dated September 2019
- 3) No development should take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority in consultation with the Council's Highway and Environmental Protection. The plan shall cover:
 - A risk assessment and appropriate mitigation measures to minimise dust and emissions based on the Mayor's Best Practice Guidance (The Control of Dust and Emissions from Construction and Demolition) of the London Plan 'Control of emissions from construction and demolition' SPG
 - An inventory and timetable of dust generating activities
 - Emission control measures
 - Air Quality Monitoring
 - The location and operation of plant and wheel washing facilities

- Details of best practical measures to be employed to mitigate noise, vibration and air quality arising out of the construction process
- Details of the training of site operatives to follow the Construction and Environmental Management Plan requirements
- Details of construction traffic movements including cumulative impacts which shall demonstrate the following:- (i) Rationalise travel and traffic routes to and from the site. (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity. (iii) Measures to deal with safe pedestrian movement.

Development shall be carried out in accordance with the approved details.

- 4) No development shall take place until a bat survey including a dusk emergence survey including relevant and appropriate mitigation measures and a detailed scheme of biodiversity enhancement has been submitted to and approved in writing by the Local Planning Authority. The enhancements shall be implemented prior to the first occupation/use of the development hereby permitted and shall be maintained and replaced when required during the lifetime of the development.
- 5) No development shall take place until details of the areas of building to be demolished and retained including the internal stair have been submitted to and approved in writing by the local planning authority. The details should include and set out the method of ensuring the safety and stability of the building fabric identified to be retained throughout the phases of demolition and reconstruction, as well as structural engineering drawings and/or a method statement. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place above ground level until details or samples of all external materials and finishes (including balconies and screens) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place above ground level until a scheme for protecting the proposed dwellings from traffic noise (including glazing\facade and ventilation specifications) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and completed prior to the first occupation of the development hereby permitted. Where mechanical ventilation is proposed as a resolution to opening windows, the impact that this would have on internal noise levels should also be detailed. The standard to work to will be BS8233:2014.
- 8) No development shall take place above ground level until a Fire Statement produced by an independent third party suitably qualified assessor has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved statement.
- 9) No development shall take place above ground level until details and specifications of the air source heat pump achieving the required seasonal

cooling efficiency of at a minimum of 5.82, and compliance with the standard CIBSE TM59 - overheating test for residential and standard CIBSE TM52 for commercial has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby permitted and retained thereafter.

- 10) Prior to the first occupation of the development hereby permitted, details of a water infrastructure scheme to minimise the use of mains water in line with the Optional Requirement of the Building Regulations (residential development), achieving mains water consumption of 105 litres or less per head per day (excluding allowance of up to five litres for external water consumption) shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) The development hereby permitted shall be carried out in accordance with the approved Energy Assessment and Sustainability Strategy (prepared by Meinhardt issue P4, dated 3 December 2020) and implemented prior to the first occupation of the development hereby permitted and maintained thereafter. Within 6 months of the first occupation of the development hereby permitted, a post completion verification report shall be submitted to and approved in writing by the local planning authority to confirm that the minimum agreed standards have been achieved and that all of the approved energy efficiency and sustainability measures have been implemented.
- 12) No development shall take place above ground level until details, including relevant drawings and specifications of the proposed works of sound insulation against airborne noise to meet $D'nT,w + C_{tr}$ of not less than 55dB for walls and/or ceilings where residential parties non domestic use, have been submitted to and approved in writing by the local planning authority.

An acoustic assessment covering all proposed noise-generating fixed plant (in line with the methodology of BS 4142:2014), along with a scheme of mitigation to ensure that at any time the plant rating level calculated according to BS4142:2014 shall not exceed the measured typical day and night time LA90 background levels at any noise sensitive receptor, and additionally and for the purposes of this condition, that the measured or calculated plant specific noise level (i.e. in the absence of any rating penalties) does not exceed 10dBA below the typical day and night-time LA90 levels at any noise sensitive receptor.

Once approved the scheme of mitigation shall be implemented in full prior the first occupation of the development hereby permitted, retained thereafter and replaced in whole or in part as often as is required to ensure compliance with the noise levels. Before any mechanical plant is used on the premises it shall be mounted in a way which will minimise transmission of structure borne sound or vibration to any other part of the building in accordance with a scheme to be submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved details.

- 13) No piling shall take place until a piling method statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) for each phase of the development has been first submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the approved statement.
- 14) Prior to the first occupation of the development hereby permitted, a car park management plan shall be submitted to and approved in writing by the local planning authority. The plan should describe how disabled parking will be distributed and managed for the residential units. Development shall be carried out in accordance with the approved plan and retained thereafter.
- 15) Prior to the first occupation of the development hereby permitted, details of a servicing and delivery management plan for the commercial and residential uses shall be submitted and approved by the local planning authority. Development shall be carried out in accordance with the approved plan.
- 16) The parking spaces hereby permitted shall be provided on site prior to the first occupation of the development hereby permitted and retained thereafter.
- 17) Prior to the first occupation of the development hereby permitted, the cycle parking shown on the plans hereby approved shall be carried out in accordance therewith and retained thereafter.
- 18) Prior to the first occupation of the development hereby permitted, details of waste collection arrangements shall be submitted to and approved in writing by the local planning authority. These details shall include, but not be limited to, the waste collection access plan, waste storage location, details of collector and frequency of collections. Development shall be carried out in accordance with the approved details and the arrangements retained thereafter.
- 19) No development shall take place above ground level until details of the affordable housing wheelchair units in accordance with the Building Regulation requirement M4(3)(2)(b) 'wheelchair user dwellings' and the remaining private wheelchair units that shall be built in accordance with the Building Regulation requirement M4(3)(2) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter.
- 20) Prior to the first occupation of the development hereby permitted, details of a 100 percent active electric charging points shall be submitted and approved by the local planning authority. Development shall be carried out in accordance with the approved details and retained and maintained thereafter.

