



Appeal Decision

Site visit made on 25 June 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th July 2019

Appeal Ref: APP/A5840/W/18/3219388

36-38 Penrose Street, London SE17 3DW

- 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 Rosemount Investments against the Council of the London Borough of Southwark.
 - The application Ref 17/AP/3934, is dated 11 October 2017.
 - The development proposed is change of use from vacant b1 floorspace to 3no. residential units (2no. two bed and 1no. studio).
-

Decision

1. The appeal is dismissed and planning permission for change of use from vacant b1 floorspace to 3no. residential units (2no. two bed and 1no. studio) is refused.

Preliminary Matters

2. I have taken the name of the appellant from the planning application form. An appeal can only be made by the applicant for the planning application. I acknowledge that it appears that the site was not owned by the Rosemount Investments at that time. As such, it would appear that Certificate A of the planning application form which, states that the applicant was the owner of the site, was submitted incorrectly. However, the agent acting for Rosemount Investments on the planning application also acts as agent on the appeal and acts for the current owner of the site Penrose Street Studios Limited. The evidence before me also indicates that these companies are linked by the same registered address for their offices and the same person as a director. Consequently, I do not consider that any party would be prejudiced by my determination of the appeal on this basis.
3. An amended plan indicating that the number of flats to be formed would be reduced to 2 by amalgamating the ground floor units has been submitted by the appellant. This has been submitted in order to overcome issues raised by the Council whilst it considered the planning application. However, that plan was not submitted formally to the Council and the appeal process should not be used to evolve a scheme. The alternative scheme involves revisions that are not of a minor nature and as such I cannot guarantee that a party would not be prejudiced by my consideration of its content. Therefore, I have not taken it into account in the determination of this appeal.
4. Since the appeal has been lodged, the National Planning Policy Framework (the Framework) has been updated on 19 February 2019. On that date, the

Government also published Housing Delivery Test (HDT) results for local authorities in England and the Office for National Statistics published the updated annual affordability ratios on the 28 March 2019. The parties have not suggested that the Council does not have a 5-year housing land supply and the relevant sections of the Framework to this appeal have not materially altered. In the circumstances of this case it is not necessary to seek the views of the parties on these documents. I am required to consider the appeals on the basis of the current Framework.

Background and Main Issues

5. The Council's Statement of Case, which includes its Officer Report, indicates that it would have refused the planning application for one reason. Nevertheless, it also states that the living conditions of the future occupiers of the studio flat could be harmed due to the flat being single aspect. It goes on to state that due to a bedroom of the first floor flat being above the kitchen/lounge of the studio flat that this would cause harm to the living conditions of the future occupiers of the first floor flat due to noise and disturbance.
6. In light of the above the main issues are: -
 - The effect on the living conditions of future occupiers of the development, with regard to outlook, loss of sunlight and daylight, noise and disturbance;
 - Whether or not the proposal would make appropriate provision for affordable housing.

Reasons

7. The appeal site comprises an existing building and small courtyard areas to the front and rear of the building. The building is between a raised railway line that has masonry abutments/arches and a commercial use. The surrounding area appears to be predominantly residential in character.

Living conditions

8. The proposal would entail the creation of 3 additional residential units within the ground and first floor parts of the building that were to be used in connection with a Class B1 unit. Two of the residential units would be dual aspect and appear to reflect the layout of the existing flats. As such, the Council have not raised any concern in relation to the living conditions of the future occupiers of these units and I have no reason to disagree with it in this respect.
9. The proposed 'studio' flat on the ground floor would be single aspect with windows, to the bedroom and lounge/kitchen area, on the rear elevation of the building. The rear elevation faces approximately north-west and looks onto a small courtyard area. I observed that there are a number of shipping containers stacked on top of each other in close proximity to the rear boundary of the site.
10. The only outlook from the habitable rooms of the studio flat would be of the small courtyard area. The presence of the shipping containers in combination with the close proximity of the masonry abutments of the railway line would lead to an overbearing sense of enclosure which would be significantly harmful to the living conditions of the future occupiers of the studio flat.

11. Taking into account the depth of the lounge/kitchen area and the height of the structures adjoining the rear courtyard area the amount of daylight received in parts of this room would be appreciably restricted. Moreover, as the windows face north-west the room receives very little direct sunlight. No technical evidence has been submitted, but my assessment of the appeal site and the proposal lead me to conclude that it is likely that the restricted levels of daylight and sunlight to the studio flat would cause material harm to the living conditions of its future occupiers.
12. The lounge/kitchen area of the studio flat would be directly below a bedroom in the proposed first floor flat. In my experience, the noise generated by the movements in and the use of a lounge/kitchen space could result in disturbance to the future occupiers of the unit above due to the bedroom being above that space. Nevertheless, the first floor unit and the studio flat are part of the proposal and it would be possible to require a scheme of acoustic insulation by planning condition if I was minded to allow the appeal. As such, I consider that acoustic insulation could be provided to overcome the potential for excess noise in the particular circumstances of this case.
13. I have found that the development would have a significantly harmful effect on the living conditions of the future occupiers of the studio flat in respect of outlook, daylight and sunlight. Accordingly, the development would conflict with saved Policy 3.2 of the Southwark Plan (SP) which states that planning permission for development will not be granted where it would cause loss of amenity to future occupiers on the application site. It would also conflict with paragraph 127 of the Framework which, amongst other things, states that planning decisions should ensure that developments create places with a high standard of amenity for future users. SP Policy 3.2 is consistent with the Framework in this respect and therefore the conflict with it has full weight with regard to paragraph 213 of the Framework.

Affordable housing

14. Policies 3.3, 3.4, 3.5, 3.8, 3.9, 3.10 and 3.11 of the London Plan 2016 (LP) respectively seek increased housing supply, optimised housing potential, quality and design of housing, housing choice, mixed and balanced communities, and maximising affordable housing provision. LP Policy 3.12 states that the maximum reasonable amount of affordable housing should be sought from private residential schemes having regard to several criteria and LP Policy 3.13 states that small developments make an important contribution to housing provision in London and must continue to help meet London's need for affordable as well as market housing.
15. Strategic Policy 6 of the Southwark Core Strategy 2011 (CS) requires as much affordable housing as is reasonably possible and financially viable on developments of 10 or more units and expects provision of a minimum 35% affordable housing on schemes of 10 or more units. Saved SP Policy 4.4 endeavours to secure 50% of all new dwellings as affordable.
16. The emerging New Southwark Plan Proposed Submission Version 2017 (NSP) Policy SP1 seeks to secure 50% of all new homes as affordable housing, while NSP Policy P1 requires 35% affordable housing within developments of 11 or more homes and states that the subdivision of sites or phasing of development which has the effect of circumventing affordable housing policy requirements will not be permitted. I have little evidence to indicate whether there are any

outstanding objections to these policies and with regard to paragraph 48 of the Framework I give them little weight.

17. Guidance in relation to partial development, additional dwellings and phased developments is provided at section 5.6 of the Council's Affordable Housing Supplementary Planning Document (2008) (SPD). There is further advice within the Council's draft Affordable Housing Supplementary Planning Document (2011) on this matter. However, even though this document may have been subject to consultation I have little evidence to indicate what those consultations entailed. Moreover, the sections relating to the above are similar to that within the SPD and the draft document has not been adopted by the Council, therefore I give it little weight.
18. The proposal for 3 residential units would not require any affordable housing provision under the above policies. Nevertheless, the Council considers that the proposal should be considered as an extension/late phase to the original planning permission and that a financial contribution towards affordable housing should be provided. My attention has been drawn to 2 High Court Judgements¹. Whilst the three criteria cited within these judgements can be a useful guide, it is a matter of judgement based on the evidence of that case, as to whether a proposal constitutes a phased development.
19. My attention has also been drawn to 3 appeal decisions² and whilst they do appear to have some parallels with the proposal in relation to whether a scheme can be treated as part of a phased development, I do not have the full details of these cases before me. Moreover, in the Warwick Court case the Inspector considered that the appeal site had been artificially separated from the adjacent site. As such, I can not be certain that they are directly comparable to the case before me. In any case, I am required to determine the appeal on its individual merits.
20. In 2008 planning permission was granted for extensions and alterations to the appeal building and its use for Class B1 use on the ground floor and part of the first floor and 9 flats in the remainder of the building. In 2010 planning permission was granted for the extensions, alterations and conversion of the building to provide 44 student accommodation units. In 2012 the 2008 unimplemented planning permission was renewed. There were further minor alterations and variation of condition applications that were permitted between 2013 and 2017. Whilst, it is clear that a number of options for developing the appeal site have been considered the proposal to provide a mixed development of a Class B1 unit with 9 residential units has been largely consistent since 2008.
21. There is no dispute that the 9 residential units approved as part of the 2012 permission have been completed and are occupied. The ground/first floor parts of the building that would have been the Class B1 unit have not been completed internally and it has been marketed since 2015. The Class B1 unit would have had independent access to that of the 9 flats. However, it would also have been able to access the lift to provide an alternative means to access the first floor part of the unit.

¹ R (Westminster City Council) v First Secretary of State and Brandford Limited [2003] J.P.L 1066 & New Dawn Homes Ltd v Secretary of State [2016] EWHC 3314 (Admin)

² APP/A5840/W/17/3174783, APP/A5840/W/16/3146086 & APP/A5840/A/09/2099116

22. The planning application that is the subject of this appeal was submitted a relatively short time after the residential part of the 2012 permission was completed. Nevertheless, a Class B1 unit has formed part of the scheme since 2008. I acknowledge that it appears that the companies Rosemount Investments and Penrose Street Studios Limited appear to be linked and share a director. In addition, the proposed flats would share refuse, cycle and access facilities and there are 12 letterboxes on the front of the building.
23. Nevertheless, the appellant has stated that the proposal is driven by the need to use the vacant areas of the building as the marketing of the Class B1 unit has been unsuccessful. The majority of the marketing was prior to the submission of the planning application but in my experience, this is not unusual. On balance, based on the evidence before me and taking into account the specific circumstances of this case including the planning history of the site I consider that the proposal relates to an unplanned alteration derived from the apparent lack of demand for a Class B1 unit in this locality rather than a phased development.
24. I can understand the Council's concerns in relation to the provision of affordable housing, but I am not persuaded that it has been demonstrated in the circumstances particular to this case that the appeal proposal has been deliberately held back from the development of the overall building to avoid the provision of affordable housing. Accordingly, I conclude that the proposal for 3 residential units does not trigger the requirement for affordable housing, as set out in the development plan. It follows that the proposal would not conflict with LP Policies 3.12 and 3.13 and CS Strategic Policy 6 and SP Policy 4.4. It would also generally comply with the guidance in the SPD.

Other matters

25. The Council have stated that the appeal site is within Flood Zone 3 (FZ3) and that a Flood Risk Assessment (FRA) should have been submitted as part of the planning application but could be required by the imposition of a planning condition. Nonetheless, I do not consider that a planning condition requiring the submission of an FRA would be reasonable as the findings of an FRA could nullify a planning consent. Given my findings on the first main issue I do not consider that it would be reasonable to delay this appeal or put the appellant to any further cost by going back to the parties requiring a completed FRA to be submitted. As a result, I have not considered this matter any further as part of my decision.

Overall Balance and Conclusion

26. There is no dispute that the site is within an accessible location. The proposal would generate temporary economic benefits from the construction works associated with the scheme and further economic benefits from its occupation and use. The provision of additional dwellings adding to the supply of housing would be a social benefit and one which is recognised in the Framework. Given the scale of the development I consider that modest weight can be given to these benefits.
27. The significant harm that would be caused to the living conditions of the future occupiers of the studio flat with regards to outlook, sunlight and daylight leads me to conclude that the proposal would conflict with the development plan as a whole. In accordance with S38(6) of the Planning and Compensation Act 2004

development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. There are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.

28. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed and planning permission refused.

D. Boffin

INSPECTOR