Appeal Decision

Inquiry held on 6 January 2009
Site visit made on 6 January 2009

by David Morgan **BA MA MRTPI IHBC**

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

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Decision date:
26 February 2009

Appeal Ref: APP/G5180/A/08/2084559
154 - 160 Croydon Road, Beckenham, Kent BR3 4DE

- 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 Joseph Samuel Corporation Ltd against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/03/04554/FULL1, dated 22 December 2003, was refused by notice dated 29 August 2008.
- The development proposed is change of use of office building to residential and enlargement to comprise 55 dwellings including key worker and affordable housing.

Application for costs

1. At the Inquiry an application for costs was made by Joseph Samuel Corporation Ltd against the decision of the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Procedural matters

2. The description of development above is as set out on the application form. However, the Statement of Common Ground uses the description 'Elevational alterations and part 7th/8th floor extensions, screened roof terrace and conversion from offices to 25 one bedroom and 24 two bedroom flats with 53 parking spaces, hard and soft landscaping, cycle parking and refuse storage'. As this description more accurately defines the development proposed in terms of alterations, unit numbers and the absence of affordable housing, I have determined the appeal on this basis, and used it in the decision set out below.

Decision

3. I allow the appeal and grant planning permission for elevational alterations and part 7th/8th floor extensions, screened roof terrace and conversion from offices to 25 one bedroom and 24 two bedroom flats with 53 parking spaces, hard and soft landscaping, cycle parking and refuse storage at 154 - 160 Croydon Road, Beckenham, Kent BR3 4DE in accordance with the terms of the application ref: DC/03/04554/FULL1, dated the 22 December 2003, and as amended by documents received on the 18 and 24 May 2004, subject to the conditions set out in the schedule below.

Main Issues

4. I consider this to be whether the proposed development meets development plan policies concerning the provision of affordable housing or a payment in-lieu thereof and, whether there are any other material planning considerations relevant to the determination of the case.

Reasons

5. The proposals are for the conversion and extension of an existing office block into 49 residential units and the provision of car parking and landscaping. Additional accommodation is to be achieved through the addition of a part seventh floor and mezzanine above. The new superstructure is to be clad in cedar boarding with metal framed windows.

6. The structure and content of these proposals has changed considerably during the period of their life. At a key stage the application was recommended for approval, subject to a Section 106 agreement setting the financial contribution to be made in-lieu of on-site affordable housing provision, and how it should be paid.

7. Subsequently there was much debate as to the size of the contribution and the mechanism by which it should be delivered. The appellant commissioned a viability study in July 2007 substantiating the amount of the contribution, though the report concluded the scheme was unable to support any in-lieu payment. The Council, after protracted discussions, rejected the conclusions of the viability study, and refused permission. Subsequent to the appeal the appellant withdrew the offer of payment in-lieu, based on the revised assessment of the viability of the scheme.

8. It seems to me, notwithstanding the extensive negotiations concerning the contribution, and the means of payment, the key issue is whether planning permission should be granted for 49 market dwellings with no payment in-lieu for affordable housing. Such a decision must be made through an application of policy, in this case policies H2 and H3 of the London Borough of Bromley Unitary Development Plan (LBBUDP) and policy 3A.10 of the London Plan (LP), balanced against other material planning considerations, principally the financial viability of the scheme, and thus its capacity to deliver the contribution required.

9. At the Inquiry a supplement to the Statement of Common Ground (SoCG) was submitted agreeing a) the residual site value with no affordable housing (£2.773 million) b) the residual value with affordable housing (£1.9223 million) and c) the existing use value of the site (£2.482 million). These values are those presented in the appellant's evidence to the Inquiry. As I understand it, these agreed values determine that without an affordable housing contribution, the scheme will only yield less than 12% above the existing use value, 8% below the generally accepted margin necessary to induce such development to proceed. Self-evidently, with a contribution in-lieu of affordable housing calculated at 35% in accordance with LBBUDP policy, such a scheme must also be, in the view of the appellant, considered non-viable.

10. Policy H2 of the LBBUDP states that 'affordable housing will be sought on all sites capable of providing 10 dwellings or more … in negotiating the amount of

affordable housing the Council will seek a 35% provision … unless it can be demonstrated that a lower level should be sought…'. Moreover, policy 3A.10 of the LP makes clear that Boroughs 'should seek the maximum reasonable amount of affordable housing when negotiating on individual private residential…schemes', concluding that Boroughs should have regard to the need to encourage rather than restrain residential development, and to the individual circumstances of each site. In my view, both policies seek such provision through negotiation, and the acceptance of specific site circumstances. I conclude, as the Council did at the Inquiry, that in negotiating a figure of affordable housing below 35%, such 'provision', assuming specific circumstances are demonstrated, could encompass '0', or no affordable units.

