
Appeal Decision

Site visit made on 28 March 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 4 May 2017

Appeal Ref: APP/A5840/W/16/3165687

Vanguard Court, Peckham Road, London, Southwark SE5 8QT

- 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 Vanguard Metropolitan Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 15/AP/3898, dated 22 September 2015, was refused by notice dated 18 July 2016.
 - The development proposed is the demolition of a part of the existing industrial estate and redevelopment of this land to form five workshops (Use Class B1), six, two bedroom flats and one, one bedroom flat with associated car and cycle parking and landscaping works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Vanguard Metropolitan Ltd against the Council of the London Borough of Southwark. This application is the subject of a separate Decision.

Preliminary matters

3. As part of the appeal the appellant has submitted amended plans¹ showing a redistribution of the floor space and elevational changes to match. These plans are intended to replace the earlier revisions referred to in the Council's decision notice. The scheme, nevertheless, is essentially that which was considered by the Council and on which interested people's views were sought. The Council has also had opportunity to comment on the proposals. I am therefore satisfied that in applying the 'Wheatcroft Principles', I am able to accept the amended plans and determine the appeal on the basis of the same.

Main Issues

4. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to noise and disturbance and the provision of internal living space; and
 - the effect of the proposed development on existing uses.

¹ Drawing numbers: 347-201 Rev B; 347-210 Rev B; 347-211 Rev B; and 347-212 Rev B.

Reasons

Living conditions

5. The appeal site is located within Vangaurd Court, which comprises a collection of commercial buildings set out in a mews type layout. The appellant says that all of the existing buildings are as in Class B1 (business) use. The Council is of the opinion that a significant number of the existing uses are either Class B2 (general industrial) or Sui Generis.
6. The appellant has provided an occupation list of the units. This includes uses such as theatrical scenery and props maker and furniture maker and restorer, which would likely create noise and dust. As explained by the Council, these existing commercial workshops are long-established and unencumbered by any planning restrictions on when or how they operate. Business could therefore in principle operate over 24 hours and over the weekend. The Council has also observed work, including noisy and dust generating activities, being undertaken outside the units within the central roadway. Whilst I have no evidence of this, because of the unrestricted nature of the site and its location away from any through road, in my view there is significant potential for this to occur. Moreover, I am not aware of any specific sound attenuation within any of the units (other than the recording studio) or any controlling mechanism to ensure large doors are shut to prevent noise escaping. Such factors point strongly to uses which could not be carried out in a residential area of such proximity as proposed, without detriment to amenity. Accordingly, there is a significant likelihood that such uses fall within Class B2, rather than Class B1.
7. Moreover, the appellant has indicated that the unit directly opposite the appeal site is used for light car repairs under Class B1. Notwithstanding any ambiguity as to what constitutes light car repairs, I have no details of any mechanism which would control it as such. Accordingly, this should be considered within the conventional context of a Class B2 use. I was also able to observe a stone mason within one of the units proposed to be demolished, which in my view also falls within Use Class B2. Unit 20 is also close to the appeal site but is not within the ownership and therefore control of the appellant. It is stated that this building is currently being used as a fabric design studio but the retiring owner is likely to let it for office use. However, I have no details as to whether or not the current business includes any Class B2 manufacturing aspect, nor do I have any secure assurances that the future use would be Class B1 offices rather than any Class B2 use.
8. Accordingly, the proposal should properly be considered in the context of a mixed commercial use of Classes B1 and B2. Given the nature of the latter, as well as associated movements of cars, vans and lorries in such close proximity to the proposed residential units, it is likely that future occupants would be subject to significant and unacceptable noise disturbance.
9. I have considered carefully the noise impact assessment (NIA) submitted by the appellant which indicates that internal noise levels within the proposed development are likely to meet guideline noise criteria through the use of appropriately specified glazing and ventilation systems. However, the Council has highlighted concerns regarding a number of assumptions made within the NIA. In particular, that the existing uses are Class B1 and that work would only be undertaken inside the workshops and with all doors and windows closed. For the reasons I have explained, these are legitimate concerns which

significantly undermine the above referenced conclusions and limit the weight I am able to give to the same.

