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# Appeal Decision

Site visit made on 5 December 2017

**by John Dowsett MA DipURP DipUD MRTPI**

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

**Decision date: 12<sup>th</sup> January 2018**

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**Appeal Ref: APP/N5660/W/17/3179656**  
**112-113 Lower Marsh, 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 Danish Hanif of Drum Investments Limited against the decision of the Council of the London Borough of Lambeth.
  - The application Ref: 16/06226/FUL, dated 1 November 2016, was refused by notice dated 9 January 2017.
  - The development proposed is erection of a two-storey roof-top extension at rear of first floor level to provide 2 self-contained flats, including the repositioning of existing condensers, provision of cycle and bin stores, along with new entrance via Launcelot Street.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The description used by the Council on the decision notice more accurately sets out the development proposed and I note that it has been adopted by the appellant on the appeal form. I have, therefore, also used this for the purposes of the appeal.

## Main Issues

3. The main issues in this appeal are:
  - The effect of the proposed development on the character and appearance of the Lower Marsh Conservation Area;
  - The effect of the development on highway safety in the vicinity of the appeal site;
  - The effect of the proposed development on the living conditions of the occupiers of the neighbouring residential property at 113 Lower Marsh with particular regard to outlook, sunlight and daylight, and privacy;
  - Whether the proposed development makes suitable provision for storage of cycles and refuse bins;
  - Whether the proposed development would provide suitable living conditions for the future occupiers, with particular regard to internal space; and

- Whether the proposed development makes suitable provision for energy efficiency.

## Reasons

### *Character and appearance of the Conservation Area*

4. The Lower Marsh Conservation Area is primarily commercial in character with residential accommodation being confined almost exclusively to the upper levels of buildings. It is generally linear in form following the plot boundaries of the buildings on Lower Marsh, with slightly more depth at the south western end on Westminster Bridge Road, and at the north eastern end at the junction of Bayliss Road and Waterloo Road.
5. The buildings date mainly from the Nineteenth and Twentieth Centuries and on Lower Marsh range between two and five stories in height, with the exception of the single storey former library building, adjacent to the appeal building. On Westminster Bridge Road, the buildings are generally taller and more substantial blocks. The buildings are in a range of architectural styles and there are a number of modern insertions among the older buildings.
6. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. In addition, Paragraph 132 of the National Planning Policy Framework (the Framework) requires when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
7. The appeal building has been considerably extended previously, with the ground floor being extended to such a degree that almost the entire plot that the building occupies is developed. The appeal proposal would result in a two storey, flat roofed structure being erected on top of this extensive ground level development. I saw when I visited the site that a two storey extension has been previously added to the building above the ground floor flat roof, located to the rear of numbers 110-111 Lower Marsh.
8. The addition of a further two storey structure would add significantly to the proportion of this flat roof that is developed, and add a substantial degree of additional massing at the rear of the building. The proposed extension would read as an additional free standing structure projecting from the large ground floor extension and as such its relationship with the existing higher portions of the building and its neighbours, and the later, two storey, addition would be poor. It would appear as a large and discordant feature. This would be exacerbated by the proposed use of timber cladding for the upper floor of the extension. Whilst there are a range of materials present in the area, extensive timber cladding is neither common nor a traditional material in the area.
9. Whilst I accept that there would be only limited views of the proposed extension from street level in Lower Marsh and Launcelot Street, the rear of the appeal building is clearly visible from Station Approach Road. This road is elevated to provide vehicular access to Waterloo Station which sits at higher level than Lower Marsh and is, consequently, level with the appeal site. Although this road is outside of the conservation area boundary, it is

nonetheless part of the context within, and from which, the conservation area is experienced. The Lower Marsh Conservation Area: Conservation Area Statement 2007 (CAS) specifically recognises that rear elevations and rear yards, especially those seen from Waterloo Station, contribute to the character of the area. The CAS also underlines the importance of the roofscape of the conservation area, noting that particularly important views into and across the conservation area and of the complex roofscape of traditional roof forms and chimneys can be obtained from trains leaving Waterloo Station.

10. The additional massing at first and second floor level to the rear of the building would materially alter the appearance of the rear part of the building by introducing a large new feature, inconsistent with, and poorly related, to the existing built form and obscuring the building line formed by the taller, older, buildings fronting Lower Marsh. The CAS expects that new development within the conservation area should not dominate or compete with the host building in visual terms and identifies that that flat roofs are not a contributory feature of the area. As such, the proposal would be harmful to the character and appearance of the conservation area, particularly those features of significance identified in the CAS.
11. Whilst I note the appellant's suggestion that a precedent has been set by previous two storey extension at the rear of the building, this extension has a street frontage to Launcelot Street and the narrow floorplan reduces its visual presence. The appeal proposal would not have such a street frontage and consequently would not relate well to any of the existing built elements. I have also had regard to the appellant's suggestion that the proposed materials could be controlled by way of a condition. This may be the case, nevertheless, I do not consider that changing the proposed materials would overcome the fundamental inconsistency and poor relationship with the existing built form.
12. The proposed extension would, therefore, cause harm to the character and appearance of the conservation area. Taking into account the scale and location of the proposed development, this harm would be less than substantial. Paragraph 134 of the Framework sets out that where a development will lead to less than substantial harm to the significance of a heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
13. In terms of the public benefits of the scheme, the appellant suggests that the proposal represents the introduction of much needed family housing in a location that has good access to shops, facilities and employment opportunities. Neither party has submitted any evidence in respect of housing land supply or the need for housing units of the size proposed. Given that the proposal comprises one, two bedroom, and one, one bedroom, flat; I am not persuaded that the development represents family housing. Nevertheless, the Framework does seek to significantly increase the supply of housing, and the proposal would represent a modest increase in the overall housing stock and would be an efficient use of the site. This weighs moderately in favour of the proposal.
14. Although the proposal would result in the relocation of the existing rooftop plant and the removal of the current acoustic screen which are unsightly elements in the conservation area, the proposal would see these replaced with

- a larger, obtrusive, structure which would also cause harm to the character and appearance of the conservation area. I, therefore, give this point little weight.
15. No other public benefits of the scheme have been put forward. Whilst the resulting increase in the housing stock weighs moderately in favour of the proposal, in itself, this does not overcome the great weight that is required to be given to the conservation of the heritage asset.
  16. I conclude that the proposed development would cause harm to the character and appearance of the Lower March Conservation Area. It would be contrary to Policies Q5, Q6, Q7 and Q8 of the Lambeth Local Plan 2015 (the Local Plan) which expect that new development should be of a high standard of design that responds positively to local context and historic character, maintains local distinctiveness, and preserves or enhances the character and appearance of conservation areas.
  17. Local Plan Policy Q11 is also cited in the reason for refusal. This policy relates specifically to domestic extensions and although the proposed extension is for residential use, the appeal building taken as a whole is in a mixed use. Consequently, I do not consider that this policy is relevant to the proposal.

*Parking and highway safety*

18. Policy T6 of the Local Plan seeks to ensure that new development does not have an adverse effect on the highway network, including amongst others, highway safety and on-street parking. Criterion a) of Local Plan Policy T1 seeks to promote a sustainable pattern of development in the borough, minimising the need to travel and reducing dependence on the private car.
19. The appeal proposal does not include any off-street parking and the appellant states that the development is intended to be car-free. I saw when I visited the site that within the surrounding area, car parking is restricted either by no waiting restrictions on the carriageway or by a Restricted Parking Zone that operates between 08:30 and 18:30 Monday to Friday and 08:30 to 13:00 on Saturdays.
20. The area has a Public Transport Accessibility Level (PTAL) rating of 6b which indicates excellent access to public transport, and would mean that the residents of the proposed development would not necessarily be dependent on private cars for their day to day transport requirements. However, this of itself, would not prevent the future occupiers from owning or operating cars.
21. Within this context, if the development were not car free, increased demand for the limited number of available parking spaces would result in an increase in parking stress and consequent illegal or unsafe parking, which would be prejudicial to highway safety in the area.
22. I have no mechanism before me as part of the appeal submissions, either as a draft or completed legal agreement, which would ensure that the flats would not be occupied by people who hold a car parking permit.
23. I have considered whether this matter could be addressed by using a planning condition to secure the development as a car-free, as suggested by the appellant. However, the Planning Practice Guidance advises that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence will only be

appropriate in exceptional circumstances, such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Due to its small scale, I do not consider that the proposed development can be considered strategically important and, therefore, would not meet this test in order to be considered as an exceptional circumstance.

24. I find that the proposed development would cause harm to highway safety in the vicinity of the appeal site. It would be contrary to the relevant requirements of Policies T1 and T6 of the Local Plan.

*Living conditions of the occupiers of neighbouring residential property*

25. The proposed extension would be located approximately 7 metres from the windows of both habitable rooms of the rear first floor flat at number 113 Lower Marsh and would be approximately 5.4 metres high, with a window on the upper floor of the extension looking toward the rear elevation of number 113. Due to the height and proximity of the proposed extension it would, in my view, be perceived as a very dominant and oppressive feature in the outlook from the windows of this neighbouring flat. I accept that the existing acoustic screen between this flat and the rooftop plant is located closer to these windows than the proposed extension. However, its height is substantially lower. The Council calculate that, based on the test from the Building Research Establishment publication Site Layout Planning for Daylight and Sunlight, a 25 degree line, taken from the first floor windows of the existing rear unit, would not be infringed by the existing acoustic screen whereas a 25 degree line taken from those windows would be infringed by the second storey of the proposed addition. This is not challenged by the appellant. Whilst this test is used to determine whether more detailed daylighting studies are required, it is also a useful guide in determining other effects of proposed buildings. The obscuration of a greater proportion of the view from these windows would increase the perceived level of enclosure rather than improve the outlook.
26. Due to the relative positions of the proposed extension and the existing flats in number 113 Lower Marsh, the proposed development would not affect direct sunlight received by the existing occupiers. However, the additional height of the appeal proposal is likely to reduce the amount of daylight received by the windows in the first floor flat at 113 which, as they face north west, will receive lower levels of natural light. In the absence of any evidence to the contrary, I find that this would be harmful to the living conditions of the occupiers of the existing flat.
27. The upper floor window in the extension facing towards the flats in the rear of number 113, would be positioned approximately 12 metres from what is shown on the submitted drawings as a window to the principal habitable room of the second floor flat. It would also allow views from an elevated position into the principal room of the first floor flat. This relationship would result in a loss of privacy for the existing occupiers and also for the future occupiers of the proposed upper flat. I note that the appellant suggests that this upper window could be fitted with opaque glazing to prevent such overlooking. Whilst this may be the case, I am also mindful that the Council state that this would result in a north facing single aspect dwelling. Policy H5 of the Lambeth Local Plan expects new residential development to provide dual-aspect accommodation,

unless exceptional circumstances are demonstrated. The Mayor of London's Housing Supplementary Planning Guidance 2016 (the SPG), at Standard 29 states that north facing single aspect dwellings should be avoided where possible. An alteration to a single aspect dwelling in order to prevent mutual overlooking between existing and proposed dwellings would in my opinion amount to exceptional circumstances.

28. This notwithstanding, regardless of whether this window were fitted with opaque glazing to overcome the potential loss of privacy, this would not outweigh the other harm that I have identified.
29. I therefore conclude that the proposed development would cause harm to the living conditions of the occupiers of the neighbouring residential property at 113 Lower Marsh. It would conflict with the relevant requirements of Policy Q2 of the Local plan which seeks to ensure that new development does not have an unacceptable impact on levels of daylight and sunlight at adjoining properties or result in an undue sense of enclosure.

*Provision for storage of cycles and refuse bins*

30. It is not in dispute between the parties that the proposed cycle storage would be secure and covered, or that it would exceed the minimum provision for the number of units proposed. The Council's objection is based on the fact that the cycle storage provision is located at first floor level which would require the future occupants of the flats to carry cycles up a flight of stairs.
31. I have had regard to the appellant's point that this activity may well be carried out by many people on a daily basis in London and elsewhere, and that householders may prefer to have the cycle storage closer to the proposed flats for security reasons. There is nothing in either Policy 6.9 of the London Plan, or Policies T1 and T3 of the Local Plan that requires cycle storage to be at ground floor level. However, there is an expectation that cycle storage will be directly and conveniently accessed from outside the building and Local Plan Policy T3 and London Plan Policy 6.9 both seek to encourage cycle use.
32. Cycles can be awkward to carry and not all are lightweight. Having to negotiate a flight of stairs carrying a cycle at the beginning and end of each trip would not, to my mind, be either convenient, or conducive to encouraging cycle use. Consequently, I do not find the appellant's argument in respect of this a compelling one and the proposed development would not, therefore, comply with the relevant requirements of policy 6.9 of the London Plan and Policies T1 and T3 of the Local Plan.
33. Local Plan Policy Q12 expects that adequate refuse and recycling storage that meets certain criteria should be provided for all development. The appellant accepts that the proposed refuse storage arrangements shown on the submitted drawings does not meet the Council's required dimensions for refuse storage facilities, nor would the suggested alternative arrangement of utilising an internal space identified for cycle storage. In his appeal statement the appellant suggests that to achieve the objective of providing bin storage that prevents visual intrusion, does not cause a threat to public health, or obstruct the highway, one bin could be stored in each of the identified areas and further details of layout, security and ventilation could be required by condition.