11. Policy H2 and the reasoned justification set out in paragraph 4.21, and the advice set out in Supplementary Planning Document (SPD) *Affordable Housing* (formally adopted in March 2008) offers further guidance on site suitability tests. In relation to 'particular development costs' it states 'The Council does not perceive that the costs usually associated with redevelopment of previously developed but otherwise uncontaminated land to be 'abnormal' and would expect such costs to be reflected in land values'. As a formally adopted document previously the subject of public consultation, I accord it substantial weight when deciding the appeal.

Test of viability

12. Fundamental to the appellant's case is the contention that when the current use value (CUV) of the building and its associated land are taken into account, the residual site value (RSV), with a 35% affordable housing component, renders the scheme unviable. The Council however maintain, in accordance with paragraph 4.21 and the SPD, the CUV cannot be deemed 'abnormal', and should not be accounted (notwithstanding their acceptance of the figure in the SoCG) in relation to viability.

13. The Council have accepted the key components of the viability argument (the CUV and RSV) in the SoCG. In my view by doing so, they have accepted that the existing building and its current commercial use have a market value, and by logical implication, one the appellant would have to accommodate when acquiring the site. The appellant, on the other hand, maintains that the CUV is an 'abnormal cost' insofar as it is an intrinsic and unique component of the market value of the site, which they are bound to take into account when assessing the relative residual values of the site. In support of this argument the appellant cites two cases, the 'Richmond Case' (Appeal Ref: APP/L5810/A/05/1181361) and the 'Key Site, Godalming' case, framed in a decision by the Secretary of State relating to Appeal Ref: APP/R3650/A08/2063055.

14. In the Richmond case, the Inspector identified the key issue (in relation to viability analysis) as the overall value of the appeal site, though the parties had agreed the basic market value of the properties. He elaborates 'The Council considers that the viability analysis should be based on the market value of the properties. On the other hand, the appellant considers that it is reasonable to take account of a 25% premium over and above the market value, which they say is necessary in order to persuade the existing owners to sell their properties'. Whilst the case may not be directly analogous as a consequence of

the debate over the added premium, it is clear to me (and the Inspector considering the case) that site acquisition costs were an intrinsic component of market value presented in the viability analysis. Whilst I note that this case related to sheltered not affordable housing, as the Council point out, this does not in my view alter the relevance of the case in relation to the specific issue of market value.

15. In the Key Site case the Secretary of State considered, in relation to provision of affordable housing, that 'the scheme should be determined on the basis of present market values. In this particular case, she agrees with the Inspector that market conditions dictate that the provision of affordable housing on the site, even at some reduced quantum, would not be viable'. Here again, an assessment of viability is founded upon present market value, and that market conditions thus dictate affordable housing provision. Whilst again I note that site contamination was an issue in this case, this is not a basis for discounting its relevance in relation to the issue of market value.

16. It seems to me therefore that the CUV of the appeal site, as agreed in the SoCG, is a legitimate component of market value, and so an intrinsic and necessary component of the viability analysis. In relation to policy H2, the reasoned justification and the Council's SPD, I conclude the CUV constitutes an *abnormal cost* in this specific case. Such a conclusion determines that when the agreed residual value of the site, incorporating 35% affordable housing is set against CUV, the development becomes unviable. This argument holds true when considering a comparably calculated payment in-lieu of on-site provision, the principle of which has been accepted by the Council in their detailed negotiations with the appellant.

17. Having carefully weighed the matter, I conclude the viability report convincingly demonstrates that the proposals cannot support any affordable housing; accordingly they are not in contravention of policy H2 of the LBBUDP. Insofar as it has hitherto been agreed a payment in-lieu would be appropriate, neither are they contrary to policy H3 of the same. On the basis of the above, neither are they contrary to policy 3A.10 of the LP.

Other material planning considerations

18. There was considerable debate in relation to housing supply. The Council maintain, though there has been an historic shortfall in housing supply that, this has been and will be met in part through revisions to the UDP, by selectively increasing housing density in specific areas, increased housing site allocation and predicted delivery through smaller windfall sites. They maintain they are on-target to meet supply to 2016, and also to meet the short-term commitment to a 5 year supply. The Council accept the latter target is contingent on delivery through an element of smaller windfall sites, without which it could not be met. The Council maintain such an approach is in line with advice set out in paragraph 59 of Planning Policy Statement 3 *Housing* (PPS3).

19. The Appellant contends there remains strong demand for market housing in the Borough, and given the reliance of the Council on small windfall sites to achieve a 5 year supply, the appeal site should be the type of housing development, notwithstanding its incapacity for affordable housing, they should support to

meet the target. I find myself in agreement with this view. Indeed, even if the targets set in the LP were met by whatever means, these are minimum figures to be exceeded, and therefore the proposals should be seen as positively adding to housing supply in the Borough.

20. Moreover, it is common ground that the appeal site comprises previously developed land in accordance with the definition of Annex B of PPS3 and that it is an accessible and sustainable location with good access to public transport, shops and other local facilities. As the proposals would result in the more efficient use of previously developed land (insofar as the extension of the building increases its capacity to accommodate a greater number of residential units) and is in a sustainable location, it accords with key strands of Government policy set out in PPS3.