- 21) No development shall take place above ground level until details of measures to minimise the risk of crime and to meet the specific needs of the application site and development have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved measures prior to the first occupation of the development hereby permitted.
- 22) Within six months of the first occupation of the development hereby permitted, a travel plan shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved plan and adhered to thereafter.
- 23) No development shall take place above ground level until details of swift brick, bird and bat boxes have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained and maintained thereafter.
- 24) Development shall be carried out in accordance with the Sustainability Urban Drainage and Foul Water Drainage Strategy Report carried out by RPS Group dated 20th November 2020.
- 25) All Non Road Mobile Machinery (NRMM) of net power of 37kW and up to and including 560kW used during the course of the demolition, site preparation and construction phases of the development shall comply with the emission standards set out in chapter 7 of the Greater London Authority's supplementary planning guidance 'Control of Dust and Emissions During Construction and Demolition' dated July 2014 (SPG) or any subsequent guidance.

An inventory shall be kept on site and on the online register at: <https://nrmm.london/> of all NRMM between 37kW and 560kW. All NRMM shall meet Stage IIIA of EU Directive 97/68/EC (as amended) as a minimum (Stage IIIB from 1st September 2020). Constant speed engines such as those found in generators shall meet Stage V standards either by technology or by retrofit for both NOx and PM reduction.

- 26) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the ground floor premises shall only be used for the purposes specified in the application and for no other purpose (including any other purpose in Class E on the Schedule to the Town and Country Planning (Use Classes) Order 1987 or any provision equivalent to that Class in any Statutory Instrument revoking and/or re-enacting that Order).
- 27) No development shall take place until details of the proposed slab levels of the building hereby permitted has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved levels.
- 28) No development shall take place above ground until a swept path analysis including the details of the layout and turning area for each of the

disabled parking spaces within the updated site boundary has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby permitted.

- 29) On substantial completion and prior to the first occupation of the development hereby permitted, details of the post-construction Whole Life-Cycle Carbon (WLC) Assessment using the Greater London Authority's WLC assessment template shall be submitted in writing to the GLA. Details shall be in line with the criteria set out in the GLA's WLC Assessment Guidance. The post-construction assessment should provide an update of the information submitted at planning submission stage (RIBA Stage 2/3), including the WLC carbon emission figures for all life-cycle modules based on the actual materials, products and systems used.
- 30) Within eight weeks of the date of this decision, accurate and verified estimates of the 'Be seen' energy performance indicators, as outlined in Chapter 3 'Planning stage' of the Greater London Authority's 'Be seen' energy monitoring guidance document, for the consented development shall be submitted in writing to the GLA.

Once the as-built design has been completed (upon commencement of RIBA Stage 6) and prior to the first occupation of the development hereby permitted, the legal owner is required to provide updated accurate and verified estimates of the 'be seen' energy performance indicators for each reportable unit of the development, as per the methodology outlined in Chapter 4 'As-built stage' of the GLA 'Be seen' energy monitoring guidance. All data and supporting evidence should be uploaded to the GLA's monitoring portal. The owner should also confirm that suitable monitoring devices have been installed and maintained for the monitoring of the in-use energy performance indicators, as outlined in Chapter 5 'In-use stage' of the GLA 'Be seen' energy monitoring guidance document.

Upon completion of the first year of occupation following the end of the Defects Liability Period (DLP) and for the following four years, the legal owner is required to provide accurate and verified annual in use energy performance data for all relevant indicators under each reportable unit of the development as per the methodology outlined in Chapter 5 'In-use stage' of the GLA 'Be seen' energy monitoring guidance document. All data and supporting evidence should be uploaded to the GLA's monitoring portal. This condition will be satisfied after the legal Owner has reported on all relevant indicators included in Chapter 5 'In-use stage' of the GLA 'Be Seen' energy monitoring guidance document for at least five years.

APPEARANCES

FOR THE APPELLANT

- | | |
|---------------------------|--------------------|
| • Mr Sam Berg | Matterhorn Capital |
| • Mr Tim Chapman-Cavanagh | Architect |
| • Mr Laurie Handcock | Heritage |
| • Mr Oliver Neaves | Highways |
| • Mr Daniel Rech | Quod |
| • Mr Tom Vernon | Quod |

FOR THE LOCAL PLANNING AUTHORITY

- | | |
|--------------------|------------------------|
| • Mr David Bord | Development Management |
| • Mr Ian Drew | Urban Design |
| • Mr Ben Johnson | Planning Policy |
| • Mr Nojan Rastani | Highways |

INTERESTED PARTIES

- | | |
|------------------------|-----------------------|
| • Mr Tony Banfield | Bromley Civic Society |
| • Ms Ann Garrett | Local Resident |
| • Mr Rodrigo Goncalves | Local Resident |
| • Mr Robert Inge | Local Resident |
| • Mrs Miranda McGuire | Local Resident |
| • Ms Davina Misroch | Local Resident |

DOCUMENTS SUBMITTED AT THE HEARING

- Copy of representation made by Mr Tony Banfield, Bromley Civic Society