



Appeal Decision

Hearing Held on 9 November 2017

Site visit made on 9 November 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 29th November 2017

Appeal Ref: APP/G5180/W/17/3178436 122-126 High Street, Bromley BR1 1EZ

- 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 Bromley JV LP against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/03132/FULL1, dated 29 June 2016, was refused by notice dated 8 March 2017.
 - The development proposed is retention of basement, ground and first floor for retail (A1) and change of use from second floor retail use (A1) and third floor office use (B1) to residential use (C3), including extension of the third floor and a new floor above to provide 42 units, together alterations to the sub-basement car park to provide 37 car spaces and associated alterations including provision of additional plant.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amendments and further evidence¹ was submitted by the appellants with their appeal submissions. This additional information is relevant to my considerations and the amendments are minor in scope. As the information was submitted at the outset of the appeal the Council and interested parties have been afforded time to consider it. For these reasons I have accepted the evidence as no party would be prejudiced by me doing so.
3. A completed Statement of Common Ground (SOCG) was provided at the hearing and I have had regard to this. Moreover, the appellant also provided a planning obligation in the form of a Unilateral Undertaking². The Council had previously seen a draft of the undertaking and are content with its contents. However, the undertaking had not been signed. It was therefore agreed that the appellants should be afforded time to obtain the relevant signatures, which they have done.

Main Issues

4. The main issues in this appeal are: 1) Whether the appeal scheme would provide adequate living conditions for future occupants with particular

¹ Revised plans, an updated daylight assessment based on the revised plans and further noise survey data.

² This is in spite of the absence of a planning obligation not being a one of the Council's reasons for refusal.

reference to outlook, aspect, daylight and noise; and 2) The effect of the appeal scheme on the supply of office floor space.

Background

5. The appeal site encompasses a purpose built former BHS store within Bromley Town Centre. It is a large building that was probably constructed in the 1970s. Other than the third floor offices, the building was last used as a retail department store. The entire building is currently vacant. The appeal scheme is to truncate the retail element of the building to just the basement, ground and first floors as it may be easier to let with a smaller floor space. The remaining second and third floors would be converted to flats. A fourth floor would also be added and this would contain flats. The appellants are seeking a comprehensive and viable reuse of the appeal building.

Reasons

Whether the appeal scheme would provide adequate living conditions for future occupants – outlook and aspect

6. The Council are concerned that the outlook from Flats 6, 7, 8, 9, 10, 11 and 15 - 18 on the second floor, and Flats 25, 27 and 31 on the third floor³, would be inadequate. The adequacy of the outlook from a property is a subjective matter. To this end the Mayor of London's Housing Supplementary Planning Guidance 2016 (SPG) does not set out a specific standard that should be achieved. However, the outlook from a residential property is a matter of public interest in assessing the adequacy of the living conditions of future occupants and therefore the Council were entitled to consider it, and so shall I.
7. The outlook from the windows and balconies in Flats 6-10 would be towards 132-138 High Street, which is an adjoining building located in close proximity to the appeal site. As such, the considerable scale and massing of 132-138 High Street would have a dominant, unavoidable and overbearing presence in the aspect from these flats. The harmfully close proximity of this building to the windows and balconies of the flats would severely limit any visual connection with the townscape or landscape beyond. As such, the occupants would have little visual connection with their surroundings and this would result in a harmful sense of enclosure.
8. The harmful proximity of 132-138 High Street would be compounded by the layout of the flats. In particular, the balconies in most of the relevant flats would be recessed. This would increase the sense of enclosure given the limited outlook. Flat 8 would have awkwardly shaped rooms that would be recessed by a notable extent away from any openings. The outlook from the Bedroom in Flat 9 would be dominated by a privacy screen, which would need to be 1.8 metres tall to be effective and Flat 10 would have deep narrow rooms which would enhance the sense of enclosure by limiting the connection future residents would have with the outside. As such, the occupants of Flats 6-10 would have unacceptable living conditions.
9. Flat 11 would be served by a large outside terrace but this would be enclosed on all sides by walls. The wall along the eastern side is particularly tall. The

³ The Council clarified that it was no longer concerned that the outlook from Flat 35 on the fourth floor would be unacceptable. I share this view given the elevated position of the flat, which would facilitate views over the adjoining town scape.

outlook from within the flat and terrace would be confined to the sky. The occupants would have no visual connection with their surroundings and therefore the outlook from this property would be harmfully constrained. As a consequence the occupants would have an unacceptable sense of enclosure. The size of the outside amenity space relative to the relevant standard in the SPG does not mitigate for its poor quality, especially as it would be significantly overlooked from the flat above.

10. Flats 15-18 would have an outlook towards the blank side elevation of the Churchill Theatre and the chiller units on the roof. The presence of the theatre would harmfully dominate the aspect from these flats. The outlook from Flats 15-18 would not be as enclosed as Flats 6-10 because the Churchill Theatre is set further away than 132-138 High Street to the northern elevation of the appeal building. However, the outlook from these flats would still be very poor, even in an urban location. This would be especially so as the balconies serving the occupants of these flats would be enclosed by the floor above, which would concentrate the aspect, particularly from within the flats, on the Churchill Theatre. Overall, I consider the outlook from Flats 15-18 would be inadequate.
11. The Gross Internal Area (GIA) and ceiling heights of Flats 6-11 and 15-18 would generally exceed the relevant standards in the SPG. Furthermore, in some instances the balconies would also exceed the applicable size standard in the SPG. This could afford opportunities for some greenery, especially in Flat 11. However, these are not determinative benefits as the limited outlook would result in a particularly poor standard of accommodation.
12. This would be especially so for Flats 6-11, which would be north facing and single aspect. Whilst these two factors alone may not be determinative given the constrained nature of the building, they are nevertheless matters that contribute to the poor living conditions the future residents of these flats would experience and, when considered cumulatively with the poor outlook, would outweigh the benefits that would otherwise arise from exceeding other standards in the SPG.
13. Flats 25, 27 and 31 would be located on the third floor where the aspect out would be more elevated than the flats on the second floor. The outlook from Flat 31 would not be particularly attractive as it would take in supporting concrete beams and the plant located on the roof of the Churchill Theatre. However, it would be possible to view the landscape and townscape beyond from the bedroom and balcony within the flat. Consequently the outlook would not be harmfully enclosed and inadequate.
14. Flats 25 and 27 would be north facing and single aspect. These are inherent limitations. However, the outlook from these flats would be over the adjoining roof tops. Like Flat 31, the outlook would not be particularly attractive as it would take in the utilitarian form and materials of nearby buildings. Nevertheless, there would be a visual connection with the townscape over and beyond the neighbouring buildings. Thus, the outlook from these flats would also be acceptable.

Whether the appeal scheme would provide adequate living conditions for future occupants – daylight

15. During its assessment of the planning application the Council identified fifteen flats within which there would be a room that would have inadequate levels of

daylight⁴. The Council arrived at this conclusion by applying the findings of a daylight and sunlight assessment commissioned by the appellants. This considered the level of day and sunlight against Building Research Establishment (BRE) targets⁵ relating to Annual Daylight Factor (ADF) and Room Depth Criteria (RDC). The fifteen flats in question did not achieve the BRE targets.

