



## Appeal Decision

Site visit made on 15 March 2022

**by Stephen Wilkinson BA BPI DIP LA MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> July 2022**

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**Appeal Ref: APP/G5180/W/21/3285554**  
**25-27 Elmfield Road, Bromley, BR1 1LT**

- 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 Kitewood Estates Ltd against the Council of the London Borough of Bromley.
  - The application Ref 20/04654/FULL1, is dated 1 December 2020.
  - The development proposed is demolition of the existing building at 25-27 Elmfield Road and the construction of mixed use development comprising residential and flexible Class E floorspace and associated car parking, cycle and waste storage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appeal was submitted following the failure of the Council to determine the application within the prescribed period.
3. Subsequently, both parties agreed a Statement of Common Ground which identifies that there are no areas of disagreement.
4. Following my consideration of the written representations received from interested parties who expressed concerns over the impact of the building on their living conditions, I asked all parties to provide evidence on a single main issue, outlined below which is concerned with the impact of the scheme on living conditions by reason of outlook. The Council wrote to all parties on 8 April 2022 seeking views on this issue. I have taken account of the representations received in this decision.
5. The appeal before me is accompanied by a Unilateral Undertaking (UU), dated 16 May 2022. This includes a range of covenants in favour of the Council. I address this further in this decision.

### Main issue

6. The effect of the proposed development on the living conditions of existing occupiers in Rafford Way and Palace View having regard to its height and location.

## Reasons

7. The appeal site lies on the east side of Elmfield Road towards its southern end close to Bromley South rail station. The road slopes steeply up from the station towards the Glades shopping centre. Palace View is a narrow road on the south side of the site which slopes steeply down, eastwards from its junction with Elmfield Road, becoming just a pedestrian link located under the A21 Kentish Way flyover, before emerging as a road within the Palace View estate (the estate).
8. The estate comprises predominantly 2 storey semidetached and terraced residential properties. This is in stark contrast to the scale, massing and form of development along both sides of Elmfield Road which includes offices and residential buildings of around 4-10 storeys.
9. The Kentish Way delineates the eastern edge of the Bromley Action Area Plan area and the Bromley Town Centre Opportunity Area identified in Policy SD1 of the London Plan 2021. The appeal site lies within Bromley South Business Improvement District, supported by planning policies included in the Area Plan and the Local Plan. The London Plan designates the site as lying in an Opportunity Area as defined by Policy SD1. This designation promotes the growth and regeneration potential of the area for business and 2,500 new homes. The site is not allocated in either the Action Plan or the Bromley Local Plan (BLP) for tall buildings.
10. Significantly, the height of the commercial properties on the east side of Elmfield Road is generally lower than those on its west side which is dominated by the towers of the Bank of America building located opposite the appeal site. For example, the appeal site's neighbouring commercial buildings, Kingfisher House and Shaw Trust House to the north and Nexus House to the south are around 4-6 storeys in height.
11. However, recent permissions have altered this pattern of development involving mixed use schemes of up to 10 storeys. These include Wells House and Prospect House at 15 and 19 Elmfield Road respectively, north of the appeal site.
12. The appeal scheme has been designed to address 2 previous schemes dismissed on appeal<sup>1</sup>. These were dismissed for reasons of character and appearance, design quality and impact on living conditions of surrounding occupiers. The proposed scheme would have an overall height of around 28m above ground floor compared to 51m and 40m for the 2013 and 2015 schemes respectively. The appeal scheme before me comprises 8 storeys above basement level with commercial floorspace on the ground floor and in part of the basement with residential use on the floors above.
13. The site has several constraints which distinguish it from other sites along the east side of Elmfield Road. The road bends eastwards towards the estate resulting in the appeal site having relatively less depth than those sites to its north. The site's proximity to the estate is exacerbated by the alignment of both Palace View and Rafford Way which intersect to its east. This increases the site's visibility to occupiers of the estate despite the location of the flyover.

