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## Appeal Decision

Hearing Held on 10 September 2019

Site visit made on 10 September 2019

**by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 October 2019**

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**Appeal Ref: APP/C5690/W/19/3220004**

**1 Sydenham Park, London SE26 4EE**

- 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 GVAP Holdings Ltd against the decision of the Council of the London Borough of Lewisham.
  - The application Ref DC/18/107355, dated 25 May 2018, was refused by notice dated 5 October 2018.
  - The development proposed is described as for the change of use of the existing building at 1 Sydenham Park, SE26, from storage (class B8) to residential (class C3) to provide 2 x three bed, 6 x one bed, and 1 x studio residential units including provision of cycle parking and refuse storage, together with the construction of a mansard roof extension to create a second floor, a 2 storey extension to the side and installation of replacement windows and doors.
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### Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use of the existing building at 1 Sydenham Park, SE26, from storage (class B8) to residential (class C3) to provide 2 x three bed, 6 x one bed, and 1 x studio residential units including provision of cycle parking and refuse storage, together with the construction of a mansard roof extension to create a second floor, a 2 storey extension to the side and installation of replacement windows and doors at 1 Sydenham Park, London SE26 4EE, in accordance with the terms of the application, Ref: DC/18/107355, dated 25 May 2018, subject to the conditions in the attached schedule.

### Application for costs

2. At the Hearing an application for costs was made by GVAP Holdings Ltd against the Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

### Procedural Matters

3. At the hearing, both main parties confirmed and agreed that the original description of development be changed to remove any reference to the provision of "1 off-street parking space" forming part of the application. The Council confirmed that they had assessed the proposal on the basis of plans which did not include such parking provision. Consequently, I have amended the wording of the original description of the proposed development, from the heading of this decision and have determined the appeal on this basis.

4. Furthermore, during the appeal process, the Appellant submitted an amended plan (Ref: 17:8783:10A) ("the Amended Plan") which alters the layout of the ground floor entrance lobby. At the hearing the Council accepted that these amendments were not material. Nevertheless, I have had regard for the principles laid out in the case of *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37] and I am satisfied that they do not change the nature of the scheme to such a degree that to consider them would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal on the basis of the drawings submitted together with the Amended Plan.
5. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.

### **Background and Main Issue**

6. The appeal site has an extensive planning history. Planning permission was granted in December 2017 for the change of use from Use Class B8 (Storage) to Use Class B1 (Business Offices) together with construction of two storey side extension and creation of second floor. Further to this, prior approval for change of use of the appeal property to ten residential units was granted in March 2018.
7. The wording of the main issue has been altered since the hearing date and the main parties have been provided with the opportunity to comment on these changes. Consequently, the main issue in this appeal is whether or not future occupiers would be likely to experience acceptable living conditions in terms of outlook, and if not, whether there are other material considerations to justify the proposal.

### **Reasons**

8. Policy 3.5 of the London Plan (2016) provides that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. Policy DM32 of the Lewisham Local Development Framework Development Management Local Plan (2014) (the Local Plan) states that new residential development is expected to provide satisfactory levels of privacy, outlook and natural lighting for its future residents.
9. The appeal site comprises a two storey angular building which is set back from the highway and which is located adjacent to, but outside, the south western edge of the Sydenham Park Conservation Area. Adjoining the appeal site to the west is a day care nursery which occupies a former church building. To the east of the appeal site there is residential development. The evidence before me indicates that the separation distance between the eastern elevation of the appeal property and the western elevation of its neighbour is, for most of the length of the shared boundary, approximately 0.8 metres.
10. The appeal scheme would comprise nine residential flats arranged over three floors. In order to accommodate the number of flats which is proposed, the existing building would be extended to the side and a second floor would be constructed.

11. With regards to the proposed residential units at ground floor level, the outlook from a number of habitable rooms of these flats would be severely restricted. The windows to two bedrooms on the ground floor and the windows to a kitchen/living area for one of the flats would look directly out towards a high brick wall which, as detailed above, is located extremely close to the eastern elevation of the appeal property.
12. Furthermore, a bedroom which would be incorporated within the proposed side extension would look out onto an extremely restricted space beneath a set of external stairs which serves as a fire escape for the adjoining day care nursery. The poor level of outlook from these specific rooms would be further compounded by the use of bottom sash fixed obscured glazing.
13. At first floor level, outlook from a number of habitable rooms would again be poor for future occupants. In this regard, windows to a kitchen/dining area and bedroom would directly face the high side wall of the neighbouring dwelling located towards the east. Furthermore, bedrooms and a kitchen area for one of the flats which would be incorporated within the proposed side extension, would look out over the narrow fire escape route and towards a high flank wall of the day care nursery at close proximity. Again, the poor level of outlook from these specific rooms would be further compounded by the use of bottom sash fixed obscured glazing.
14. The proposal would further introduce an additional third storey which would accommodate three individual residential units. Due to the height of the windows above ground level and the position of the proposed windows in relation to these flats, I find that there would be no adverse impact on future occupants of these second floor flats with regards to outlook.
15. Overall, by reason of the proximity of a significant number of windows of habitable rooms included within the appeal scheme to the side elevation of the neighbouring buildings, and due to the use of bottom sash obscured glazing, I find that the proposed development would not provide acceptable living conditions for future occupants with particular reference to outlook.
16. Consequently, the proposal would be contrary to Policy DM32 of the Local Plan, and Policy 3.5 of the London Plan. Combined these policies seek to ensure that housing development is of the highest quality and does not unduly diminish the living conditions of future occupiers.
17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The Appellant has drawn my attention to the existing prior approval for ten residential units at the appeal site and it is maintained that the appeal scheme represents an overall improvement in the living conditions of future residents when compared to the potential fallback position of the increased number of flats granted under the prior approval application.
18. In this respect, the Council contends that, by reason of the submission of further planning applications in relation to the site which would, in their view, provide a more acceptable level of living conditions with regards to outlook, and due to the belief that more works would be needed to make the residential flats under the prior approval scheme marketable, there is no longer a real prospect of the fallback development being implemented. Accordingly, the

Council considers that no weight should be attached to this fallback position in the determination of this appeal.

19. However, as confirmed at the hearing, the Appellant had good reasons for submitting further planning applications due to the forthcoming expiration of existing permissions. Furthermore, as confirmed at the hearing and from the evidence submitted by the Appellant, the fallback position to the ten residential units permitted under the prior approval scheme would provide a greater level of profit than retaining the current use of the appeal property or redeveloping the site into a number of office units as permitted under a scheme which was approved by the Council in December 2017.
20. In light of the evidence and submissions made, in my view there is a greater than theoretical possibility that the fallback position, with regards to the ten residential units permitted under the previous prior approval, would be implemented in the event that this appeal was dismissed. As such, I consider that this represents a realistic fallback position (the Prior Approval Fallback).
21. In this respect, whilst I acknowledge that the outlook from a number of habitable rooms would not necessarily be improved under the appeal scheme when compared to the Prior Approval Fallback, overall in terms of outlook the appeal scheme would offer a better level of outlook for a greater number of the proposed units and thereby potential future occupants. The appeal scheme would provide some external amenity space in relation to the larger ground floor residential units and would provide a greater standard of accommodation with regards to internal amenity space provision for all of the proposed flats when compared to the Prior Approval Fallback.
22. Further to the above, I also recognise that the appeal scheme would provide additional benefits in terms of the contribution of a varied mix of units to cater for different needs, the use of previously developed land and that the appeal scheme would include landscaping to soften the appearance of bin and bicycle storage areas.
23. For the above reasons, I give this 'fallback position' significant weight and as such it outweighs the conflict that I have found with the development plan in terms of the living conditions of future residents with reference to outlook.

### **Other Matters**

24. Concerns have been raised by interested parties with regard privacy and overlooking, to the provision of a bin storage area, use of the fire escape which serves the day care nursery and use of the path which exists between the appeal property and its neighbour.
25. In these regards, it is noted that the Council Officers raised no concerns regarding the provision of bin storage areas, and from the observations made on my site visit I consider that sufficient space exists at the site to safely accommodate these requirements without impacting on the character and appearance of the surrounding area. Furthermore, whilst I acknowledge the concerns regarding privacy and overlooking, there appears to be a single small window of a neighbouring property which faces the appeal property and this window, as well as any windows which would form part the proposed development and which would face this neighbour, incorporates obscured glazing such that any overlooking and loss of privacy would be minimised.

26. I also consider that the side extension would not impede the use of the fire escape and would allow sufficient space for those exiting the building to leave through the gated side entrance. Furthermore, whilst I acknowledge the concerns of interested parties with respect to the use of the pathway between the appeal property and its neighbour for maintenance, this is a matter of civil law. As a planning application is determined on its planning merits, this is a consideration that has not altered my assessment of the appeal.
27. Concerns have also been raised regarding the adequacy of parking provision in relation to the appeal scheme. However, in this instance I consider that the parking arrangements are sufficient given the scale of the development and note that the Highways Officer raised no objection with regards parking provision or highway safety. Furthermore, at the time of my site visit I did not observe any illegal or obstructive parking in the area which would be indicative of parking stress. In the absence of clear evidence of a local parking issue, I do not consider that the proposal would have a harmful effect on local parking.
28. Representations were made by interested parties to the effect that the rights of local residents under the Human Rights Act 1998, Article 8 and under the First Protocol Article 1, would be violated if the appeal were allowed. However, I have concluded that the proposed development would not cause unacceptable harm to the living conditions of residents. The degree of interference that would be caused would be insufficient to give rise to a violation of the rights.

### **Conditions**

29. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. I further find it reasonable to include conditions requiring details of any soft and hard landscaping, boundary treatments, external finish and materials, be agreed with the Local Planning Authority, in the interests of preserving the character and appearance of the surrounding area.
30. Further in the interests of preserving the character and appearance of the surrounding area, there is justification for the restriction of permitted development rights in this instance with regards to placement of satellite dishes and external pipes on the exterior of the appeal property.
31. In the interest of living conditions of nearby residents and occupants at the proposed dwellings, I have included conditions requiring that refuse storage facilities be provided prior to any occupation of the building, that the external amenity space be retained permanently and that restrictions are placed on the use of an area of flat roof at the appeal site so that it would not be used as a balcony or external amenity space.
32. Furthermore, again in the interests of living conditions, I find it reasonable to include conditions requiring sound insulation matters are agreed with the Local Planning Authority, that delivery of construction materials to the site be restricted to certain hours of the day and that works be carried out in accordance with a Construction Logistics Plan to be approved by the Local Planning Authority.
33. In the interests of highway safety and the free flow of traffic, I also find it reasonable to include a condition that requires that the existing vehicle access

be closed and the highway reinstated, prior to occupation of the appeal property.

34. Where necessary, and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. At the hearing, the wording of the pre-commencement condition was agreed by the Appellant.

### **Conclusions**

35. For the reasons given above, the appeal succeeds and planning permission granted subject to conditions identified.

*A Spencer-Peet*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Gregory Jones QC

Francis Taylor Building  
Temple

Nadia Shojaie

Indigo Planning

Vernon Burraway

Tom Appleton

Rupert Walsh

### **FOR THE LOCAL AUTHORITY**

Ben Fullbrook

Landmark Chambers

Samuel James

London Borough of Lewisham

James Hughes

London Borough of Lewisham

### **DOCUMENTS SUBMITTED AT HEARING**

1. Application for an award of appeal costs and supporting statement.
2. Schedules of Accommodation and Recommended Sales Prices dated August 2019.
3. Scheme Reference document detailing scheme references given to a number of separate planning applications relevant to the appeal site.
4. Copy Letter of Notification dated 22 June 2019.
5. Copy Notice of Proposed Development dated 22 June 2019.
6. Copy Letters of Notification Address List dated 18 July 2019.
7. Copy Public Notice dated 24 July 2019.



## **Schedule of Conditions**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.
2. The development hereby approved shall in all respects accord strictly with the application plans, documents and drawings numbers 11420004/1; 17:8783:02; 17:8783:03; 17:8783:04; 17:8783:05; 17:8783:06; 17:8783:11I; 17:8783:16A; 17:8783:17; 17:8783:18; Transport Statement (Caneparo dated May 2018) received by the Local Authority on 13 June 2018 and 17:8783:20 and Transport Statement addendum (Caneparo dated July 2018) received by the Local Authority on 1 August 2018 and Daylight and Sunlight Study (Right of Light Cons. dated 29 August 2018) received by the Local Authority on 3 September 2018 and Construction Management Briefing Note (Indigo dated 6 September 2018) and Delivery and Servicing Plan Briefing Note (Indigo dated 6 September 2018) received by the Local Authority on 7 September 2018 and drawing number 17:8783:10A received by the Local Authority on 10 September 2018 and Construction Logistics Plan received by the Local Authority on 19 September 2018.
3. The construction works must be carried out in full accordance with the recommendations and measures specified in the submitted Construction Logistics Plan.
4. a) Notwithstanding the details hereby approved, prior to commencement of development, a detailed schedule and specification and detailed plan at 1:20 showing windows, doors and all external materials and finishes, roof coverings and balcony balustrades to be used on the building must be submitted to and approved in writing by the local planning authority.  
  
b) The development shall be carried out in accordance with the approved details.
5. The refuse storage facilities as shown on plan no. 17:8783:10A received 10 September 2018 hereby approved, shall be provided in full prior to occupation of the development and shall thereafter be permanently retained.
6. a) Prior to occupation, drawings showing full details of hard landscaping of any part of the site not occupied by buildings (including details of the permeability of hard surfaces) shall be submitted and approved in writing by the Local Planning Authority.  
  
b) All hard landscaping works which form part of the approved scheme under condition 6 a) shall be completed prior to occupation of the development.
7. a) A scheme of soft landscaping (including details of any trees or hedges to be retained and proposed plant numbers, species, location and size of trees and tree pits) and details of the management and maintenance of the



landscaping for a period of five years shall be submitted to and approved in writing by the Local Planning Authority prior to occupation.

b) All planting, seeding or turfing shall be carried out in the first planting and seeding seasons following the completion of the development, in accordance with the approved scheme under condition 7 a). Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

8. The development hereby approved shall not be occupied until the existing vehicular access has been closed.
9. The whole of the amenity spaces as shown on drawing no. 17:8783:10A received 10 September 2018 hereby approved shall be retained permanently for amenity purposes.
10. Notwithstanding the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the use of the flat roof on the building shall be as set out in the application and no development or the formation of any door providing access to the roof shall be carried out, nor shall the roof area be used as a balcony, roof garden or similar amenity area.
11. No deliveries in connection with construction works shall be taken at or despatched from the site other than between the hours of 10am and 5pm on Mondays to Fridays and 8 am and 1 pm on Saturdays and not at all on Sundays or Public Holidays.

No work shall take place on the site other than between the hours of 8 am and 6 pm on Mondays to Fridays and 8 am and 1 pm on Saturdays and not at all on Sundays or Public Holidays.

- 12.a) The building shall be designed so as to provide sound insulation against external noise and vibration, to achieve levels not exceeding 30dB LAeq (night) and 45dB L<sub>Amax</sub> (measured with F time weighting) for bedrooms, 35dB LAeq (day) for other habitable rooms, with window shut and other means of ventilation provided. External amenity areas shall be designed to achieve levels not exceeding 55 dB LAeq (day) and the evaluation of human exposure to vibration within the building shall not exceed the Vibration dose values criteria 'Low probability of adverse comment' as defined BS6472.
- b) Within 2 months of commencement of development a sound insulation scheme pursuant to paragraph (a) must be submitted to and approved in writing by the Local Planning Authority.
- c) The development shall not be occupied until the sound insulation scheme approved pursuant to paragraph (b) has been implemented in its entirety.

Thereafter, the sound insulation scheme shall be maintained in perpetuity in accordance with the approved details.

13. a) Details of the proposed boundary treatments including any gates, walls or fences shall be submitted to and approved in writing by the local planning authority prior to construction of the above ground works.  
  
b) The approved boundary treatments shall be implemented prior to occupation of the buildings and retained in perpetuity.
14. Notwithstanding the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking, re-enacting or modifying that Order), no satellite dishes shall be installed on the south (Sydenham Park facing) elevation or the eastern roof slope of the mansard.
15. Notwithstanding the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking, re-enacting or modifying that Order), no plumbing or pipes, other than rainwater pipes, shall be fixed on the front elevation of the building.
16. All cycle parking spaces shown on plan no. 17:8783:10A received 10 September 2018 hereby approved, shall be provided and made available for use prior to occupation of the development and maintained thereafter.