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## Appeal Decision

Site visit made on 30 November 2020

**by M Cryan BA(Hons) DipTP MSc MRTPI**

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

**Decision date: 15 April 2021**

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### **Appeal Ref: APP/N5660/W/20/3254825 72-74 Gipsy Hill, London SE19 1PD**

- 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 Court Group Ltd against the decision of the Council of the London Borough of Lambeth.
  - The application Ref 19/01472/FUL, dated 17 April 2019, was refused by notice dated 16 April 2020.
  - The development proposed is the partial demolition of existing structures and the change of use from B8/B2 use and conversion of the existing building into 1no. live-work unit.
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### **Decision**

1. The appeal is dismissed.

### **Application for costs**

2. An application for costs was made by Court Group Ltd against the Council of the London Borough of Lambeth. This application is the subject of a separate Decision.

### **Procedural Matters**

3. The description of development in the banner heading above is taken from the planning application form, although I have removed the site address in the interests of brevity and because it is not descriptive of the proposal.
4. In August 2019 the appellant submitted revised plans to the Council in response to various comments raised by the Council's Conservation and Urban Design Officer. The Council was of the view that the amended plans 'would not have overcome the main reason for refusal of the application' and it did not take them into account, referring to advice in the Planning Practice Guidance that 'it is at the discretion of the local planning authority whether to accept such changes'<sup>1</sup>. However, the revised plans directly addressed one of the reasons for which the application was ultimately refused, albeit not to the Council's satisfaction. None of the evidence before me suggests that the revised plans were so significant as to fundamentally alter the proposal, and the Council has had the opportunity to respond to the changes proposed. I am satisfied that no party's interests are prejudiced by my determining the appeal on the basis of the revised plans submitted (drawings M18-8779:10D, 11B,

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<sup>1</sup> Paragraph 061 – Reference ID: 14-061-20140306

12B, 13B and 14C, which replaced M18-8779:10C, 11A, 12A, 13A and 14B). The relevant matters are addressed in the character and appearance sub-section of my reasons below.

5. The Council's decision notice, and both parties' appeal statements, referred to policies of the London Plan 2016. This was superseded by the London Plan 2021, which was published and became part of the development plan on 2 March 2021 while this appeal was being determined. I therefore sought comments from both parties on the relevant policies of the 2021 London Plan, and I am consequently satisfied that neither party's interests have been prejudiced. In my reasons section below I have referred to policies of the 2021 London Plan where relevant, rather than those of the 2016 plan originally referred to in the decision notice.

## **Main Issues**

6. The main issues are:

- The effect of the proposed development on the supply of employment land and premises;
- The effect of the development on road congestion and demand for on-street parking, and whether it would promote the use of sustainable modes of transport;
- The effect of the proposed development on the character and appearance of the host building and the Gipsy Hill Conservation Area; and
- Whether or not the proposed development would provide acceptable living conditions for future residents, with particular regard to living space.

## **Reasons**

### *Employment land and premises*

7. The appeal site is located at the corner of Gipsy Hill and Cawnpore Street. It encompasses the lower ground floor of 72-74 Gipsy Hill, previously known as the Old Dairy, and single storey outbuildings to the rear, including those at 1 Cawnpore Street. The evidence before me indicates that the northern part of the site, accessed from Gipsy Hill, has most recently been in use as carpentry workshops within the B2 use class, while the southern part of the site at 1 Cawnpore Street (although this too extends into the lower ground floor of the Old Dairy building) has been used for storage purposes within the B8 use class. I saw at the time of my site visit that the ground floor is in use as an office, while the upper floors of the building are in residential use. These other parts of the building do not fall within the proposed development.
8. The proposal is demolish the single storey outbuildings at the rear of the site, open up the existing lower ground floor windows of the Old Dairy building, and extend and convert the entire lower ground floor space to create a *sui generis* live-work unit with two bedrooms and a work studio.
9. The appeal site is not within one of the borough's Key Industrial and Business Areas, and Policy ED2 of the 2015 Lambeth Local Plan ('the Local Plan') states that in such locations a loss of employment floorspace will not be supported without 'clear and robust' evidence showing there is no demand for the floorspace. Policy ED2 also indicates that mixed-use development including

live-work uses will be supported where the existing quantity of B class floorspace is replaced or increased.

10. Additional information on the scope of marketing evidence required is set out in the Council's 2015 Marketing of Employment Premises and Sites Guidance Note ('the Guidance Note'). Although the proposal is for a live-work unit, there would nevertheless be an overall reduction in employment floorspace available on the site. Policy ED2 and the Guidance Note therefore require that marketing evidence should be provided. While the appellant has provided information in respect of the rental costs of nearby office units as a comparison with the proposed development, there is no evidence provided to show that the site has been marketed for continued employment use.
11. The appellant argues that the proposal would 'remove nuisance and disturbance to neighbours from regular deliveries and despatches which are likely from the existing B2/B8 use or indeed from alternative employment uses'. However, while Policy ED2 of the Local Plan sets out a more flexible approach to the loss of employment land or floorspace 'where there are clear amenity and environmental reasons justifying a change of use, such as an unacceptable relationship to surrounding properties', the Council has stated that it is not aware of any complaints or other issues arising from the historic lawful use of the premises. Although the appeal premises are not occupied at present, as well as their B2/B8 uses they could also be used as for employment purposes within the B1 use class. The ground floor of the building is already in employment use and, from what I saw at my site visit, appears to operate without causing any obvious significant disruption to neighbouring occupiers. The appellant has submitted evidence indicating that the cost of carrying out work to bring the site up to modern office standards would make such a development financially unviable. However, the Guidance Note is clear that the need for marketing evidence applies even where premises are in a poor condition, and the marketing activity should take account of the premises' condition.
12. While the appellant suggests that some residential use could be achieved within the site by use of permitted development rights, I note also the Council's view that such a proposal would be unlikely to comply with the restrictions set out in Part 3, Class P of the GPDO<sup>2</sup>. Consequently I can give this consideration very limited weight as a possible fallback position, and it does not justify ignoring the policy requirements protecting existing employment land and premises.
13. The proposal would result in a loss of employment floorspace, thereby reducing the borough's supply of employment land and premises. This has not been justified by reference to robust marketing evidence demonstrating that there is no continued demand for B class floorspace. The proposal therefore conflicts with Policy ED2 of the Local Plan and with Policies E2, E4 and E7 of the 2021 London Plan which together seek to protect and maintain the supply of employment land and premises.

#### *Transport and parking*

14. Policy T6 of the Local Plan states that planning applications will be supported where they do not have unacceptable transport impacts, including cumulative impacts on congestion of the road network and on-street parking. Policy T7

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<sup>2</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

requires new development of all types to be car-free, including permit-free or permit-capped in areas where public transport accessibility is high, and to provide car club membership for all residents in any development that includes housing.

15. The appeal site is not within a controlled parking zone (CPZ), and on-street car parking is allowed both on Gipsy Hill outside the property and on the surrounding side streets. At the time of my site visit on a weekday afternoon a reasonable number of safe on-street parking spaces were available close to the appeal site. As my visit occurred while Covid-19 lockdown restrictions were in place it is not clear that whether the parking situation I saw represented would be typical in more 'normal' times or not. The Council has stated that the area is one of parking stress and that it is continuing to expand CPZs within the borough, although there is no detailed evidence before me relating to this matter, nor is it suggested that there is a specific proposal to introduce a CPZ to this area any time soon. I therefore consider that in the current circumstances it would not be reasonable or necessary to seek a s106 obligation in respect of a possible future CPZ.
16. The appeal site includes a narrow driveway leading off Gipsy Hill at the northern edge of the site which currently could provide parking space for more than one vehicle, albeit in a somewhat constrained space. The proposal includes the retention of a single off-street parking place within this part of the site. It would consequently not be a car-free development, and there would therefore be conflict with this requirement of Policy T7. However, the on-site parking provision would be less than at present, and a live-work unit is likely to result in fewer vehicle movements overall than premises in active B2 or B8 uses.
17. The site has a Public Transport Accessibility Level (PTAL) of 3 which signifies that it has moderate public transport connectivity. However, areas very close by have higher PTALs, and as well as train services to central London from Gipsy Hill station there are bus services to a wide variety of destinations available from Central Hill a short walk to the south. In my view the site therefore has reasonably good public transport accessibility, and secure bicycle storage would be provided on site. However no provision has been made for car club membership for future occupiers, and there is therefore also conflict with this requirement of Policy T7.
18. Taking all the foregoing matters together, the proposed development would fall short in its promotion of sustainable modes of transport. There would therefore be conflict with those elements of Policies T7 and D4 of the Local Plan which seek to achieve car-free development and to provide car club membership in all developments with a residential element. However, given the scheme's likely overall reduction in vehicle movements compared to those which could arise from the site's current lawful uses, I do not consider that there would be an unacceptable impact either on road congestion or on-street parking. I therefore find no conflict with Policies T1 and T6 of the Local Plan or with Policy T4 of the 2021 London Plan, which together seek to reduce dependence on the private car and to ensure that development does not have unacceptable transport impacts.

### *Character and appearance*

19. The appeal site is within the Gipsy Hill Conservation Area (the Conservation Area). I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Area. As heritage assets are irreplaceable, the National Planning Policy Framework (the Framework) states that they should be conserved in a manner appropriate to their significance (paragraph 184). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 194) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 196).
20. The Gipsy Hill Conservation Area is a linear north-south area which for the most part comprises buildings on Gipsy Hill itself, including the appeal site, although it also includes some parts of the side streets. It is predominantly characterised by terraced or detached Georgian and Victorian housing of a variety of sizes and styles, although there are also commercial premises, Gipsy Hill station and Christ Church.
21. As originally submitted, the proposal included the use of render on the exterior walls of the proposed side and rear extensions. The appellant submitted amended plans a considerable time before the planning application was determined, which proposed to use facing brick rather than render for those walls. These changes were not accepted by the Council but, as I have described in paragraph 4 above in my view this did not amount to a fundamental material alteration of the proposal. I therefore consider that the use of facing brick for the extensions, as shown in the amended plans, would be acceptable.
22. The amended plans still show that existing brick walls forming the boundary with the building at No 3 Cawnpore Street would be finished with white render. The appellant suggested that this is because the existing brick faces which would be exposed by the proposed development are not in a good condition and that therefore using render would achieve a higher quality finish. From what I saw at my site visit it was not possible to be certain of the condition of the existing walls, as they are for a large part hidden by the structures of the existing extensions at the rear of the appeal site, or obscured by painting. However, the appellant has suggested that if, following removal of the existing buildings these walls turned out to be in a better state than currently assumed the brickwork could be cleaned and repointed, and that a condition could be imposed requiring the materials and finish of these walls to be agreed at a later stage during redevelopment.
23. I saw that there is already a considerable use of white-painted render in the area immediately around the appeal site, including the houses at 76 and 78 Gipsy Hill (where the rendered side wall of No 76 forms the northern boundary of the appeal site) and, across Cawnpore Street, at Nos 68 and 70 Gipsy Hill. Given this, the limited use of relatively small areas of render to finish existing walls in a part of the site which would be largely obscured from any public views would not be inappropriate, nor would it be visually intrusive. It is not therefore a matter which in my view would therefore need to be addressed by condition, had the proposal been otherwise acceptable.
24. I conclude that the development would not be harmful to the character and appearance of the host building, and the character and appearance of the Gipsy Hill Conservation Area would be preserved. The proposal would therefore

comply with Policies Q5 and Q11 of the Local Plan, and advice in the 2015 Building Alterations and Extensions Supplementary Planning Document, which together require development proposals (including alterations and extensions) to sustain and reinforce local distinctiveness, and to use appropriate materials. As I do not find that the proposal would cause harm to or loss of the heritage assets, it is not necessary for me to apply the public benefit test set out in paragraph 196 of the Framework.

### *Living conditions*

25. Policies H5 and Q2 of the Local Plan and Policy D6 of the 2021 London Plan (supported by advice in the London Plan 2016 Supplementary Planning Guidance on Housing) seek to ensure that residential developments have adequate living space through the application of the nationally-described standard for internal living space ('the NDSS')<sup>3</sup>. There is no space standard set out in the development plan or NDSS for the workspace element of a live-work scheme.
26. The main parties have put forward different figures for the proposed live-work unit's internal space. The Council suggests that the living space element would measure around 110m<sup>2</sup> with a 40m<sup>2</sup> work studio, while the appellant's statement indicates that there would be around 116m<sup>2</sup> of living space, including 'shared' areas such as the hallway, with the work studio measuring around 24m<sup>2</sup>. Notwithstanding the discrepancy between the figures, it is clear from the evidence before me that even taking the lower figure the living space would exceed the minimum 70m<sup>2</sup> gross internal floor area requirement set out in the NDSS for a two bedroom, four person dwelling, and this is accepted by the Council. Furthermore, the two bedrooms would also exceed the specific requirements of the NDSS, and the private external amenity space would exceed the requirement set out in Policy H5 of the Local Plan.
27. Although the appellant states that the proposal would comply with the minimum built-in storage requirements of the NDSS, the submitted plans show only a single built-in cupboard (within the master bedroom). The Council calculates that this measures approximately 0.9m<sup>2</sup>, and so the overall storage space to be provided would fall short of the 2m<sup>2</sup> requirement of the NDSS. However, the internal living space as a whole would comfortably exceed the requirements of the NDSS, and there would also be a separate external cycle storage unit. As a result, I am satisfied that despite the apparent shortfall in built-in internal storage space the development would not be likely to provide unacceptably cluttered or cramped living conditions for future occupiers.
28. I therefore conclude that there would be adequate living space within the proposed live-work unit, and so it would provide acceptable living conditions for future occupiers, notwithstanding that there is some shortfall of built-in storage space assessed against the NDSS. The proposal would therefore comply with Policies H5 and Q2 of the Local Plan and Policy D6 of the 2021 London Plan, which seek to ensure that residential developments provide good living conditions for future occupiers.

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<sup>3</sup> Technical housing standards – nationally described space standard. Department for Communities and Local Government, March 2015

## **Planning Balance and Conclusion**

29. Section 38 of the Planning and Compulsory Purchase Act 2004 requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
30. The proposal would provide a live-work unit, with employment benefits likely to arise during construction and throughout its future occupation. However, given the small scale of the scheme the housing supply and other economic benefits would be limited, and they therefore carry only modest weight in its favour.
31. The proposal would preserve the character and appearance of the Conservation Area, the live-work unit would provide acceptable living conditions for future occupiers, and the development would not have unacceptable impacts in respect of road congestion or car parking. These are all matters which have a neutral impact on the overall balance.
32. The loss of business premises, although not currently in active use, would reduce the borough's supply of employment floorspace. This has not been justified by robust marketing evidence, and so would undermine the Council's plan-led approach to the provision and retention of employment sites. Furthermore, the proposal would not adequately promote the use of sustainable methods of transport. These matters attract significant weight, and outweigh the benefits associated with the proposal.
33. The scheme consequently conflicts with the development plan read as a whole. None of the material considerations identified, including the Framework, outweigh this conflict or justify a decision other than in accordance with the development plan. The appeal is therefore dismissed.

*M Cryan*

Inspector