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<sup>1</sup> APP/G5180/W/13/2210460 & APP/G5180/W/16/3146806

14. The footprint of the appeal scheme would fill virtually the whole of the site. This contrasts with that of the existing buildings along the east side of Elmfield Road which have a form of development comprising an office block on the frontage with parking to the rear. This has the effect of setting the built form further away from the estate than what is proposed in the scheme before me.
15. The appeal scheme would sit squarely within its site with its east elevation facing directly into the estate. Storey heights on its eastern elevation would be stepped with floors 1-6 stepped away from the eastern edge of the ground floor and with floors 7 and 8 stepped slightly further away. This would result in the upper floors being around 40-65m away from the properties in The Chase, Rafford Way and Palace View.
16. The scheme's stepped profile is designed to articulate its most sensitive elevation on its eastern façade. However this together with the use of contrasting materials of rusticated red brick for the basement with upper floors of buff brick and curved balconies with the 7<sup>th</sup> and 8<sup>th</sup> floors completed in copper coloured cladding is insufficient to reduce the dominance of the building when looking from within the estate.
17. Objections from local residents are concerned with a range of matters. However, consistent through these are concerns regarding the height of the proposed building and its intrusive nature, its dominance and overbearing effect. Other comments identify that given its location it would appear higher than the towers of the Bank of America Building when viewed from the estate.
18. Both main parties through the Statement of Common Ground state that the design intent of the scheme is to mediate between the larger buildings to the west and the low scale buildings to the east within the estate in a new context of taller buildings.
19. I recognise the attempts to achieve this given the reduction in height from the previous appeal scheme. However, the mediation between the contrasting townscape determined by both the estate and Elmfield Road does not account for the site's specific constraints which distinguish it from others along its east side which have been granted permission.
20. The failure to address these constraints is clearly demonstrated in the 'visual assessments' included in the HTVA<sup>2</sup>. In particular, from Views 06 and 07. These demonstrate how the scheme would project as an unwelcome and dominant building into views through the estate. The size of the scheme and the configuration of the roads result in the eye being taken to it.
21. I recognise that the orientation of the streets within the estate mean that few windows within the properties would face directly towards the site but there would be many more views from gardens, as indicated on my site visit from where the appeal scheme would be clearly viewed as a stark visual intrusion. It would have a looming ponderous presence by virtue of its height and massing and would dominate views from along Rafford Way and Palace View.

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<sup>2</sup> Heritage Townscape and Visual Assessment

22. A common thread running through policies of both the London Plan and the Local Plan is a recognition that a design led approach can allow high quality buildings at high densities. However, included in policies D3, D4 and D9 of the London Plan and Local Policies BLP4, BLP37 and BLP47 is a recognition that local character and physical context should be respected. Furthermore, these policies require that new buildings should positively contribute to the existing streetscene and respect the amenity of occupiers of neighbouring buildings complementing the scale, proportions, form and layout of adjacent areas.
23. I have considered the concerns of interested parties about the physical impact of the scheme on their living conditions by reason of its impact on outlook. The building design has been informed by its relationship to the other properties along Elmfield Road, the 'emerging context', but less so by its relationship with the properties to its east. In this respect, it fails to afford the transition required by Policy D9C1iii. The varied materials and stepped profile are insufficient to overcome the scheme's impact on the estate.
24. For these reasons the appeal scheme's location and height conflicts with London Plan Policies D3, D4 and D9C1iii and Local Plan policies BLP4, BLP37 and BLP47 in protecting the living conditions of occupiers in Rafford Way and Palace View.

### **Other Matters**

25. I recognise that considerable work has been carried out to overcome the comments of an Inspector colleague regarding the previous scheme in respect of the impact of the scheme on the living conditions of surrounding occupiers through loss of privacy<sup>3</sup>. The appeal scheme includes a re-design of fenestration on the scheme's eastern elevation.
26. The windows on floors 1-6 which face the estate serve bedrooms or are secondary windows to the main living areas. These have been designed to include directional glass with obscured louvres designed to orientate the viewer from within proposed flats towards the south and not east towards the estate. The windows on the top 2 floors would be set back to an extent that they would not be overlooking east and include obscure glazing to around 1.5m above floor level.
27. Other measures, designed to preserve privacy for the residents of the estate include recessed balconies for the 2-6 floors for the flats on the scheme's northern and southern elevations. Furthermore, those balconies located on the scheme's eastern elevation are curved in profile to dissuade occupants to look into the estate. For the same reason there will be no access to that section of the 7<sup>th</sup> floor roof terrace which faces the estate.

