
Appeal Decision

Site visit made on 10 September 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Appeal Ref: APP/N5660/W/19/3225699
166 Weir Road, London SW12 0NP

- 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 Udhyam Amin, Cashco UK Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/03148/FUL, dated 24 May 2016, was refused by notice dated 28 September 2018.
 - The development proposed is the demolition of existing retail warehouse, yard and associated outbuildings (Use Class B8) and the provision of 8 residential units (Use Class C3) with associated landscaping works.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing retail warehouse, yard and associated outbuildings (Use Class B8) and the provision of 8 residential units (Use Class C3) with associated landscaping works at 166 Weir Road, London SW12 0NP in accordance with the terms of the application, Ref 16/03148/FUL, dated 24 May 2016, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Udhyam Amin, Cashco UK Ltd against the Council of the London Borough of Lambeth. This application is the subject of a separate Decision.

Procedural Matter

3. The second reason for refusal contained within the Council's decision notice references policy Q11 of the Lambeth Local Plan (2015) (the Local Plan), which refers to building alterations and extensions and as such does not appear relevant. There is reference in the submissions to policy Q14, which refers to development in gardens and backland sites. The Council has confirmed that policy Q14 should have been referred to and not Q11. A copy of Q14 has also been provided. The appellant has referred to policy Q14 in the appeal statement and as such I am satisfied that there would be no injustice in me considering this policy when making my decision.

Main Issues

4. The main issues raised in this case are:

- whether the loss of an existing employment use is justified, having regard to local policy protecting such uses,
- the effect of the proposal on the character and appearance of the area, and
- the effect of the proposal on the living conditions of the occupiers of 134-140 Weir Road, with particular regard to light and outlook.

Reasons

Loss of employment use

5. The site is currently occupied by a “cash and carry” enterprise, which has been operating at the site since the mid-1980’s. Policy ED2 of the Local Plan seeks to maintain a stock of sites and premises in business use across the Borough. In order to achieve this, the policy requires that the loss of floorspace in business, industrial or storage (B class) use, or in employment-generating *sui generis* use, will only be supported where clear and robust evidence is submitted showing that there is no demand for the floorspace. This should include marketing of the floorspace when vacant and for a period of at least one year. Exceptions to this will apply, amongst other circumstances, where there are clear amenity and environmental reasons justifying a change of use.
6. The appellant has submitted evidence to show that the site has been marketed for a period of in excess of 12 months and that during this time no new leaseholder has come forward. However, during this time the appellant has continued to occupy the site for the purposes of the “cash and carry” operation and the site was not vacant.
7. The appellant contends that the proposal would result in amenity and environmental benefits through the removal of a business use from a location adjacent to residential properties, stating that there has in the past been a “fractious” relationship between the current use and existing dwellings. However, I note that the Council consider that there is anecdotal evidence that the business is seen as a good neighbour. I also note that an interested party has commented that they are content with the way the current business operates and that a number of interested parties are concerned that the proposed residential development would adversely affect their amenity. As such, I am not convinced that the scheme would result in the clear amenity and environmental reasons necessary to justify an exception. There is also no evidence that the scheme would comply with any of the other stated exceptions.
8. Consequently, the marketing exercise has not been undertaken whilst the floorspace has been vacant and environmental reasons have not been put forward that justify an exception to this requirement. As a consequence, the proposal conflicts with policy ED2.
9. The appellant contends that the existing operation is not a viable business and only operates through support from the “owner’s wider business operation” and would not on its own be financially viable. Whilst this is noted, this refers to the specific operation currently at the site and does not, to my mind, demonstrate that there is a lack of demand for the floorspace. There is also reference to the site being constrained in terms of its location, access and layout. However, the

business has operated at this site for a significant period of time and as such I do not find that these matters unreasonably impede the business operation.

10. Notwithstanding the above, and whilst noting that there is a technical non-compliance with policy ED2, the appellant has submitted details of the marketing of the site that has been undertaken. Marketing of the site began in December 2016 and remained ongoing at the time of the submission of the appeal. During this time there were 33 enquiries in respect of the site and 8 visits to the site by prospective occupiers. None of these led to the uptake of a new lease for the site.
11. The submitted marketing information demonstrates that a marketing board has been erected at the premises, brochures have been produced which have been circulated to both the local and national markets and the property has been listed on a number of websites. Copies of the site's particulars have been provided, as well as copies of the canvassing literature and photographs showing the display of the marketing board at the site.
12. The marketing agent has also submitted information stating that the current market conditions have declined, which is evidenced in a reduction in enquiries and completions in respect of commercial spaces. Furthermore, the information shows that there are other vacant sites which are in competition with the appeal site, which it is stated, have fewer constraints to a successful commercial use. It is also the opinion of the marketing agent that the ongoing occupation of the site has not been an impediment to the marketing efforts.
13. On the basis of the above, I am of the view that an extensive marketing exercise has been undertaken and in regard to this specific case, that it has been sufficiently demonstrated that there is no ongoing demand for the commercial floorspace. This view is further reinforced by the stated intention of the current operator to relocate to other premises, as evidenced by the submission of a planning application for alternate premises. Furthermore, I am not convinced in this case that having the premises empty would result in the site being more attractive to potential users.
14. Thus, based on the specific and distinctive circumstances of this case, I consider that the evidence provided indicates a decision other than in strict accordance with the requirements of policy ED2 and that the loss of the employment use has been sufficiently justified.

Character and appearance

15. The site lies to the rear of terraces of existing dwellings which front Weir Road, Radbourne Road and Hydethorpe Road. The properties in the area are generally traditionally proportioned and designed dwellings. However, there is also variety in the design of properties within the area, with some blocks of flats present as well as dwellings with a modern design.
16. The appeal scheme proposes the construction of detached dwellings which would provide three storeys of accommodation. However, one of these storeys would comprise a lower ground floor, below the existing ground level of the site. As such, the ridge height of the dwellings would sit below that of the existing dwellings which surround the site. As a consequence, whilst I acknowledge that the existing buildings within the site are lower in their height

than those that are proposed, the proposed units would be subordinate in their scale to the existing dwellings within the area.

17. The siting and arrangement of the dwellings within the vicinity of the site is a regimented and linear arrangement, creating strongly defined frontages along roads. The appeal site however is located to the rear of the existing properties and does not have a frontage to the street. Within this context, the siting of the proposed units as detached dwellings behind existing buildings would not be viewed as part of this linear arrangement, but as a secondary layout of properties. Thus, the proposal would be clearly distinguishable from the traditional terraces of properties it adjoins and would be visually read separately from the existing properties. Consequently, in my view, the proposal would not result in a harmful or discordant addition to the area. I note that the Council has concern that the proposed scheme does not respect the pattern of development in the area, however given its backland nature and limited presence to the street, the departure from the predominant layout of development would not result in any injury to the character or appearance of the area.
18. The proposed units themselves would depart from the traditional design and detailing of the existing dwellings nearby. However, given that I have identified above that the scheme would be read separately from the neighbouring development, the use of differing materials and detailing would create variety and diversity within the area. I consider that this would positively contribute to the character and appearance of the area rather than detract from it. In terms of the bulk of the proposed dwellings, this would not be incompatible with that of the existing properties, which are arranged in terraces. Rather the narrow frontages of the proposed units would be reflective of those of individual properties forming the nearby terraces.
19. For the above reasons, I find that the proposal would not be a discordant or incongruous addition, would not amount to an over-development of the site and thus it would have an acceptable effect on the character and appearance of the area. The scheme would accord with Policies Q2, Q5, Q7 and Q14 of the Local Plan. Together, and amongst other things, these policies seek to ensure development does not unacceptably compromise visual amenity from the public realm, that development makes a positive contribution to its local context, that development is of a quality of design that is visually interesting and that within the redevelopment of backland sites, forms and heights remain subordinate to the built context.

Living conditions

20. The Council's reason for refusal cites an adverse effect on 134-140 Weir Road. Dwelling 8 is positioned to the western end of the appeal site and would be 12-13 metres (m) from the rear elevation of these properties. Whilst not cited within the reason for refusal, the Council's officer's report and appeal statement raise further concern in respect of the effect on the occupiers of 172 and 174 Weir Road, as well as 121 Hydethorpe Road.
21. Dwelling 1 would be located 15-16m, based on the Council's figures, from the rear elevation of 172 and 174 Weir Road. Whilst the proposed dwellings would be obvious features in views from the rear of these properties, they would not be so oppressive as to have an unacceptable effect on the outlook of residents; similarly they would not increase any sense of enclosure to such a degree as to

- reduce the living conditions of the occupiers of these units. This is particularly so given the dwellings would occupy only a portion of views and the height of the proposed units would not preclude views over them. As such, I consider that the separation between existing and proposed residences is sufficient to maintain acceptable living conditions.
22. Whilst no separation distance between Dwelling 5 and 121 Hydethorpe Road is stated, I consider that there would be a sufficient separation to ensure that the appearance of Dwelling 5 would not be unacceptably intrusive, and therefore this would be acceptable also.
23. The Council accepts that its concerns in respect of loss of light have been addressed through the information shown on the appeal submissions. I too consider that the development would not result in any unacceptable loss of light to the surrounding properties. In respect of the properties along Radbourne Road, there is sufficient separation distance between existing and proposed properties to ensure that there would be no harm to the living conditions of occupiers.
24. Accordingly, I find that the scheme would not have an adverse effect on the living conditions of neighbouring occupiers in respect of the loss of light and outlook. Thus, the proposal would accord with policy Q2 of the Local Plan insofar as it seeks to ensure development provides for adequate outlooks, avoiding any undue sense of enclosure and that there is no unacceptable impact on levels of daylight and sunlight.

Other Matters

25. A planning obligation, by way of a Unilateral Undertaking (UU), has been submitted securing the development as car-free, as well as securing a proportion of affordable housing as part of the proposal. The Council has been given the opportunity to comment on the UU and has commented that it is satisfied with the car-free agreement and that the affordable housing contribution is acceptable. I am satisfied that the UU accords with the planning obligation tests as laid out in paragraph 56 of the Framework and Regulation 122 of the CIL Regulations.
26. There is reference within representations from interested parties to the retention of a boundary wall; there is no suggestion that this is to be removed. There is also reference to the need for a new wall to the rear of a number of properties. In any event, a planning condition requiring details of all boundary means of enclosure would ensure that satisfactory details are agreed in these respects.
27. Concern has also been expressed in regard to the potential impact of street lighting along the access road. This is a matter that can be addressed by a planning condition requiring details of such lighting to be agreed.
28. There is mention that the scheme would result in an adverse effect on protected species, specifically bats. The planning application was accompanied by an ecological survey which concluded that the buildings offer low to no potential as roosting sites and that there was a lack of features which made the buildings suitable for roosting bats. In the absence of evidence to the contrary, I find that the scheme is unlikely to result in an adverse effect on protected species. A condition in respect of landscaping details would ensure that an

appropriate mix of plant species would be included within the scheme to safeguard against any harm to biodiversity.

29. The matter of the effect of the development on house prices in the area has been raised. No substantive evidence of any adverse effect in this regard has been provided and so this matter has little bearing on my decision.

Conditions

30. I have imposed a condition in relation to the commencement of development and in the interests of clarity a condition to ensure compliance with the submitted plans.
31. In order to ensure that the development has a satisfactory external appearance, I have also imposed a materials condition as well as a boundary treatment and soft landscaping condition, although I have simplified the conditions suggested by the Council. In the interests of promoting sustainable transport options, a condition is required to secure the provision of cycle parking facilities. So that the construction phase of the development does not adversely affect neighbouring occupiers or highway safety, I have imposed a condition in respect of a Construction Method Statement. Similarly, in the interests of highway safety I have imposed a condition requiring details of the vehicular access to the site to be submitted.
32. There are a number of existing trees within surrounding sites, in order to protect them and safeguard the character and appearance of the area, I have included a condition requiring details of their protection within the appeal site. Conditions in respect of water and energy usage are required in the interests of sustainability, although I have amended the suggested conditions to require such details prior to housing construction work taking place, rather than being pre-commencement.
33. A condition has been suggested in regard to the development meeting 'Secured by Design Standards'. However, the policy referred to has not been provided by the Council, as such I am unable to conclude that such a condition would meet the test of necessity. No plumbing or pipes are shown to the exterior of the buildings and as such a condition preventing this is, in my view, not necessary.

Conclusion

34. I have found that the loss of the employment use has been satisfactorily justified. I have also found that the scheme would have an acceptable effect on the character and appearance of the area as well as on the living conditions of neighbouring occupiers.
35. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Martin Allen

INSPECTOR

Schedule of 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:
 - E358/PP/110
 - E358/PP/010
 - E358/PP/020
 - E358/PP/030 Rev 1
 - E358/PP/040 Rev 1
 - E358/PP/050 Rev 1
 - E358/PP/060 Rev 1
- 3) No above ground level development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No above ground level development shall commence until details of both boundary treatments and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include the quantity, size, species, position of all planting as well as an implementation programme detailing the timing of all planting. The boundary treatments shall be carried out in accordance with the approved details before any part of the development is first occupied and the planting shall be carried out in accordance with the agreed implementation programme.
- 5) Prior to first occupation of the units hereby approved, details of the proposed cycle parking (including elevation drawings) shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities for each dwelling shall be provided in accordance with the approved details before that dwelling is first occupied.
- 6) No demolition or development shall commence until full details of the proposed construction methodology, in the form of a Method of Construction Statement, have been submitted to and approved in writing by the local planning authority. The Method of Construction Statement shall include details regarding:
 - a) The notification of neighbours with regard to specific works;
 - b) Advance notification of road closures;
 - c) Details regarding parking, deliveries, and storage;
 - d) Details regarding dust mitigation;
 - e) Details of measures to prevent the deposit of mud and debris on the public highway; and
 - f) Any other measures to mitigate the impact of construction upon the amenity of the area and the function and safety of the highway network.No demolition or development shall commence until provision has been made to accommodate all site operatives', visitors' and construction vehicles loading, off-loading, parking and turning within the site or otherwise during the construction period in accordance with the approved

details. The demolition and development shall thereafter be carried out in accordance with the details and measures approved in the Method of Construction Statement.

- 7) Development shall not take place until details of the layout of the proposed access road, to include details of lighting, have been submitted to and approved in writing by the local planning authority; and the development shall not be occupied until the approved details have been implemented. The layout of the access shall thereafter be retained.
- 8) No site clearance, preparatory work or development shall take place until a scheme for the protection of the surrounding trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 9) No housing construction work shall take place until calculations for internal water use have been submitted to and approved in writing by the Local Planning Authority. Prior to first occupation of the building(s) evidence (schedule of fittings and manufacturer's literature) should be submitted to the Local Planning Authority and approved in writing to show that the development has been constructed in accordance with the approved internal water use calculations.
- 10) No housing construction work shall take place until a finalised Energy Strategy, including full Design Stage calculations under the Standard Assessment Procedure, demonstrating how a 35% carbon dioxide emissions reduction is to be met in line with the Mayor's energy hierarchy and how risk of overheating has been reduced in line with the Mayor's cooling hierarchy, has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved Energy Strategy.
- 11) Prior to first occupation of the building(s), evidence (e.g. photographs, installation contracts and as-built certificates under the Standard Assessment Procedure) shall be submitted to the Local Planning Authority and approved in writing to show that the development has been constructed in accordance with the approved Energy Strategy and achieved a 35% reduction in carbon dioxide emissions.