16. Following the Council's decision, the appellants have made a number of alterations to the proposal and these were submitted with the appeal. The alterations proposed the insertion of roof windows into some of the flats previously identified as failing the ADF targets. The effect of this would be to increase the level of daylight. Following a retest of the fifteen flats, but with the proposed roof lights, the appellant identified 8 rooms in the development which would not adhere to the ADF target. The Council have not disputed the appellants' findings and therefore I am content to rely upon them.
17. The appeal site is located in Bromley Town Centre, which is a dense urban area. The BRE targets are based on a suburban layout which would typically have wider streets and lower buildings. The BRE guidance is also clear that the targets are not mandatory and should be applied flexibly. The BRE guidance goes on to explain that alternative targets may be appropriate in urban areas where expectations for daylight may be reduced or where a development is constrained. The SPG also states that BRE guidance should be applied sensitively in urban areas. As such, given the dense urban context of the appeal site a failure against the BRE target alone is not determinative. In this instance an alternative target would be appropriate.
18. To this end the appellants have considered the eight rooms that failed the ADF target in turn and tested the 'primary seating/sleeping area' in each room. This being the alternative target. This was defined as the space within the relevant rooms 3.25 - 4 metres behind the window serving the room. This is a reasonable target as 3.25 - 4 metres is an acceptable room size. Following this analysis only two rooms were identified as failing to meet the ADF targets, these being the living room in Flat 8 and the living room/kitchen in Flat 27. All of the other rooms in the development would now pass either the original ADF target or the alternative ADF target adjusted to consider only the primary seating/sleeping areas.
19. The primary seating area in the living room of Flat 8 would have an ADF score of 1.3 against the target of 1.5. The primary seating area in the living room/kitchen in Flat 27 would have an ADF of 1.6 against a target of 2. Although below the BRE target, the shortfall is acceptable given the constraints posed by the building and its urban location. Moreover, the shortfall against the targets is not excessive.
20. Table 01 of the CPMC report identifies that eight rooms in eight flats would fail the RDC targets, which are to be applied to a day lit room illuminated by windows in one wall only. However, when the RDC was applied to the first 4 metres in the relevant rooms and then the first 5.5 metres, there was full compliance. Again, I consider this alternative target is appropriate given the urban context.

⁴ The flats in question are summarised in Table 01 of Mr Cawood's Statement of Case.

⁵ See Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice

21. Moreover, the rooms are deep due to the plan of the building. Significantly, the flats tend to have a larger footprint than the minimum standards for GIA in the SPG. Therefore, the areas that would fail the RDC would be additional space which could, in theory, be designed out by enlarging communal areas such as the corridors. If this was done then the flats would pass the RDC target. However, I share the appellant's view that larger flats, albeit with darker areas, would likely be the preference for future occupants than smaller flats that meet both GIA and RDC standards/targets.
22. On balance, given the urban context and the constrained nature of the development, the contravention of the BRE targets would not, in itself, result in harmful living conditions for the future occupants of the development. Overall, there would be an adequate level of daylight and sunlight to the proposed flats. However, any transgression against the BRE targets needs to be considered cumulatively with the other failings I have identified so that a holistic view can be taken on the overall quality of the living conditions in each of the relevant flats. This is a point I will return to.

Whether the appeal scheme would provide adequate living conditions for future occupants – Noise

23. The Council have identified three noise sources that it considers could affect future occupants of the appeal scheme. The first is noise from the chiller units on the roof top of the Churchill Theatre to the residents that would occupy flats on the southern side of the building⁶, particularly when in their balconies. The second is the effect of activities at the Churchill Theatre, particularly performances and overnight packing up of the stage and equipment. These impacts would be to the occupants of flats on the southern and western side of the building⁷. Lastly, noise from plant on the fourth floor to the occupants of adjoining flats⁸.

The noise effect from the chiller units

24. Following the Council's decision the appellant commissioned a week long survey of the noise emitted from the chiller units and Churchill Theatre. During this period the chiller units were operated at a maximum load for four hours. The survey measurements show a daytime⁹ noise level range at the appeal site of 58 to 62dB¹⁰. The units did not typically operate between midnight and 0630. The Council confirmed at the hearing that that it is broadly content for me to rely on these findings.
25. British Standard 8233 (BS 8233) sets out guidance on noise levels. I have referred to this rather than Noise Exposure Categories, as the latter were set out in the now defunct Planning Policy Guidance Note 24. BS 8233 states that it is desirable that the external noise level in amenity spaces does not exceed 50dB with an upper guideline value of 55dB for noisier environments. World Health Organisation guidance on Community Noise also identifies 55dB as the figure that should not be exceeded on balconies.

⁶ Agreed by the appellant and Council at the hearing as being Flats 1, 15 to 18, 19, 31 to 34, 38 to 41

⁷ Agreed by the appellant and Council at the hearing as being those flats identified above and Flats 2 to 5, 20, 21 and 42

⁸ Agreed by the appellant and Council at the hearing as being Flat 37 and possibly Flats 35 and 36

⁹ 16 hours from 0700 to 2300

¹⁰ A-Weighted Equivalent Continuous Sound Level

26. Given the town centre location of the appeal site I consider it is appropriate to apply the upper guideline figure as the area is likely to be noisier than most locations where there are dwellings. BS 8233 goes on to state that a noise specification for balconies is not necessarily appropriate. However, it draws a distinction between small balconies used for drying washing and growing pot plants and larger balconies which may be used for relaxation, where the general guidance on noise in amenity space is still appropriate.
27. In my view, the balconies proposed to serve the occupants of the flats on the southern side of the building could be used for sitting out and thus relaxation. As such, the guideline of an upper limit of 55dB for outdoor amenity space, as set out in BS 8233, should be applied. The implication of this is that the maximum noise output of the chiller units when heard on the balconies of the flats would exceed the upper guideline value set out in BS 8233.
28. BS 8233 states that protection from noise can be a means of achieving the guideline target. To this end the appellant has suggested that an extension of the existing noise barrier around the chiller units along the full length of the parapet wall of the Churchill Theatre would provide attenuation of 10dB for the fourth floor flats, where the protection from the barrier would be at its least. Therefore, noise from the chillers when heard within the balconies of the flats would not be expected to exceed 52dB and could be lower in some instances. Consequently, the upper guideline of 55dB in BS 8233 would not be exceeded.
29. The Council accepted this analysis and effectively removed its objection at the hearing subject to a planning condition that would secure the provision of the acoustic barrier in the event the appeal was otherwise acceptable. The barrier would be on land outside the appellant's control but the operators of the Churchill Theatre have indicated that they would be content for the barrier to be installed. As there would be a likely prospect of the mitigation being delivered, a planning condition securing it would be reasonable. With such a condition imposed, it would be unnecessary to attach any further conditions requiring additional noise attenuation in the balconies.
30. The barrier would also provide some protection to residents from day time noise when they would be within their flats with the windows open¹¹. The relevant targets for noise levels inside a residential property are 30dB at night and 35dB during the day. A partially opened window can attenuate noise by 10-15dB. As such, noise levels affecting a room with a partially opened window should not normally exceed 50dB during the day and 45dB at night. Therefore, even with the acoustic barrier around the chillers, night time noise levels of 52dB would exceed the night time guideline target of 45dB. The daytime level would be close enough to the target to be acceptable¹².
31. However, the chiller units are seldom operated throughout the night and even if they were, the barrier would reduce noise levels to somewhere in the region of the UK mean night-time noise level of 48dB¹³. The appeal site is also in a town centre location where occupants would expect higher noise levels and would not normally expect to be able to sleep with their windows open. On balance, the noise from the chillers, with the acoustic barrier in place, would

¹¹ Guideline levels in BS8233 for internal noise of 30db at night and 35dB during with the window closed would not be exceeded by the chiller units.

¹² The Council advised that a change in noise levels of 3dB is needed for the change to be noticeable/of significance

¹³ See The National Noise Incidence Study 2000/2001 referred to by Mr Watts in his Statement of Case

not harm the internal living conditions of future occupants of the appeal scheme.

The noise effect from activity at the Churchill Theatre

32. During the week long noise survey there was only one occurrence when loading and unloading extended into the overnight period and this was by 15 minutes. There were six performances over the week long sample. As such, I share the view of Mr Watts that this is evidence that over-night loading and unloading at the Churchill Theatre is an infrequent occurrence. Neither the Council nor the operators of the Churchill Theatre have provided substantive evidence to suggest otherwise. Based on the evidence before me, I am satisfied that loading and unloading would not result in significant noise impacts.
33. To gauge the impacts from other activities at the Churchill Theatre, including performances, the appellant is relying on the results from the week long noise survey. The Council are not satisfied by this and considered a longer survey would be necessary. Mr Watts explained that in his experience a week long survey is adequate. Moreover, the week in question included a number of different performances¹⁴, some of which went on into the evening. There is nothing of substance before me to suggest the week surveyed was not typical and therefore I consider it to be a reasonable indication of the type of noise impacts that could arise from activity at the Theatre.
34. Average night time noise levels tended to average 53dB within a range of 49-58dB. Noise from the theatre was, at times, as high as 65dB. However, in general terms noise from the theatre when experienced on the balconies of the proposed flats would be within guideline targets of 55dB for outside amenity areas.
35. When within the flats, the average noise level of 53dB would exceed the night time guideline targets for a room with a window partially open¹⁵. With the window closed the guideline target would not be exceeded¹⁶ when applying average noise levels, although there may be occasions when noise levels are exceeded even when the windows are closed. However, I consider it reasonable to base my assessment on the average.
36. Therefore, it is likely that future occupants of the relevant flats would need to keep their windows closed to keep noise from the theatre within guideline targets. This would of course, prevent natural ventilation and cooling being achieved by opening the windows. As such, the appellant has suggested air conditioning could be provided to the relevant flats to ensure they would not over heat. I consider this to be reasonable in this instance given the constraints of the site and the town centre location, where residents are unlikely to expect to be able to sleep with windows open and not experience notable levels of noise.
37. The air conditioning would provide a fall back that would allow windows to be kept closed, thereby mitigating the theatre noise, and the rooms ventilated. Mr Watts has explained in his statement how the air conditioning could be

¹⁴ A programme was appended to Mr Watts' Statement of Case

¹⁵ 30dB but if allowance is made for attenuation provided by the open window, then the noise target increase to 45db

¹⁶ 30dB but if allowance is made for attenuation provided by the closed window, then the noise target increase to 55db

designed to ensure it would not omit unacceptable noise levels. I have no reason to arrive at a different view. As a consequence, activity at the theatre would not result in unacceptable noise nuisance.

The noise effect from plant on the fourth floor

38. The revised drawings submitted by the appellant demonstrate that the retail plant can be placed in the basement rather than on the roof as originally proposed. Therefore, the plant that would be positioned on the fourth floor would relate to the flats and would not be as noise intrusive. Suitably worded conditions could have been imposed to ensure this plant would not exceed specified noise levels had the scheme been otherwise acceptable. There was some debate as to what the level should be, but it was generally agreed that I could, if allowing the appeal, take a figure based on the mid-point of what the respective experts were recommending.

Conclusions on the adequacy of the living conditions of future occupants

39. The appeal scheme would provide a very poor outlook for the occupants of Flats 6-11 and Flats 15-18. This in itself would be harmful. Nevertheless, added to this Flats 6, 7, 8 and 10 would fail the BRE ADF targets and Flat 8 would also fail the revised target that only considers ADF to the primary seating/bed areas. Flats 7 and 11 would also fail the RDC target. The failure against the BRE targets would not, in itself, justify withholding planning permission for the reasons already given but it adds to my overall reservations over the adequacy of the living conditions of these flats.
40. Not all of Council's assertions regarding inadequate living conditions have been demonstrated. However, the absence of harm in these respects would not justify the harm I have identified.
41. My overall conclusion is that the occupants of Flats 6-11 and 15-18 would have very poor and inadequate living conditions. The proposal would therefore be at odds with Policies BE1 and H12 of the UDP¹⁷, which seek to ensure that residential conversions achieve a satisfactory quality of accommodation and amenity for future occupants. This is consistent with Paragraph 17 of the National Planning Policy Framework. As such, Policies BE1 and H12, and subsequent conflict with them, can be afforded significant weight¹⁸.
42. The appeal scheme would not offend Policy 3.5 of the London Plan 2016 (LP), as it would not breach the minimum standards outline therein (and in the supporting SPG). Nor would the proposal be at odds with Policy 7.15 of the LP as it would not expose future occupants of the flats to unacceptable noise impacts. Nevertheless, the lack of conflict with the LP does not mitigate for the conflict with the UDP, to which I have afforded significant weight.

The effect of the appeal scheme on the supply of office floor space

43. Policy EMP3 of the UDP states that the conversion of offices for other uses will only be permitted where it can be demonstrated that there is no local shortage of office floor space *and* there is evidence of long term vacancy despite marketing of the premises. The Council and appellant agreed that both tests

¹⁷ London Borough of Bromley Unitary Development Plan 2006

¹⁸ The Council has referred to its emerging policies but these are yet to be examined and the extent of unresolved objections was not clarified at the hearing when I asked. As such, the emerging policies are currently of very limited weight

- need to be positively addressed for a proposal to be consistent with Policy EMP3. I have considered the appeal scheme accordingly.
44. The Council did not provide evidence outlining whether there is a local shortage of office floor space and it advised that its employment land study, of which a copy was not presented and the figures therein not referred to, was out of date.
 45. Alternatively, the appellant provided two letters from Linays Commercial, a local estate agent. The first letter dated 20 June 2016 suggests local market conditions in the office sector were improving relative to the beginning of 2016 with a slight increase in demand. The second letter dated 8 June 2017 suggests market conditions have changed substantially from July 2016 with enquiries for town centre office accommodation dramatically reducing. As a result of this low demand, the agent suggests that there is currently a seven year office supply.
 46. The letters from Linays Commercial do not outline the methodology that was employed to arrive at the conclusions presented. Nevertheless, in the absence of any evidence from the Council I am satisfied that I can rely on the letters from Linays Commercial as an indication that there is not currently a local shortage of office floor space.
 47. Policy EMP3 requires marketing to demonstrate that a premise has been long term vacant. It is clear that the offices within the appeal building have been empty for a long time but whether this is a result of a lack of demand is a matter that will turn, in part, on the results of marketing. The letters from Linays Commercial outlines the marketing that has been undertaken to date. It states that the office floor space was marketed without success. The agent puts this down to the excessive size of the office floorspace, its condition and the lack of associated parking.
 48. The Council's Officers' originally relied on the marketing details presented when forming their recommendation to the planning committee. Further details were not requested. However, the Council ultimately refused the planning application as it considers the marketing was inadequate. The appellant has not provided any additional marketing details with the appeal.
 49. There is no explanation in the UDP or any supporting guidance as to what the marketing for the purposes of Policy EMP3 should entail. Furthermore, the policy does not require 'adequate' or 'satisfactory' marketing. It just requires marketing. Therefore, on face value, it may appear that the appellant has met the requirements in Policy EMP3, as there is nothing to suggest the office floor space was not marketed. However, this would be an overly generous interpretation of Policy EMP3. It is clear to me that the marketing must be carried out and be robust, as it is required to test the demand for the office floor space in question. I consider this to be particularly necessary in this instance given the town centre location of the appeal site and the quantum of office floor space that could be lost if the appeal was upheld.
 50. The marketing details provided suggest that the office floor space was marketed for six months with letters sent out to possible tenants and details placed on websites.

51. However, it is unclear how many letters were sent out and to whom. There is no indication of the websites the details were placed upon and how many 'clicks' they generated. The property was not advertised in the Estate Gazette or Property Week. There is no indication from the appellant of the guide price and how that equated to reasonable comparables and the condition of the building. Nor have the terms that the property was offered at been clarified. This is particularly important given the conditions of the office space.
52. Moreover, marketing particulars have not been presented and it is unclear how the marketing was adjusted given the apparent lack of interest. It is also unclear whether the offices could be subdivided and therefore marketed as smaller units. The letters from Linays Commercial suggest that the marketing generated a limited number of enquires and a limited response from potential office occupiers. It is unclear what 'limited' is in this context and to what extent the interest was pursued.
53. Overall, the details of the marketing campaign presented to me are significantly lacking and therefore I cannot be satisfied that the scope and extent of the campaign was robust. As such, the requirements of Policy EMP3 have not been met as the appellant has not provided evidence of long term vacancy despite marketing.
54. In coming to the view above, I acknowledge that the loss of the office floor space would not directly result in the loss of jobs because the office is currently empty. Furthermore, given the apparent decrease in demand for office floor space relative to the existing supply, the appeal scheme may not have a notable adverse impact on the local economy. However, robust marketing is necessary to confirm this and I cannot be certain this has been the case from the information before me.
55. The appellants have also suggested that it would be unviable to retain the office accommodation as it would not complement the other uses being explored for the rest of the building. However, I was presented with nothing of substance to suggest this would be the case.
56. Additionally, the appellants suggested that the office could be converted by enacting 'permitted development rights' as there is little to indicate that prior approval would be withheld. However, the appellant conceded that they are seeking a comprehensive solution for the building and therefore this is unlikely. In light of this, and the fact a scheme for prior approval has not been submitted and plans have not been prepared, I am minded to give the potential for a change of use under permitted development rights very limited weight as a fall-back position.
57. I therefore conclude that in the absence of details demonstrating that a robust marketing campaign has been undertaken, the appellant has failed to establish that any long term vacancy has been the result of a lack of demand. As such, there may be a reasonable prospect that the office floor space could be occupied. Consequently, there would be a conflict with Policy EMP3 of the UDP. Policy EMP3 is consistent with Paragraph 22 of the Framework and therefore the conflict can be afforded significant weight.

Other Matters

58. The appeal scheme would provide 42 residential apartments. This would support the Council's housing land supply at a time when its overall housing requirement may be set to increase. The appeal scheme would also comprehensively and viably address the reuse of the building, which is a particular challenge given that it was a purpose built department store. The flats would also provide some economic benefits to the construction industry and would contribute towards the vitality of the town centre, which is an aim of the Bromley Area Action Plan.
59. I share the Council's view that the benefits of the appeal scheme would be sufficient to outweigh the conflict with Policy EMP3. Particularly as there is no local shortage in office floor space. However, the benefits would not be so compelling as to justify the very poor living conditions that the occupants of Flats 6-11 and Flats 15-18 would have to endure. As such, the benefits of the appeal scheme, as material considerations, would not outweigh the harm I have identified and the conflict with the development plan and national planning policy that flows from this.
60. In light of my findings it is unnecessary for me to consider in detail the planning obligation submitted by the appellant. This is because the planning obligations in the unilateral undertaking are agreed between the Council and appellant and in any event, I have dismissed the appeal and therefore the planning obligation would not be engaged.

Conclusion

61. The appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, the proposal is not sustainable development and for this reason, the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Philip Mallon	Grainmarket Asset Management
Shirley Karat RTPI	First Plan
Beverley Bateman	First Plan
Neil Cawood BSc (Hons), MSc MAPM MRICS	CPMC
David Watts BEng CEng FIOA	Acoustic Consultant
Jan Melichar	Architect

FOR THE LOCAL PLANNING AUTHORITY

David Bord BA (Hons) PG Dip MRTPI	Principal Planner
Charlotte Hennessy LLB (Hons) MSc AMIOA	Environmental Health Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Photograph of chiller units on Churchill Theatre
2. Completed and signed Statement of Common Ground
3. Unsigned Unilateral Undertaking