34. Whilst this would provide screened bin storage that would not obstruct the highway, it is not clear from the submitted information how this suggested arrangement would be managed, if adequate ventilation could be achieved, or how it would impact on refuse and cycle storage facilities for the existing flats at the rear of the building. Additionally, this suggested arrangement would require pulling a bin through the communal entrance hall to the building and through the main entrance. In the light of the above, I am not satisfied that such arrangements can be addressed through a condition as there is no certainty that they could be satisfactorily resolved.
35. I therefore conclude that the proposed development does not make adequate provision for the storage of cycles and refuse bins. It would not comply with the relevant requirements of Policy 6.9 of the London Plan and Policies T1 and T3 of the Local plan which expect suitable storage for cycles to be provided in order to encourage cycle use, nor would it comply with the relevant requirements of Policy Q12 of the Local Plan which seeks to ensure that new development makes adequate provision for refuse and recycling storage.

*Living conditions of the future occupiers*

36. It is common ground that the gross internal area floor area of both proposed flats exceeds the minimum requirements set out in the London Plan 2016, the SPG and the Technical housing standards -nationally described space standard (the Standard). The Council's principal concern, as set out in the reason for refusal, is that neither flat provides built in storage that meets the requirements of the Standard. This requires 2 square metres of built in storage space for a 2 bedroom flat and 1.5 square metres for a one bedroom flat.
37. Both flats exceed the minimum required gross internal area by 2 square metres. From the submitted plans, I am satisfied that the layout of the proposed flats is such that they would provide adequate and practical space for the basic living requirements of the occupiers and that the requirement for built in storage could be accommodated without prejudicing this. This matter could be addressed by a suitably worded condition.
38. With the exception of the potential for mutual overlooking that has been discussed under the previous issue, the Council have not raised any other matters in respect of the quality of the accommodation. The under-provision of built in storage space, which could be addressed by a suitably worded condition, is not, of itself a reason to refuse planning permission.
39. I conclude that the proposed development would provide suitable living conditions for the future occupiers. Subject to a suitable planning condition it would not conflict with the relevant requirements of the Standard.

*Energy efficiency*

40. Policy EN4 of the Lambeth Local Plan requires all development to meet high standards of sustainable design and construction and London Plan policy 5.2 states that development proposals should make the fullest contribution to minimising carbon dioxide emissions. Further guidance is provided in the Mayor of London's Sustainable Design and Construction Supplementary Planning Guidance 2014.
41. Certain measures are set out in the Design and Access Statement which would address these points. Whilst these are not set out in great detail in the form of

a strategy for the site, there is sufficient detail to demonstrate what steps are proposed. In addition, matters such as energy efficiency and the reduction of emissions are the subject of control under the Building Regulations and I am satisfied that between the information that has been provided and the requirements of the Building Regulations that there is no inherent conflict with either London Plan Policy 5.2 or Local Plan Policy EN4.

42. I therefore conclude that the proposed development makes suitable provision for energy efficiency.

### **Conclusion**

43. I have found that the proposed development would cause harm to the character and appearance of the Lower Marsh Conservation Area, would cause harm to highway safety in the vicinity of the appeal site, would not make adequate provision for cycle and refuse storage, and would cause harm to the living conditions of the occupiers of the neighbouring residential property at 113 Lower Marsh. It would be contrary to Policies Q5, Q6, Q7, Q8, Q12, T1, T3 and T6 of the Local Plan and Policy 6.9 of the London Plan. These are, in my view, important matters such that the proposed development would be contrary to the provisions of the development plan as a whole.
44. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. Although I have found that the proposed development would provide suitable living conditions for the future occupants of the proposed flats, suitable provision has been made for energy efficiency, and that the proposed development would make a modest contribution to increasing the housing stock in the area, none of these matters, either singly or collectively, outweigh the other harm that has been identified. No other material considerations have been identified that would warrant making a decision other than in accordance with the policies in the development plan and, consequently, the appeal must fail.
45. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR