
Appeal Decision

Site visit made on 23 July 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2020

Appeal Ref: APP/A5840/W/19/3243879
12-14 Marshalsea Road, London SE1 1HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ian Ogilvie of Cyrus Homes Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/1530, dated 20 May 2019, was refused by notice dated 12 July 2019.
 - The application sought planning permission for "Extension of the existing mansard roof to create a full storey to match the building below and the erection of a new mansard roof above, together with the change of use of part of the ground floor accommodation at no. 14 from an office (Use Class B1(a)) to a café (Use Class A1/A3) and the change of use of the first, second, third, fourth and fifth floors of no.14 from office (Use Class B1(a)) to 5 two bedroom flats and the use of the new roof level accommodation as 2 one bedroom flats; together with refuse and cycle storage at ground floor level" without complying with a condition attached to planning permission Ref 16/AP/1767, dated 2 June 2017.
 - The condition in dispute is No 2 which states that: "The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Ref:1000 SP(0)01; Proposed Plans Ref 1000 P(2)01 and 02;"
 - The reason given for the condition is: "this provides certainty".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Ian Ogilvie of Cyrus Homes Ltd against the Council of the London Borough of Southwark. This application is the subject of a separate Decision.

Procedural Matters

3. Following the decision of the Council, the appellant has submitted amended drawings which show two alternative options for the sixth floor flat, giving a total of three development proposals to be considered in this appeal.
4. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the principles of natural justice and fairness to third parties, the range of alternatives before me, the comments from the appellant, and the lack of engagement by the Council with the

proposed alternatives. In the interests of fairness and transparency, I have therefore determined the appeal on the basis of the plans that were before the Council when it made its decision and on which third-parties were consulted, although for this decision I note the clarification regarding the retention of the hoist on the Disney Place elevation.

Background and Main Issues

5. The appeal proposal seeks to amend the approved plans condition in order to use the existing loading bays on the Disney Place elevation as balconies, reconfigure the layout and shape of the 6th floor units to create an additional bedroom for each flat, amending the design of the approved mansard roof, adjusting window openings on the 4th, 5th and 6th floors, and creating a roof terrace.
6. As a result, the main issues are whether Condition 2 is reasonable and necessary having regard to the effect that the proposed changes would have on the i) the historic environment, ii) the development potential of the neighbouring site, iii) the living conditions of the future occupiers of unit 6 with specific regard to the outlook from bedroom 2, and iv) the living conditions of occupiers of adjoining properties with specific regard to increased overlooking and loss of privacy.

Reasons

Historic environment

7. The Liberty of the Mint Conservation Area Appraisal and Management Plan, adopted November 2018 (the CAA) identifies the significance of the Conservation Area (the CA) as being in its varied mix of buildings, their original uses and the tight, well-defined townscape. In particular it notes the purposeful arrangement of the streets and buildings immediately surrounding the site.
8. The Council has now acknowledged that the proposal would not result in any substantive increase in the height of the proposal. The appellant has also confirmed that the existing hoist will remain in place.
9. Turning to the glass balustrade to the roof terrace, on my site visit, I saw that the proposed treatment of the roof terrace and upper storeys of the building is neither unusual nor would it appear incongruous given the setting of the building, the mixture of old and new buildings, as well as both traditional and contemporary design and detailing. In light of the existing overhang of the loading bays over the highway and the retention of both the existing timber bases and doors, I do not consider that the proposed balconies would in themselves cause the harm to the architectural significance of the building itself or the wider CA identified by the Council.
10. I consider that any effect on the significance of the CA would therefore be neutral, and as such the proposal would preserve the character and appearance of the area. In reaching this conclusion I have had regard to the nature of the proposal and its location, and the great weight which should be given to the conservation of the significance of the CA. For the same reasons, I do not consider that the proposal would harm or adversely affect their setting or features of special architectural or historic interest which the nearby listed buildings possess.

11. The proposal would therefore accord with Saved Policies 3.12, 3.13, 3.15 and 3.18 of the Southwark Plan 2007 (the Southwark Plan), Strategic Policy 12 of the Southwark Council Core Strategy 2011 (the Core Strategy), all of which seek, amongst other things, to ensure quality in design, contextually appropriate design and the protection of the historic environment.

Neighbouring site

12. Saved Policy 3.11 of the Southwark Plan seeks to ensure that new development should make efficient use of land, but that in doing so, it should not unreasonably compromise the development potential of neighbouring sites.
13. In light of the design and location of the proposed roof terrace, on top of the building, I do not consider that it would unreasonably compromise the development potential of neighbouring sites. With regard to the proposed high-level, east-facing window I note the comments of the appellant regarding the size of the neighbouring site, its height relative to the appeal site, and the potential difficulties they perceive in developing any scheme which could be prejudiced by the changes proposed. However, that is not to say a proposal could not come forward in the future the height, layout or use of which could be prejudiced by the location of that proposed window and the room it serves. That potential for future prejudice is expressly what the policy seeks to protect against. I consider therefore that the proposed changes would be contrary to Saved Policy 3.11 of the Southwark Plan.

Living conditions for unit 6

14. Through a combination of its size and high-level, the proposed window to bedroom 2 of unit 6 would offer limited, poor quality outlook to any future occupier. I acknowledge that there would be other larger, more accessible windows within the unit. However, Saved Policies 3.2, 3.12 and 4.2 in the Southwark Plan all seek to protect the amenity of future occupiers and make specific reference to the importance of outlook to achieving good quality living conditions. Strategic Policies 12 and 13 of the Core Strategy reinforce the need for the highest possible standards of design. The living conditions in the bedroom which this window would serve would therefore be contrary to the requirements of these policies.

Living conditions for occupiers of surrounding properties

15. I note that there are balconies in buildings around the appeal site, including those facing the appeal site on Disney Place, and that the proposed balconies would be in the same location as approved windows. However, I do not consider that a proper comparison can be drawn between the overlooking and subsequent loss of privacy, and indeed the perception of the same which arises from a window and that which arises from a balcony. In my opinion, a balcony would give rise to much greater opportunity for, and perception of, overlooking and subsequent loss of privacy than a window. The proposed balconies would therefore cause an unacceptable degree of loss of privacy and overlooking to the occupiers of surrounding properties.
16. In their reason for refusal on this matter, the Council have referred Strategic Policy 13 of the Core Strategy which relates to 'High Environmental Standards. As such, it is not entirely clear how it is relevant to this issue. However, as the balconies would cause harm to the living conditions of the occupiers of

adjoining properties through loss of privacy and increased overlooking, I consider that the proposal would be contrary to Saved Policies 3.2 and 3.11 of the Southwark Plan, which seek, amongst other things to protect amenity.

Conclusion

17. For the reasons given above I conclude that Condition 2 is reasonable and necessary to protect the development potential of the neighbouring site, the living conditions of the future occupiers of unit 6 with specific regard to the outlook from bedroom 2, and the living conditions of occupiers of adjoining properties with specific regard to increased overlooking and loss of privacy. The appeal should therefore be dismissed.

S Dean

INSPECTOR