
Appeal Decision

Site visit made on 3 January 2017

by A A Phillips BA (Hons) DipTP MTP MRTPI

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

Decision date: 3 March 2017

Appeal Ref: APP/N5660/W/16/3158640
230-234 Brixton Road, London SW9 6AH

- 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 Mr Mark Harris of AMCL Brixton Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/03748/FUL, dated 21 June 2016, was refused by notice dated 19 August 2016.
 - The development proposed is demolition of first floor rear addition, erection of extensions to create second, third and fourth floor levels, the continued use of the ground floor as a day nursery, the use of the upper floors as 1 one bedroom, 5 two bedroom and 1 three bedroom flats with associated refuse and cycle stores at ground floor level and the installation of a new shop front and associated external alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i. Whether the proposal preserves or enhances the character or appearance of the Brixton Road and Angel Town Conservation Area;
 - ii. The effect on the living conditions of the occupants of adjacent residential properties with particular reference to daylight, sunlight, outlook and sense of enclosure;
 - iii. Whether satisfactory living conditions are provided for future occupants of the proposed single-aspect unit with particular reference to outlook, overheating and noise; and
 - iv. The effect on the local economy and job opportunities, having particular regard to the availability of employment land.

Reasons

3. The appeal property is a two-storey mid-terraced building located on Brixton Road which is the main road through Brixton Local Centre. To one side of the site there is a row of three storey 1930s buildings and to the other there are three, two storey 19th century buildings. There is a higher three storey building at the corner of Ingleton Street and Brixton Road. To the rear of the site is
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Slade Gardens which is an area of public open space. There is a modern six storey development of flats on the opposite side of Brixton Road.

4. The ground floor of the property has most recently been used as a children's day nursery and the first floor as a place of worship.

Character and Appearance

5. The proposal entails the retention of the parts of the existing building, significant extensions and alterations, including the erection of an additional three storeys and the installation of a new shop front. Therefore, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the National Planning Policy Framework (the Framework) in determining this appeal I attach great weight to the desirability of preserving or enhancing the character or appearance of the Brixton Road and Angel Conservation Area within which the site is located.
6. This particular part of the conservation area is characterised by various buildings of different ages, styles and materials and which range in height from between two and six storeys along Brixton Road. The buildings either side of the appeal property are traditionally designed and have commercial uses on the ground floor with residential uses above.
7. The existing building on the site, being of limited height in relation to others in the terrace and as a consequence of its mid-terrace location, is not particularly prominent from Brixton Road or from Slade Gardens to the rear. It has a functional design, is not in particularly good condition and has extensive commercial signage on its frontage. At present it has a poor relationship with the adjoining terrace and detracts from the Brixton Road street scene and the wider conservation area. The rear of the property has a modern two storey extension and has been the subject of extensive external alterations. Overall, the rear elevation is typical of other properties in the locality, many of which have been also extended and altered in various ways. The rear of the site is partially screened from Slade Gardens by trees.
8. The proposed ground floor shop front would have a vertical emphasis and existing pilasters would be retained, providing some visual interest. Subject to the agreement for further detailing, which could be conditioned in the event of this appeal being allowed and planning permission granted, the new shop front could make a positive contribution to the appearance of the street scene and the conservation area.
9. The proposed additional storeys would be constructed of brick to match the existing and adjacent buildings. The overall height of the ridge of the existing building would be increased to above the adjacent established terraces. However, although the development would be significantly higher than adjoining buildings, the six storey residential building opposite on Brixton Road creates a context for buildings of this scale in the locality. Furthermore, the variation in the height of buildings along the terrace means that the proposed height difference would be acceptable.
10. The glazed curtain walling of the fourth floor of the development would be set back from the frontage of the property and would also be partly screened by brick work. Therefore the roof top feature would not be unduly prominent from Brixton Road, although it would be more evident from the open amenity land

on the opposite side of the road. Indeed, the modern residential building opposite incorporates extensive glazing on its brick facades and does not seem incongruous within the street scene. Overall, the traditional design of the brick elevation with painted timber windows would reflect the overall character and appearance of the area and I conclude that the development would enhance the Brixton Road street scene.

11. The Council's Conservation Officer has expressed some concern regarding the appearance of the glazed curtain walling to be used on the fourth floor, particularly due to the proposed bathroom on the front elevation. However, I do not consider that the use of fritted or other obscure glazing on this part of the roof would harm the overall integrity of this part of the proposal. Therefore, in the event of this appeal being allowed, a suitably worded condition could satisfactorily deal with this concern.
12. The proposal would project further from the rear than the adjacent buildings. Although the degree of projection would decrease progressively on each upper floor, the extension would project significantly further than the corresponding floor levels of existing adjacent development. Therefore, the extensions would not be subordinate, but rather dominant and incongruous large additions. As a consequence of its scale, although there is some tree screening, it would be visible from Slade Gardens to the rear and the harm associated with the incongruous nature would be clearly apparent from the public realm.
13. The Framework is clear that planning decisions should not impose architectural styles or stifle innovation in terms of design, originality or initiative. However, it is proper for decisions to be made in the interests of promoting and reinforcing local distinctiveness and new buildings should integrate with the historic environment. I recognise that the appellant has amended the design on the basis of the previous inspector's comments and that the latest scheme is an attempt to provide a design more in keeping with the more traditional neighbouring buildings in the row, including the arrangements of windows and design details such as soldier courses above the windows. I also recognise that the stepped down profile of the rear elevation is intended to minimise the visual impact of the proposal from Slade Gardens and is a design response to the stepped profile of other properties in the vicinity. However, these amendments and design features do not overcome the harm I have found. Overall, notwithstanding the enhancement to the Brixton Road street scene, as a consequence of the negative effect of the dominant and incongruous rear extensions I find that the proposal would be harmful to the character and appearance of the Conservation Area. Given the scale of the proposal within the context of the conservation area as a whole, I consider that it would cause less than substantial harm to its character and appearance. In accordance with paragraph 134 of the Framework, I must weigh the harm against the public benefits of the proposal.
14. The appellant has not demonstrated specific benefits that may arise from the development. Although there may be some small economic and social benefits associated with construction activity and the provision of additional dwellings, these do not, in my judgment, outweigh the harm that I have found.
15. I therefore conclude that the proposal would fail to preserve or enhance the character or appearance of the Brixton Road and Angel Town Conservation Area. The development would not accord with the Framework and Policies Q5,

Q7, Q11 and Q22 of the Lambeth Local Plan September 2015 (the LP), which collectively seek to achieve good quality design and the conservation and preservation of the historic environment, ensure that local distinctiveness is sustained and reinforced, and that where proposals deviate from locally distinctive development patterns the proposed development would deliver design excellence and make a positive contribution to its local and historic context. It would also fail to meet the local character and architectural requirements of Policies 7.4 and 7.6 of the London Plan March 2016.

Living conditions of the occupants of adjacent residential properties

16. Although the development would not extend the footprint of the building, the additional floors to accommodate the residential units would extend beyond the established rear building line of neighbouring properties.
17. The findings of the up to date sunlight and daylight report show that that the development would have relatively minor effects on surrounding properties, including adjoining first and second floor level residential units at 236 Brixton Road and 6 and 7 Lorn Court (228 Brixton Road) with reference to daylight and sunlight. The analysis in the report follows the methodology used in relation to the Building Research Establishment Report: Site Layout and Planning for Daylight and Sunlight – A Guide to Good Practice (1991). The assessment accurately plots the location of the nearest windows in relation to the proposal and I have no reasons to dispute its findings. Therefore, I conclude that the proposal would not have an unacceptable impact on levels of daylight and sunlight to adjoining properties.
18. Nonetheless, given the depth of projection of the development in relation to the rear elevation of the outrigger of the neighbouring properties in Lorn Court and the proximity to rear habitable room main windows in No 236 I am concerned that the overall scale, height, bulk and massing of the development in this location would be overbearing and dominant, resulting in poor outlook and an unacceptable undue sense of enclosure to the occupants of adjoining residential properties.
19. Consequently, on this issue I conclude that the development would have an unacceptable harmful effect on the living conditions of the occupants of adjacent residential properties with reference to outlook and sense of enclosure. Therefore, it is contrary to the amenity requirements of Policy Q2 of the LP and Policy 3.5 of the London Plan, which seek to ensure that adequate outlooks are provided, avoiding any undue sense of enclosure and that housing developments should be of the highest quality in relation to their context.

Living conditions of future occupants

20. The Framework encourages the provision of good standard of amenity for the occupants of buildings and high quality homes. LP Policy H5 provides further details regarding how this should be achieved in Lambeth. It states that, among other things, residential development is expected to be dual-aspect accommodation unless exceptional circumstances are demonstrated. Unit 2 of the proposed development would be a single aspect property at the front of the building facing Brixton Road.
21. Although it may well be the case that the layout is a response to the position of the existing stairs to the first floor, which would be retained by the proposal,

and the need to retain access to the nursery, I do not consider that this constitutes exceptional circumstances as required by Policy H5. However, the failure to provide a dual aspect residential unit would not alone necessarily lead to unacceptable living conditions. In my view that would depend on other aspects of the proposed design such as the provision of outdoor amenity space and the position and size of windows in relation to the rooms they serve. In this case the local planning authority has also identified three specific concerns relating to the dual-aspect flat; namely outlook, overheating and noise from Brixton Road.

22. The large windows and terrace doors on the front elevation of Unit 2 would ensure occupants have a wide and extensive outlook over Brixton Road and the surrounding area from the living / dining / kitchen area and the bedroom. Consequently, I do not find that the outlook from the unit would be unsatisfactory. Furthermore, Unit 2 would have good access to private amenity space in the form of an external terrace which exceeds the standard of the London Plan Housing SPG 2016 (Housing SPG).
23. However, as identified by the Council, Brixton Road is a very busy road and there is a high level of noise associated with traffic movements and commercial activity in the immediate vicinity of the site. Indeed, at my site visit I observed the high levels of noise from outside and inside the building. The Council has identified that the noise levels are within the second highest band of 70.0 – 74.9 dB (A), as identified by the Department for Environment, Food and Rural Affairs in accordance with Directive 2002/49/EC. I have no technical evidence to support these conclusions. Nonetheless, in more general terms and from my own observations on site, as a consequence of its single-aspect layout facing directly onto Brixton Road Unit 2 would be susceptible to high noise levels. Given its relationship to Brixton Road, the external terrace would be particularly exposed to noise. Because of this, and in the absence of a detailed noise assessment and evidence of attenuation I find that the noise levels in Unit 2 would be unsatisfactory, to the detriment of the living conditions of future occupants.
24. Furthermore, the single aspect layout of Unit 2 is less likely to be ventilated naturally by natural cross ventilation and therefore would have less capacity to deal with potential overheating. As set out in Standard 29 of the Housing SPG, such single aspect dwellings in these circumstances should be avoided. I have no evidence that the proposal would mitigate the potential for overheating without the need for mechanical cooling. Consequently, the single aspect unit would be contrary to the provisions of the Housing SPG.
25. On this issue I conclude that the development would not provide satisfactory living conditions for future occupants of the proposed single-aspect unit with particular reference to overheating and noise. Therefore it would be contrary to the design and amenity requirements of Policies Q1, Q2 and H5 of the LP, Policy 3.5 of the London Plan and the London Plan Housing Supplementary Planning Guidance March 2016. Overall, these policies seek to secure new development compliant with best practice, reduce the adverse effects of noise, provide outdoor amenity space free from excessive noise and accord with the principles of good design with particular reference to ventilation and overheating, among other things.

26. In dealing with a previous appeal on this site for a similar scheme the erection of extensions to create second, third and fourth floor levels; the continued use of the ground floor as a day nursery; the use of the upper floors as seven two-bedroom flats with associated refuse and cycle stores at ground floor level; the installation of a new shopfront and associated external alterations the Inspector concluded that, due to the combined effect of the single-aspect layout and lack of outdoor amenity space for some of the flats, the proposal would fail to provide the standard of accommodation expected by development plan policy. My conclusion regarding the living conditions of the occupants of the proposed single-unit unit in relation to overheating and noise are not inconsistent with my colleague Inspector's findings.

Employment Land

27. The LP was adopted in September 2015, having been found to be consistent with the Framework which, among other objectives, seeks to boost the supply of housing and avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose.
28. Over a period of time the planning history of the site, including the delegated report associated with planning reference 08/02826/FUL, points to uncertainty in identifying the precise lawful use of the first floor of the site for office B1(a) purposes. Although there is dispute between parties regarding the precise B1(a) lawful use of the site as a whole there is no disagreement that, although most recent previous use of the first floor has been as a place of worship (D1), the lawful use of this floor falls within an employment-generating B1 or B2 use.
29. Policy ED2 of the LP aims to maintain a stock of sites and premises in business use across the borough and states that the loss of floorspace in business, industrial or storage use will not be supported unless clear and robust evidence is submitted which shows there is no demand for the floorspace. Such evidence should include marketing of the existing premises for business use or other suitable B class use and for the redevelopment of the site for such uses.
30. In the absence of any clear marketing evidence relating to this building as required by Policy ED2 I have insufficient evidence that there is no demand for the floorspace or that there is no reasonable prospect of an alternative business use being found. Therefore on this matter I conclude that the development would result in the unacceptable loss of employment land to the detriment of the Lambeth and wider London economy and the range of local business and job opportunities, contrary to Policy ED2 of the LP.
31. In dismissing the previous appeal on the site the Inspector attached significant weight to the fall back position that the first floor of the unit would be likely to be converted to residential use if that appeal was dismissed and consequently the proposal would only cause limited harm to the objectives of Policy ED2 of the LP regarding the local economy and job opportunities. While the previous decision is an important material consideration, I must have regard to all of the evidence before me on the matter.
32. Under reference 15/03307/P30 the Council granted prior approval for a change of use of the first floor from office (Use Class B1(a)) to a dwelling house (Use Class C3). However, the decision notice is quite clear that it does not constitute confirmation that the proposed development complies with any other

requirements and/or conditions of Class O, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Specifically, it states that the notice does not constitute a Lawful Development Certificate and that an application for such should be submitted if the applicant wants confirmation that the proposed development would be lawful.

33. It is not clear why the Council chose to grant prior approval in circumstances where it was not convinced that the other requirements of Class O were met. Nevertheless, given the wording of the document I am unable to regard it as any indication, on its own, that the requirements of Class O are met.
34. The appellant has submitted plans for Building Regulations approval relating to the first floor and at my site visit I observed that the accommodation was in the process of being cleared, including the removal of ceiling tiles, radiators and carpets. However, these would not constitute evidence of the lawful implementation of the previously approved Prior Approval. Furthermore, although the Valuation Office Agency data indicates that the property has been rated as offices, this is inconclusive regarding the continued lawful use of the first floor for B1(a) office purposes.
35. Overall, on the basis of the evidence before me, I am not satisfied that it has been demonstrated that the first floor of the building could be converted to residential use without the benefit of planning permission. Consequently, I give little weight to the fall back argument that in the event of this appeal being dismissed the first floor would be converted to residential use in any case.
36. I acknowledge that the previous Inspector did attach significant weight to the fallback position that the first floor of the building would be converted to residential use if the previous appeal had been dismissed. However, that decision was made on the basis of information before him at that particular time. The information now before me includes the prior approval document issued by the Council which, for reasons I have already given, is not conclusive.

Overall conclusion

37. By virtue of the conflict with the LP, the Framework and other relevant guidance I have referred to above in relation to the main issues, the proposal would not accord with the development plan. This means that, in line with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Paragraph 11 of the Framework planning permission should not be granted unless other material considerations indicate otherwise.
38. The proposal would be materially harmful to the character and appearance of the rear of the terrace of which it is part and consequently to the Brixton and Angel Conservation Area. Also, it would cause some harm to the local economy and job opportunities, having particular regard to the availability of employment land; fail to provide satisfactory living conditions for future occupants of the proposed single-aspect unit with particular reference to overheating and noise; and have a harmful effect on the living conditions of the occupants of adjacent residential properties with particular reference to outlook and sense of enclosure.

39. The proposal would deliver some benefits arising from the creation of seven new residential properties. However, given the relatively limited overall scale of the proposal and my conclusions in relation to the main issues I attach only moderate weight to these benefits.
40. Overall, the benefits of the proposal would not outweigh the harm that I have identified and therefore, material considerations do not indicate that planning permission should be granted for the development which does not accord with the development plan.

Conclusion

41. For the above reasons and taking account of other matters raised I conclude that the appeal should be dismissed.

Alastair Phillips

INSPECTOR