

Appeal Decision

Site visit made on 7 November 2016

by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 19th December 2016

Appeal Ref: APP/A5840/W/16/3157299

350-354 Old Kent Road, London SE1 5AA

- 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 Nabiganj Investment Co Ltd against the Council of the London Borough of Southwark.
 - The application Ref 15/AP/4862, is dated 4 December 2015.
 - The development proposed is removal of existing shipping containers and redundant external metal stair to rear yard area and erection of a part 6-storey building and basement and a part 3 storey building and basement fronting Old Kent Road comprising a unit on the ground floor and basement (use Class A1) with 4 self-contained flats above comprising (3No. 1B x 2P flats and 1No. 2B x 3P flat) including a maisonette (Use Class C3) and a part 3-storey building and basement to the rear to provide 4 self-contained flats (Use Class C1) comprising (2No. 3B x 4P flats and 2No. 1B x 2P flats).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development as set out on the application and appeal forms and reproduced in the banner heading above, refers to 4 of the proposed flats being in Use Class C1 Use, which includes hotels and hostels. It is clear from all that I have seen and read, however, that the proposal is for self-contained residential units and I have dealt with the appeal on that basis.
3. Since the appeal was lodged the Council has withdrawn its archaeological objection to the proposal. This is, therefore, no longer a determinative issue in this appeal.

Main Issues

4. The main issues in this case are:
 1. The effect of the development on the character and appearance of the area and, linked to that, whether the proposal would preserve or enhance the character or appearance of the Conservation Area;
 2. The effect of the development on the living conditions of neighbouring residents, having particular regard to light and outlook;
 3. Whether a satisfactory standard of accommodation would be provided for future occupants, having particular regard to outlook and light;
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4. The risk to future occupiers of the flats from flooding.

Reasons

Character and Appearance

5. The site is situated at the junction of Old Kent Road and Cobourg Road with a frontage to both roads, and being an 'L' shape, wraps around the rear of Nos 352 and 354 Old Kent Road. Those properties, and No 356, form a terrace of buildings some 3-4 storeys in height. The properties have a projecting element at the front at ground floor level and are in use as restaurant with residential flats above. Adjacent to the site on Cobourg Road is St George's Methodist Church, beyond which are residential properties and opposite is Burgess Park.
6. The site is currently used as the rear access and service yard to the properties fronting Old Kent Road and also contains two shipping containers. It lies within the Cobourg Conservation Area, the significance of which, in my judgement, is derived from the age, regular pattern and rhythm of development which is predominantly of a domestic scale. The wider area around Old Kent Road includes a vibrant mix of uses and buildings of a variety of sizes, ages and styles although the terraced properties adjacent to the site are of a traditional design and have a rhythm to their appearance. Consequently they presently make a positive contribution to the character of the Conservation Area
7. The proposal is for the removal of the existing shipping containers and a redundant fire escape, and the erection of a part 6, part 3 storey 'L' shaped building with basement. The development would incorporate a retail unit at the ground and basement levels fronting Old Kent Road and 4 self-contained flats above it, plus 4 flats over 4 levels, including a basement level, behind. The building would be constructed primarily in brick with areas of pre-cast concrete.
8. On the Old Kent Road frontage, the proposed development would sit significantly forward of the upper part of the existing terrace at first, second and third floor levels. As such, although the terrace is slightly staggered, it would not reflect the existing building line and would be a prominent addition to it. In addition, with two additional floors it would be a tall addition that would not reflect the form or scale of the existing row. I acknowledge that the two upper floors of the building would be set back from the frontage and would be constructed in a contrasting material to assist in visually breaking up the building mass. Nevertheless, the size and bulk of the building would be clearly apparent from Old Kent Road to the north-west, and from Burgess Park, from where it would appear out of scale with its surroundings and dominant in the Conservation Area.
9. In addition it seems to me that the incongruity of the scale of the building would be compounded by its architectural detailing and appearance. The first floor of the building would project beyond the ground floor window such that the upper floors would appear dominant, in contrast to the terrace where the ground floor units are the dominant feature. A traditional fascia is not proposed to the shop window and as such the window would appear squat in comparison to that of the adjacent units. Furthermore, the use of pre-cast concrete would not reflect the traditional appearance of properties in the Conservation Area, and particularly on the Cobourg Road frontage, would be seen as a stark and alien material.

10. I acknowledge that there is a rhythm to the fenestration pattern particularly on the Cobourg Road elevation and that the brick work would match the existing. However, these elements of the proposal, in themselves, would not outweigh the harm I have identified.
11. My attention has been drawn to a tall development in a corner position at Coopers Road. I do not have the full circumstances of this development before me so cannot be certain that its context, including whether or not it is within a Conservation Area, is directly comparable to that of the appeal proposal. Moreover, whilst I accept that some traditional buildings are taller in corner positions as demonstrated at Trafalgar Avenue, this does not appear to be the predominant pattern of development locally. Around the junctions of Cobourg Road, Oakley Place and Rowcross Street with Old Kent Road, in the immediate vicinity of the site, buildings are generally a modest 3 storeys in height.
12. Consequently, for the reasons set out, the development would dominate the street scene and would neither preserve nor enhance the character or appearance of the Conservation Area. As such the proposal would fail to comply with saved policy 3.16 of the Southwark Plan 2007 and policy SP12 of the Southwark Core Strategy 2011 which seek amongst other things to ensure that new development is of the highest standard of design that preserves or enhances Southwark's historic environment, including Conservation Areas.

Effect on the living conditions of existing neighbouring residents

13. The upper floors of Nos 352, 354 and 356 are in residential use and have windows to the front, facing Old Kent Road, and to the rear, facing across the service yard to the side of the church. Whilst the proposed development would project some 3.4m forward of the building line at the front, the corner would be angled away from the neighbouring properties such that it would not unduly overbearing or restrict daylight. Given that it would be situated on the north-west side of the neighbouring properties it is unlikely to unduly affect direct sunlight.
14. At the rear there are a number of habitable room windows which would directly face the side elevation of the development from a distance of less than 6m away. The appellant's evidence indicates that whilst there may be a loss of daylight to those rooms, such a loss is unlikely to be noticeable. Given the proximity of the church I have no reason to disagree. However, there is no evidence before me as to the impact of the development on sunlight and moreover, given the limited distance between buildings, it seems to me that the proposal would be overbearing and have a harmful, enclosing effect when viewed from within the neighbouring rooms. I acknowledge that the windows currently face the side of the Church, itself a large building mass, but the space would be considerably reduced and as such there would be a loss of outlook. Therefore, as a result of the development, those rooms would be less pleasant places to be.
15. Consequently, in this respect, the proposal would be harmful to the living conditions of the adjoining residents, contrary to saved policy 3.2 of the Southwark Plan 2007 and Strategic Policy 13 of the Core Strategy 2011 which seek, amongst other things, to protect the amenity of existing occupiers and prevent development which adversely affects the environment in which we live.

Standard of accommodation for future residents

16. The Council has assessed that the units would comply with and exceed the space standards set out in the Council's Residential Design Standards SPD 2015. Although there would be some shortfall in the provision of amenity space, including communal amenity space, I note that the communal yard area is capable of accommodating sufficient provision for bins and cycle storage.
17. However, the outlook from the lower ground floor flat would be limited. In particular the outlook from the bedroom and lounge windows would be towards a retaining wall, less than 2m away and from the kitchen/dining room towards a wall less than 5m away. The external areas are likely to suffer from low levels of daylight as suggested in the daylight report. Whilst I accept that adequate levels of privacy could be achieved in this unit, it seems to me that the flat would be a gloomy and oppressive space in which to live. Whilst I recognise the appellant's point that basement flats exist in inner London, circumstances around them may vary. Moreover, it is my duty to consider the appeal on its own merits in the light of current policy and guidance.
18. Consequently while I am satisfied that the majority of the flats would provide adequate levels of amenity, I am concerned that the occupants of the below ground floor flat would have a poor residential environment. In this respect the proposal would be contrary to saved policies 3.11, 3.12 and 4.2 of the Southwark Plan 2007, and policy 12 of the Core Strategy 2012 which seek, amongst other things, to ensure that new development provides a satisfactory standard of accommodation and amenity, including outlook, for future occupiers.

The risk to future occupiers of the flats from flooding

19. The Framework aims to steer new development to areas with the lowest probability of flooding. The site falls within Flood Zone 3 which is the area at highest risk of flooding. The Environment Agency recognises that whilst the site benefits from the River Thames tidal flood defences, it lies within the currently modelled areas at risk of residual flooding. The Council also notes that the site is within one of the lowest lying parts of the Borough and close to the line of an historic river.
20. The Environment Agency recommends that more vulnerable residential accommodation, particularly sleeping accommodation, is located at first floor level or above or, if the former approach is absolutely not possible at a minimum of 300m above the 1 in 200 year flood level. In this case vulnerable accommodation, including a bedroom, is proposed below ground. As the flood risk assessment accompanying the application does not set out either finished floor levels or site specific modelled flood levels, I cannot conclude that future occupiers would not be at risk from flooding.
21. As such the scheme would not accord with the aims of the Framework in this regard and would be contrary to Strategic Policy 13 of the Core Strategy 2011, and Policy 5.12 of the London Plan 2016 which seek to ensure that development is safe and resilient to flooding.

The Planning Balance and Conclusion

22. As set out above, I have identified that the proposal would not preserve the character or appearance of the Conservation Area and, therefore, would result in harm to a heritage asset. The approach in the National Planning Policy Framework is that where a development proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal including securing its optimum viable use.
23. In this case there would be moderate economic and social benefits from the provision of a shop and residential accommodation in a sustainable location. I recognise that the site lies within the wider Old Kent Road Opportunity Action Area and, currently, the Aylesbury Action Area where it is envisaged that new residential and employment opportunities will be focused. In addition there will be a limited visual benefit from the removal of the shipping containers and redundant metal stairs.
24. However, the Framework advises that great weight should be given to a heritage asset's conservation. In addition is the harm I have identified to the character and appearance of the area; harm to the living conditions of adjoining residents; harm from inadequate standard of accommodation to the basement flat and from potential flood risk, which cumulatively attract considerable weight. Consequently the benefits of the proposal, including securing its optimal viable use, are clearly and demonstrably outweighed by the adverse effects.
25. My overall conclusion therefore, having regard to all matters raised, is that the appeal should be dismissed.

S Ashworth

INSPECTOR