21. Affordable housing is an important element of housing provision in Bromley, and policy safeguarding its delivery should be robustly defended. However, LBBUDP policy allows for the provision of affordable housing to any degree below the aspirational 35% target - if the case can be made. LP policy looks to deliver the maximum achievable depending on specific circumstances, and critically, the need to encourage, not restrain residential development. In my judgement, and in the circumstances of this case, it has been demonstrated the proposals cannot support affordable housing. I appreciate the Council may be concerned such a conclusion sets an undesirable form of precedent for future decisions; I do not agree. I reach my conclusions on the basis of evidence before me, which necessarily reflects the specific circumstances of the time. If a similar application were to come forward in the future, any viability analysis would account for the then relative values of current use and residual value of development. Such analysis would be critical to deciding its acceptability or otherwise.

22. I have taken account of local concerns over loss of privacy as a result of overlooking and the potential overbearing effect the development may have by virtue of the additional floors proposed. Whilst such concerns are understandable, I conclude that given the presence of the existing building and its current use, the limited increase in its height that would result, and the distance it is from neighbouring properties, no material harm to living conditions of local residents would result. I note the Council share my conclusion in this regard.

23. Parking, traffic generation and the combined effect these may have on highway safety are also of concern to local residents. Whilst this is understandable, I conclude, given the current use of the building and the adoption of the existing authorised access to the site, that the proposals would not result in any material increased risk to highway users. Again this is a conclusion shared by the Council and the highway authority.

24. I am content that any concerns over refuse storage can be satisfactorily overcome through the submission of detailed proposals for such provision, required by the condition set out in the schedule below. Concerns over the possibility that the development would require the replacement of television aerials on nearby properties are not supported by any evidence as to why this should prove necessary. In the absence of such evidence I can only afford

limited weight to such concerns, and discount them as a material consideration in this case.

Conditions

25. Allowing the appeal, I attach conditions requiring the submission of details of hard and soft landscaping, materials and external finishes and details of windows, to ensure a satisfactory appearance to the development; the submission of details of access arrangements, parking layout and cycle storage provision to ensure appropriate vehicular management on the site; and details of lighting of the car parking areas and provision of recycling and refuse storage on the site to safeguard living conditions of future occupiers and neighbours. I have determined not to add a condition requiring the washing of vehicles prior to leaving the site as the absence of major ground works renders such a condition neither necessary nor reasonable.

26. For all the reasons given above, and having regard to all matters raised both in writing and at the Inquiry, I conclude the appeal should be allowed.

David Morgan

Inspector

Schedule of conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) No development shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include a schedule of species, sizes, and planting densities along with the specification for ground preparation and aftercare maintenance. The landscaping shall take place prior to the occupation of any part of the development (or in accordance with a programme agreed by the local planning authority) and shall be maintained for a period of five years, such maintenance to include the replacement, within the next planting season, of any plants that die or become damaged with plants of the same size and species.

3) Notwithstanding the details shown on the submitted plan, the development shall not be occupied until full details of hard landscape works have been submitted to and approved in writing by the local planning authority and the agreed works carried out as approved. These details shall include, where appropriate, means of enclosure and boundary treatments, car park layout and surfaces, hard surfacing materials and lighting. All works shall be carried out in accordance with the approved details and retained as such unless otherwise agreed in writing by the local planning authority.

4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

5) No development shall take place until details of windows to be used in the construction of the building hereby permitted, including samples of materials and sections through mullions, transoms and sills, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

6) No development shall take place until details of refuse and recycling storage facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. These facilities shall thereafter be retained for these purposes unless otherwise agreed in writing by the local planning authority.

7) No development shall take place until details of cycle storage facilities on the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. These facilities shall thereafter be retained for this purpose unless otherwise agreed in writing by the local planning authority.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Darby	Of Counsel
He called:	
Mr R McQuillan BA (Hons) MA CD, MRTPI, FRICS	Chief Planning Officer, London Borough of Bromley

FOR THE APPELLANT:

Mr J Clay	Of Counsel
He called:	
Mr J S Escott BA (Hons) Dip TP, MRTPI	Robinson Escott Planning, Downe House, 303 High Street, Orpington, Kent BR6 0NN
Mr J D Turner BA (Hons) FRICS	Turner Morum, 32-33 Cowcross Street, London EC1M 6DB

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's letter of notification of Inquiry – Mr Darby
2. Statement of Common Ground – Mr Clay
3. DCLG land supply advice – Mr Clay
4. Circular 5/05 Planning Obligations – Mr Clay
5. Oxted Police Station appeal decisions – Mr Clay
6. Closing - Mr Darby
7. Letter from Mr Escott to the Council – Mr Clay
8. Further correspondence relating to costs – Mr Darby