10. I appreciate that the appellant owns and manages the commercial space at Vanguard Court and may be able to control activities on the roadway through lease agreements. However, the planning permission would run with the land and I am mindful that the owner of the business park might change along with any lease agreements and more intensive B2 uses may also occur. Consequently there are no secure planning mechanisms before me to prevent uses spilling out onto the roadway. I'm not convinced that a condition could reasonably be imposed on existing business operations and, in any case, Unit 20 does not fall within the control of the appellant. This therefore undermines the assertion that future occupiers would know what environment they would be moving into, as this would not necessarily be a fixed position as uses could change and intensify, along with the associated effects.
11. I appreciate that there are existing residential uses along Shenley Road and at the Piano Factory and that there may not have been any complaints from the occupants of these properties regarding existing activities. However, in contrast to those existing properties, the appeal proposal would be located within the heart of Vanguard Court and face onto the central roadway and the potentially harmful business activities, rather than being physically separated from them. Moreover, the proposed development would project closer to the uses opposite than the existing building.
12. Clearly the Mayor's garage conversion to residential use does not benefit from such a physical separation, being positioned immediately adjacent to the appeal site. Occupants of that building could therefore experience harm from noise and disturbance but they would at least be shielded from the main operating aspect of the business activities which face onto the central roadway. These existing uses and permissions therefore materially differ to that currently before me and as such do not serve to justify the appeal proposal. In any case, I have determined the appeal on its own merits.
13. I therefore conclude that the proximity of noise generating activities to the residential units is such that the proposed development would not provide acceptable living conditions for future occupants. This would be contrary to Policy 7.5 of the London Plan; Strategic Policy 13 of the Core Strategy (CS) and Saved Policies 3.2 and 4.2 of the Southwark Plan (SP), which state, amongst other matters, that planning permission for development will not be granted where it would cause loss of amenity, including disturbance from noise.
14. The Council's reason for refusal also refers to conflict with Section 12 of the National Planning Policy Framework (the Framework). However, this relates to conserving and enhancing the historic environment and as such has little relevance to this main issue.
15. On the basis of the details shown on the amended plans, the parties have now agreed on the floor space figures provided by the appellant. These demonstrate that all of the flats would meet minimum space standards of Policy 3.5 of the London Plan, which states that housing development should be of the highest quality internally. I recognise that the bathroom of flat 1 would be accessed via its kitchen rather than a circulation area, contrary to the Council's Residential Design Standard Supplementary Planning Document (SPD), however, this would not in itself justify withholding planning permission.

16. I am satisfied therefore that the proposal would provide acceptable living conditions for future occupants in terms of the provision of internal living space and in this regard would not result in conflict with Section 6 of the Framework, Policy 3.5 of the London Plan; CS Strategic Policy 7; SP Policy 4.2 or the Council's Residential Design Standards SPD 2011 and 2015 Technical Update. These seek, amongst other matters, to ensure high quality housing provision with enough space for the needs of occupants.

Existing uses

17. Given the proximity of the noise generating activities to the proposed residential units, I also share the Council's concerns that the proposal would result in noise nuisance complaints being made by future occupants against the legitimate activities of those existing businesses in Vanguard Court. This in turn could lead to the imposition of restrictions that would not otherwise be required, thereby placing unreasonable costs and burdens on those businesses.
18. Indeed, this is reflected in the objection from an existing business at Vanguard Court which states that the introduction of a residential use so close to their premises would adversely affect the business environment and their business operation in particular.
19. Accordingly the proposed development would risk compromising the legitimate activities of existing businesses, contrary to Policy 7.15 of the London Plan and Saved SP Policy 3.11. These seek, amongst other matters, that development proposals should mitigate and minimise the existing and potential adverse impacts of noise in the vicinity of new development without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens on existing businesses.
20. The Council's reason for refusal also refers to conflict with Section 11 of the Framework. However, this relates to conserving and enhancing the natural environment and as such has little relevance to this main issue.

Other matters

21. On the basis of the above, the proposal would not meet the social and environmental objectives of sustainable development. As such it would not benefit from a presumption in favour of the same, as anticipated by paragraph 14 of the Framework.
22. The appeal site is situated adjacent to the Sceaux Gardens Conservation Area. For such matters, paragraph 132 of the Framework makes clear that great weight should be given to the conservation of designated heritage assets, and to their setting. In this regard, I note that the Council's Committee report concludes that the proposals would preserve the setting of the Conservation Area and I find no reason to take a contrary position.

Conclusion

23. For the reasons explained, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR