
Appeal Decision

Site visit made on 17 January, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 26th April, 2017

Appeal Ref: APP/N5660/W/16/3160160

141 Lower Marsh, Lambeth, London SE1 7AE

- 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 Kiran Jatania of Landmark Property (Waterloo) Ltd. against the decision of the Council of the London Borough of Lambeth.
 - The application Ref: 16/1800/FUL dated 18 March, 2016 was refused by notice dated 11 May, 2016.
 - The development proposed is erection of a roof extension (additional floor) to provide for the creation of 1 x 1-bed residential flat (Class C3) together with the erection of a lift shaft to the rear serving all floors.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a roof extension (additional floor) to provide for the creation of 1 x 1-bed residential flat (Class C3) together with the erection of a lift shaft to the rear serving all floors at 141 Lower Marsh in accordance with the terms of the application, Ref: 16/1800/FUL, dated 18 March, 2016 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 095.001A; 095.002A; 095.003A; 095.004A; 095.005A; 095.006A; 095.007A; 095.008A; 095.009A; 095.010A; 095.011A; 095.020A; 095.021B; 095.022A; 095.023A; 095.024A; 095.025A; 095.026A; 095.027A; 095.028A; 095.029A.
 - 3) No development shall commence until details or samples of the materials to be used in the construction of the external surfaces of the extension 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 or samples.

Procedural Matters

2. The description of development has changed from that given on the original application form, with the agreement of the parties, and the application was determined on that basis. I have therefore determined the appeal on the basis of the amended decision.
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3. Plainly, the appeal scheme is dependent on the extant permission for a fifth floor being implemented. It is conceivable that, should that permission expire, it would not be possible to implement the appeal scheme unless and until a further permission for the fifth floor is granted. However, I have no reason to suppose that the existing permission will be allowed to lapse. Indeed, the appeal proposal indicates a continued desire to add to the building. In any event, neither party has indicated that the possibility of such a situation is a reason to withhold planning permission, and I do not consider it to be either.
4. A signed and completed S106 Unilateral Undertaking (UU) has been submitted by the appellant to secure a car free development. The Council were given the opportunity to respond to this. I consider this undertaking below.
5. The appellant has submitted a revised drawing in relation to the provision of cycle parking, which shows a minor change to the internal layout of the ground floor and no changes to the exterior of the building. I have considered whether it would be fair to take this plan into account, and conclude that it does not create any material alteration to the scheme which would mean that to grant the application would deprive those who should have been consulted on the changed development the opportunity of such consultation. Accordingly I have taken it into account.

Main Issues

6. The main issues in this case are:
 - the effect on the character and appearance of the Lower Marsh Conservation Area;
 - the effect on the living conditions of future occupiers of the proposed dwellings in respect of living space;
 - whether the proposal makes adequate provision for cycle parking;
 - the effect on car parking provision in the area;
 - whether adequate provision has been made in respect of affordable housing.

Reasons

The Conservation Area

7. No 141 Lower Marsh sits within the Lower Marsh Conservation Area, an urban retail and commercial area typified by the modest nineteenth century terraces sheltering in the lee of the raised sheds and tracks of Waterloo Station. Lower Marsh has a strong character of yellow stock brick terraces of three storeys, occasionally punctuated by taller landmark buildings or later infill buildings.
8. The appeal building sits in a small group of unusually high, twentieth century buildings at the western end of Lower Marsh, running east from the corner with Westminster Bridge Road. It is a utilitarian building of four storeys, in red brick. It has a café at the ground floor and offices above. It is of limited interest in its own right, and is part of a pocket of atypical buildings in the conservation area.
9. No. 141 benefits from planning permission granted in 2015 (ref 15/00127/FUL) for erection of a roof extension to create a self-contained flat. The appeal proposal is to add an additional roof extension on top of the permitted

- additional storey to create a further, one bedroom flat, and to provide a lift to the rear of the building serving all storeys except the basement.
10. The buildings to either side are taller than No 141, and it is not as a result currently visible in long views west along Lower Marsh. It can be seen in short views from the corner with Westminster Bridge Road and as the corner is approached.
 11. The previously approved scheme would bring the parapet of No 141 to an equivalent height to that of The Walrus public house to its west, and slightly higher than that of No 140 to its east. The roof extension created by the appeal proposal would be an additional element set back from the parapet to the front by around 1.5 metres. It would as a result be only partially visible from Lower Marsh in the shorter views of the appeal building. While it would be seen in long views west along Lower Marsh, it would appear as a very minor additional element visible over the roof of No 140, and set against a backdrop of much higher buildings beyond the railway, and of the substantial brick service structure and timber clad telecoms mast rising above roof level on the Walrus. Direct views of the roof extension would only be possible from the upper floors of the facing building.
 12. I consider therefore that the additional storey created by the appeal proposal would cause only a marginal increase in the perceived height of the host building, and would be visible only from certain limited views within the conservation area. As it would sit in the context of an unusually tall group of buildings within the conservation area and would not exceed the overall height of the group, it would not therefore appear as an over-dominant or non-contextual addition to the appeal building, the group in which it sits or the conservation area.
 13. The design and materials of the roof extension and lift shaft would complement those of the host building. While the building is not typical of the conservation area as a whole, the use of contextual design and traditional brick facing would help to ensure that the appeal structure did not create a conspicuously atypical element in that context.
 14. The Council has also pointed out the characteristic and picturesque roof scape of the Lower Marsh Conservation Area which makes a positive contribution to its character and appearance. Nevertheless, the Conservation Area is mixed in character, with views of traditional chimneys, butterfly roofs and mansards interspersed with more modern and less visually interesting interventions. The roofs of the appeal building and its neighbours sit at the margins of the wider roof scape of the conservation area, and the proposed roof extension would be seen in a limited number of views, largely from the service roads for Waterloo Station or glimpsed in transit from a moving train. It would consequently not have a harmful effect on the character or appearance of the conservation area as a whole.
 15. I conclude therefore that the proposed roof extension would not be out of keeping with or overly dominant in respect of the host building and, although visible in views into, out of and within the conservation area, would not form a conspicuous or particularly harmful element of these views. The proposal would not therefore conflict with Policy Q11 of the Lambeth Local Plan 2015 (the LP) which requires development proposals which positively responds to the original architecture of the host building and which are subordinate to the host

building. I consider that part (c) of policy Q11, quoted in the Council's decision, which refers to closet extensions on early to mid-19th century buildings, does not apply to the proposal. The appeal proposal would not conflict with Policy Q22 of the LP, which requires that development should respect and reinforce established positive characteristics of the conservation area and protect its setting, including views in and out of the area.

16. The proposal would therefore preserve the character and appearance of the Lower Marsh Conservation Area, and would not conflict with the Framework in this respect

The effect on the living conditions of future occupiers of the proposed dwellings with respect to living space

17. The sixth floor flat to be created by the appeal proposal would have a floor to ceiling height of 2.3m, which meets the requirements of the nationally described space standards. While it does not meet the 2.5 m floor to ceiling height for at least 75% of the gross internal area strongly recommended in the London Plan Housing Supplementary Planning Guidance, that guidance must now be seen in the context of the Government's Planning Practice Guidance (PPG). This is clear that, where a local planning authority wishes to require an internal space standard, they should only do so by reference in their Local Plan to the nationally described space standard. In the light of this important material consideration, I attach greater weight to the national standards and find that the ceiling height is satisfactory. I conclude therefore that the proposal would not cause harm in this respect to the living conditions of future occupiers of the accommodation.
18. It is not disputed between the parties that in other respects the proposed flat meets internal spaces standards, and as Policy H5 of the LP does not refer to internal floor to ceiling heights, I conclude that the appeal proposal would not conflict with that policy.

Whether the proposal makes adequate provision for cycle parking

19. The cycle parking shown on the drawings considered as part of the original application would be vertical, wall-mounted and located in the basement and not therefore readily accessible. The appellant has indicated a willingness to provide spaces on the ground floor in horizontal stands, to be created through minor alterations to the layout on that floor, and amended drawing ref. 095. 021 B illustrates how this could be achieved.
20. The revised arrangements shown appear to me to be a satisfactory approach to the provision of cycle parking which meet the concerns of the Council in refusing the application. The Council has not provided any response to the plan which causes me to alter my conclusion on this point.
21. As it would be therefore possible to provide suitable accessible and secure cycle parking, I conclude that the appeal proposal would not conflict with Policy H6 of the LP, which requires adequate provision for cycle parking. As there is no external space capable of accommodating secure parking, the proposal would not conflict with Policy Q13 of the LP, which supports storage within flats if it is proved that there is no viability alternative, accessibility is convenient, and it does not result in cycles being stored externally such as on a balcony or roof.

The effect on car parking provision in the area

22. The appeal building is situated in an area of extremely good public transport provision, with a Public Transport Accessibility Level (PTAL) rating of 6a, and where levels of pressure for on-street parking are high. It is also located within the Waterloo "W" Controlled Parking Zone (CPZ). No off-street parking is provided by the proposal. Given the presence of the CPZ, residential permits would be capable of being controlled, and a permit free development could be secured through use of a planning obligation; however none was forthcoming at the time of determination of the application.
23. A completed and correctly executed Unilateral Undertaking (UU) has been submitted by the appellant, dated 19th January, 2017 and signed by parties with an interest in the land and witnessed. By ensuring that no person would be permitted to occupy the residential units unless and until they had waived all rights and entitlement to a permit issued by the Council to park in a resident's parking bay, and ensuring that they had been notified that they would not be able to enter into a contract to park within any Council car park, it would be capable of creating a car free development.
24. I am satisfied therefore that this would be necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations, and paragraph 204 of the Framework, which require planning obligations to meet these three tests. It would also be enforceable. I have therefore attached weight to it in reaching my decision.
25. The Council has had an opportunity to view the UU, and have made no comment to suggest that they maintain an objection on these grounds.
26. As the development is capable of being made car free, it would not therefore increase parking stress within the area. It would not conflict with Policy T7 of the LP which requires car-free development in areas where alternative modes of transport are available and where public transport accessibility is high.

Whether adequate provision has been made in respect of affordable housing

27. Policy H2 of the LP says that on sites providing fewer than 10 units, a financial contribution towards the delivery of off-site affordable housing will be sought, in line with the Council's preferred methodology. However, no such contribution has been provided or offered
28. So far as the development plan is concerned therefore, a contribution should be made towards meeting affordable housing needs in the borough. Section 38(6) of the Planning and Compulsory Purchase Act requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
29. However, following a Court of Appeal judgement¹ on 11 May, 2016 updates to the Planning Practice Guidance (PPG) in relation to planning obligations have set out a change in policy in relation to affordable housing and tariff-style contributions from smaller developments. It advises that contributions should not be sought from developments of 10 units or less, and which have a

¹ Secretary of State for Communities and Local Government vs West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

maximum combined gross floor space of no more than 1,000 square meters. This clearly establishes that Government does not wish contributions to be sought in cases such as this.

30. This is therefore a recent expression of national policy which post-dates the Local Plan policies, and I consider that it must be afforded greater weight in consideration of this issue. No specific local considerations have been brought to my attention to show that the PPG should be set aside in this instance, or to demonstrate that its objective of helping to bring forward new housing would not be undermined in doing so.
31. On the basis of matters drawn to my attention in respect of this particular case I conclude that although the proposal conflicts with Policy H2 of the LP, it falls below the thresholds set out in the PPG which indicate where affordable housing and tariff-style obligations should be sought. As, therefore, a more up to date expression of national policy exists which advises that no such contribution is necessary; the lack of a contribution to affordable housing does not count against the proposal.

Conditions

32. The council has suggested no conditions. Nevertheless, I have considered whether any conditions are necessary to make the development acceptable in planning terms.
33. To provide certainty, a condition is added requiring implementation in accordance with the approved plans. Details of materials to be used in the extension are required in the interests of protecting the character and appearance of the area.

Conclusion

34. For the reasons given above therefore, and taking into account matters raised, I conclude that the appeal should be allowed.

S J Buckingham

INSPECTOR