### **Section 106 Agreement for Infrastructure**

28. The Framework confirms that planning obligations should only be sought to mitigate the effects of unacceptable development therefore making it acceptable. The Framework in paragraph 57 and CIL Regulation 122 set out 3 'tests' for seeking planning obligations. They must be necessary to make the development acceptable in planning terms, be directly related to the

development and fairly and reasonably related in scale and kind to the development.

29. A Community Infrastructure Levy (CIL) compliance statement provided by the Council concludes that the obligations meet the tests of the Framework and CIL Regulations. However, in the light of my findings above, it is unnecessary for me to consider this matter further.

### **Planning Balance**

30. Both parties acknowledge that the Council cannot demonstrate a 5 year supply of deliverable housing. In these circumstances, paragraph 11(d)ii and footnote 8 of the Framework state that the policies which are the most important for determining the application should be considered as out of date, and that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.
31. However, the fact that policies have to be considered as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 219 which amongst, other things, explains that the closer that policies in the plan are to policies in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed out of date for reason of an inadequate land supply to still carry significant weight.
32. I consider that this to be the case for this appeal as all the policies cited by the parties are consistent with the Framework. This is particularly so of those policies referred to above which reflect Chapter 12 of the Framework, related to well designed places.
33. Set against the conflict with adopted policy, the appeal scheme includes a range of benefits when assessed against the policies of the Framework as a whole. In terms of the social objectives of the Framework the appeal scheme would include a policy compliant amount of affordable housing and market units. This would address the strategic regeneration policies of both the Council and the GLA and would partially address housing need and also contribute to the Council's undersupply of housing land.
34. In terms of the environmental dimensions of the Framework, it would involve the redevelopment of brownfield land with a high density scheme. The site lies in PTAL Zone 6b reflecting its excellent location to both a concentration of bus services in the town centre and Bromley South Station. This negates the requirement for a large amount of on site parking which is a matter of concern for the interested parties. Furthermore, despite its height, the scheme would not adversely impact on sunlight and daylight for residents of the estate.
35. The scheme would also result in the creation of additional employment opportunities both in the short term through construction jobs and in the long term through the spending power of additional households in the scheme in local shops and services.
36. The redevelopment of the site represents an opportunity to maximise its capacity for residential development in line with the strategic objectives of

both the GLA and the Council. This is the third appeal to be lodged on this site following the dismissal of 2 previous schemes of 16 and 12-13 storeys in 2013 and 2017 respectively<sup>4</sup>.

37. This appeal scheme has been significantly remodelled to address these previous decisions with a reduction in height and revised elevational treatment, particularly to Elmfield Road and its eastern elevation. However, despite these changes it would still sit square in its site facing eastwards and in so doing appear as an overbearing presence in relation to the estate.
38. I acknowledge that taller schemes have been granted planning permission in recent years on sites to the north along Elmfield Road but no evidence is before me regarding their physical relationship with the estate.
39. The officer's report identifies that the scheme would form part of an emerging cluster of similar buildings and would fall within the silhouette of the Bank of America building. This fails to fully account for the particular circumstances of the location of this site, the relation of the building in the site and its overall height in relation to the estate. The concerns of interested parties are an important matter which together with the importance I attach to the design policies of the Development Plan weigh strongly against the scheme in this instance.
40. I am aware of the points made by an Inspector colleague on the previous decision in respect of this issue but having regard to the comments of interested parties and my own assessment, consider that this is the matter on which this decision turns.
41. Overall, I conclude that the harm caused in this case would significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. As such the proposed development does not benefit from the Framework's presumption in favour of sustainable development.
42. Bearing all of the above in mind, there are no material considerations, including the Framework, that would indicate that the decision in this case should be taken otherwise than in accordance with the Development Plan. Accordingly, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Stephen Wilkinson*

INSPECTOR

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<sup>4</sup> APP/G5180/W/13/2210460 and 3146806

