



Appeal Decision

Hearing held on 16 to 18 February 2021

Site visit made on 21 June 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2021

Appeal Ref: APP/A5840/W/19/3233375

303 Camberwell New Road, London SE5 0TF

- 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 Ucur, TFC Camberwell against the decision of the Council of the London Borough of Southwark.
 - The application Ref: 18/AP/1878, dated 24 April 2018, was refused by notice dated 30 January 2019.
 - The development proposed was originally described as the demolition of all buildings on site and redevelopment of the site to provide a mixed-use development, comprising retail and 27 dwellings with ancillary refuse storage, cycle storage and landscaping.
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Decision

1. The appeal is dismissed.

Application for Costs

2. At the hearing an application for costs was made by the Council of the London Borough of Southwark against Mr Ucur, TFC Camberwell. 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. During the course of the planning application the description was changed to the redevelopment of the site involving the demolition of all existing buildings and the erection of a 7-storey building comprising an A1 retail unit (95sqm) and 27 residential units (7x1bed, 10x2bed, 10x3bed) with associated disabled parking, car club bay, refuse storage, cycle storage and landscaping. It was agreed at the hearing that I should consider the appeal on this basis and, hence, I have done so.
4. The Council's reasons for refusal as were set out in the decision notice expressed concerns in relation to daylight, sunlight, noise and air quality, amongst other issues. The Council withdrew its concerns over daylight and sunlight on receipt of additional information that the appellant had provided with the appeal submission. Shortly before the hearing and following discussions with the appellant, the Council also withdrew its concerns over noise and air quality, subject to conditions. As interested parties have raised concerns over these matters, however, they remain the subject of my decision.

5. The appellant submitted a revised '4th & roof level plans' drawing (ref: CAM-PR-4C) at the hearing (the revised plan). The Council were of the view that I should not accept the revised plan on the basis of ambiguities, in particular in relation to submitted elevations, and that the changes were of a magnitude that should not be considered at this stage. The changes are, though, of a fairly minor nature as they involve altering what was formally a private outdoor terrace area into a communal outdoor area and sub-dividing it from a private terrace. The boundary between the two areas would be demarcated by a screen. A secondary bedroom would overlook the communal outdoor area. The appellant stated that the associated window could be obscurely glazed to protect privacy.
6. It would be the future occupiers of the proposal that would be likely most affected by the revised plan. As they are not known at this stage, their interests would not be prejudiced. The proposal is not so changed that it would deprive those who should have been consulted on the revised plan the opportunity of such consultation. In relation to the modest elevational changes that would result, this could be dealt with by way of the imposition of a planning condition if the appeal was to be allowed. Accordingly, I have considered the revised plan in my decision.
7. I accepted additional information from both main parties in the run up to the hearing regarding affordable housing and provided a ruling to this effect, as I was asked to do by the Council. The appellant also submitted related additional information during the hearing. In the interests of fairness, the Council were given the opportunity to respond to this information after the close of the hearing, as was the appellant in relation to the Council's response. The appellant also submitted a final version of the Unilateral Undertaking (UU) after the hearing, which the Council was also afforded the opportunity to comment upon. Also after the hearing, the London Plan was published by the Mayor of London on 2 March 2021 (London Plan). It replaces all previous versions of the plan. Both main parties were given the opportunity to provide their views as the Council's reasons for refusal refer to London Plan policies. As a consequence, I have considered these various documents and responses in my decision.

Main Issues

8. The main issues are (i) whether the proposal would make adequate provision for the need for affordable housing; (ii) the effect on the character and appearance of the area, including on the setting of both the Camberwell Green Conservation Area and the St Mary's Greek Orthodox Cathedral; (iii) the effect on the potential redevelopment of the adjacent bus depot site; and (iv) the effect on the living conditions of the future occupiers by way of the communal amenity space provision.

Reasons

9. The appeal site is occupied by a 3 storey flat roofed building. At ground level, there is a supermarket and a warehouse. The upper floors comprise 4 flats. The building is set back from Camberwell New Road by a forecourt. Access is provided under an overhang of the building to a rear car park, as well as to the warehouse and a service yard.

10. The site lies in between St Mary's Greek Orthodox Cathedral (the cathedral) and a bus depot. On the opposite side of the road there is a row of 3 storey Victorian terraced properties which rise to 4 storeys on a nearby street corner. Beyond the bus depot is a railway bridge. The site also lies close to Camberwell town centre, where there are a variety of commercial and residential uses contained within buildings of varying sizes and heights.

Affordable Housing

Planning Policy Position

11. Strategic Policy 6 of the Southwark Council, Core Strategy (2011) (Core Strategy) states that development should provide as much affordable housing as is reasonably possible whilst also meeting the needs for other types of development and encouraging mixed communities. It requires as much affordable housing on developments of 10 or more units as is financially viable. In this regard, it requires a minimum of 35% affordable housing units on developments with 10 or more units. Strategic Policy 6 also states that developments of 10 or more units must provide a mix of housing and the associated figure with the policy reaffirms that at least 35% of new units must be affordable.
12. Saved Policy 4.4 of the Council's Southwark Plan (2007) (Southwark Plan) also seeks to secure affordable housing as part of private residential development, whilst Saved Policy 4.3 is concerned with a mix of dwelling sizes and types to cater for the range of housing needs of the area, amongst other considerations. The Council's Affordable Housing Supplementary Planning Document (2008) (Affordable Housing SPD) provides further guidance as regards Saved Policies 4.3 and 4.4 including on need and the provision of affordable housing, as well as on financial appraisals if an applicant suggests that it is unable to provide the required amount of affordable housing on a site.
13. Policy H4 of the London Plan sets a strategic target for 50 per cent of all new homes delivered across London to be genuinely affordable. Amongst the measures that are set out to achieve this aim is that all major development of 10 or more units triggers an affordable housing requirement to provide affordable housing through the threshold approach. This approach is set out by Policy H5 where the level of provision is also initially set at a minimum of 35%. It also allows for the consideration of detailed supporting viability evidence, where the approach is not met. Policy H6 sets out the split of affordable housing products that should be applied to residential development.
14. Paragraph 64 and footnote 29 of the National Planning Policy Framework (Framework) states that where a major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership as part of the overall affordable housing contribution from the site. There are exceptions listed in paragraph 64 to this approach, although they do not apply in this case. Accordingly, paragraph 64 is also of relevance to the proposal.
15. The need for affordable housing is not in dispute between the main parties. The policy framework that I have set out above seeks to address this need. The minimum 35% of affordable provision on developments with 10 units or more represents the starting point for assessing the proposal, rather than if affordable housing should, or should not, be provided. Whilst it was put to me

at the hearing that there would be some expectation that an appellant would, as a matter of course, seek to provide less at least when seeking planning permission, this is not reflective of the approach under the policy framework.

16. As a result, it is not the case that the Council needs to justify its position as regards at least 35% affordable housing provision. The onus is on the appellant to satisfactorily demonstrate why such a level of provision should not be provided. As I have also identified above, viability is a matter for consideration in this regard to see if a departure from the starting point of at least 35% provision is warranted.

Development Viability

17. The Framework states that all viability assessments should reflect the recommended approach in national planning guidance, including standardised inputs. These are set out in the Planning Practice Guidance: Viability (PPG) and are *Gross Development Value (GDV)*, *Costs*, *Land Value*, *Landowner Premium* and *Developer Return*. The Council's Development Viability Supplementary Planning Document (2016) (Development Viability SPD) also sets out the process for assessing the financial viability of a development proposal. Whilst it predates the most up to date version of the PPG in terms of the inputs and the processes that it sets out, it is largely in line with it. My deliberations are, however, based on the PPG in light of that it forms the recommended approach under the Framework.
18. Based on the submitted viability assessment, the appellant considers that no affordable housing can be provided. This position is reaffirmed in the appellant's Financial Viability Assessment - Update dated November 2020 and in the appellant's contributions to the Table of Inputs for the Statement of Common Ground (2021) (TI). The appellant considers that a £132,646 deficit would result from a 100% private scheme. The Council has presented a number of positions, dependant on whether stand-back and sensitivity analysis is applied, all of which lead to affordable housing provision being made. In the TI, the Council state that surplus figures of £789,562 and £1,116,433 would result from a 100% private scheme.
19. With regard to *GDV*, the principle difference between the main parties as set out in the TI relates to the use of indexation. The PPG states that market evidence can be used. It is to be adjusted to take into account variations in use, form, scale, location, rents and yields, disregarding outliers. The use of indexation seems to more greatly reflect the approach set out in the PPG in relation to *GDV* by way of the consideration of market evidence. The Council's case is more compelling because of the indexation it applies and which the appellant's evidence somewhat underplays. The effect of this would be to contribute towards a surplus, rather than a deficit for the proposal, if it was entirely a private scheme. The effect caused by the differences in views on the likely progression in sales is tempered by that it is not in dispute that all of the dwellings at some point would be sold.
20. The difference between the main parties on *Costs* is also partially dependant on the application of indexation as regards the works costs. The appellant has pointed out that the Council had previously agreed such costs, albeit that indexation appears now to have also changed that position. In respect of costs that were put forward by both parties for marketing and legal fees (sales), the differences are not insignificant. Both main parties did evidence in

detail how those figures had been derived in relation to comparator sites and in taking views from the respective professionals in those fields.

21. In all likelihood, the costs that would be ultimately incurred is likely to be between the two main parties' respective positions. The same applies in relation to contingency costs and the associated professional fees, which the PPG states is to be relative to project risk and developer return. As a consequence, the actual position on costs would also likely contribute towards a generation of a surplus for a private housing scheme.
22. Concerning *Land Value*, there is a dispute between the main parties on what floorspace in the existing building should be utilised. Whilst there appeared to be agreement that the use of the ground floor of the building was not in accordance with the related planning permission¹, the appellant considered that the existing, rather than the approved layout, should be utilised. I have some difficulty with this approach, in the absence of a relevant permission or a CLEUD². Nor is it my role as an Inspector dealing solely with an application for planning permission to conduct an exercise as to lawful use or operation. Hence, I favour the Council's evidence including how it contributes to the Existing Use Value (EUV) and the figure which is set out in the TI.
23. It is also in dispute over whether the Council had used comparator evidence to inform its figures on EUV. The Council explained that it had not been used in relation to establishing the Benchmark Land Value (BLV), but rather in a separate exercise relating to the value of the site, assuming planning permission. I am therefore satisfied that the Council's EUV is not reflective of 'hope value', which the PPG cautions against.
24. The BLV incorporates the *Landowner Premium*. Under the PPG, the premium should provide for a reasonable incentive for the land owner to bring forward land for development while allowing a sufficient contribution to fully comply with policy requirements. The PPG is clear that components of a reasonable premium can include adjustments for policy compliance (including for affordable housing), as well as landowner expectation.
25. The BLV is based on the market yields. The Council put forward a persuasive argument at the hearing that, as a consequence, it already provides such a premium because it reflects the price at which a landowner should be able to be willing to sell the site. The effect of adding a further premium of 20%, as the appellant proposes, would seem to result in an element of duplication and, as such, would go against what could be considered a reasonable adjustment under the PPG, not least as it is also to account for policy compliance concerning affordable housing. On this basis, the BLV would account for landowner expectation. The removal of the further premium would also likely contribute to a level of surplus.
26. In relation to the level of *Developer Return*, this is agreed by the main parties through the TI as regards the base scheme.
27. The Council carried out a stand back analysis as part of its viability review. The effect of assessing a scheme with planning permission and market movements is that, perhaps unsurprisingly, it increases the viability. In any event, even

¹ Council ref: 12/AP/0040

² Certificate of Lawfulness of Existing Use or Development

without stand back analysis, there appears scope to provide some level of affordable housing.

Other Affordable Housing Matters

28. Strategic Policy 14 of the Core Strategy provides for planning obligations to reduce or mitigate the impact of development. A similar approach is also set out by Saved Policy 2.5 of the Southwark Plan and Policy DF1 of the London Plan. The UU contains a number of planning obligations as regards affordable housing.
29. The appellant proposes a mechanism through the UU that would allow for an early stage review of viability at the implementation stage of the proposal. Such an approach does not sit comfortably with the policy position which is predicated on affordable housing provision being made as part of the approved scheme, rather than afterwards. Whilst I would acknowledge that the Development Viability SPD concerns itself with viability reviews, as does Policy H5 of the London Plan, this would be more appropriate when there is agreement that the proposal cannot provide a policy compliant level of affordable housing at the outset. With the concerns that I have expressed, this does not apply in this case.
30. The Council are also not signatories to the UU, yet it would seem to be obligated in the assessment of the development viability information submitted, as well as in the event that it would lead to an affordable housing financial contribution. If it did not obligate the Council, then it would not have teeth as a review mechanism and so it would not result in an appropriate level of affordable housing provision being made at that stage. It carries limited weight in my decision, even if it offers a more advantageous split in favour of the Council than is set out in the Development Viability SPD in the event that the viability review demonstrates an improvement in the proposal's viability.
31. I have also been referred by the appellant to a number of schemes in the Council area in relation to how viability appraisals have been carried out. The Council pointed to that all of these schemes provided affordable housing, apart from one student housing scheme which is not the type of residential development for my consideration. This was not disputed by the appellant. As such, they have a limited bearing in a case where no affordable housing is proposed.
32. The appellant has also referred to how the Council dealt with the financial viability assessment at the planning application stage. However, such matters are not for my consideration. My deliberations on affordable housing are based on the totality of the evidence submitted.

Conclusion on Affordable Housing

33. The appellant's viability evidence does not adequately demonstrate that the policy position of at least 35% provision can be put aside in favour of providing no affordable housing. A number of the standardised inputs cast doubt on whether the scheme would be in deficit and the case for the provision of no affordable housing is not compelling.
34. On this basis, I conclude that the proposal would not make adequate provision for the need for affordable housing. It would not comply with Strategic Policy 6 of the Core Strategy, Saved Policy 4.4 of the Southwark Plan, and Policies H4,

H5 and H6 of the London Plan as it would not provide for an appropriate level of affordable housing. In the absence of affordable housing as part of the housing mix, it would also not comply with Saved Policy 4.3 of the Southwark Plan.

35. The lack of affordable housing provision would also result in conflict with the Affordable Housing SPD and the Framework in this regard. The shortcomings in relation to the UU and affordable housing also cause the proposal not to comply with Strategic Policy 14 of the Core Strategy, Saved Policy 2.5 of the Southwark Plan and Policy DF1 of the London Plan.

Character and Appearance

Conservation Area

36. The appeal site lies adjacent to the boundary of the Camberwell Green Conservation Area. The main parties agree that the site lies within its setting. Much of the significance of the conservation area is derived from it being one of London's urban villages with the Green at its core. The site is separated from the Green by a number of buildings which, apart from the cathedral, are of varied quality as regards their contribution to the significance.
37. The Council's Camberwell Green Conservation Area Appraisal (CAA) identifies an important view down Camberwell New Road from the railway bridge, which is also outside of the conservation area boundary. The view extends past the site and towards central Camberwell. This view is contained within the street frontages. The existing building appears relatively unobtrusive with its 3 storey flat roofed form and as it is set back from the street frontage. Looking out from the conservation area, the building also appears discrete. The cathedral and trees provide not insignificant levels of screening from this direction.
38. The CAA also considers that the cathedral is an important reference point at this western end of the conservation area. It is difficult to disagree with such a statement. When this is considered with the site's location on a gateway into the conservation area, the site is found in a sensitive location and this forms the significance of the setting. The existing building has a neutral effect, in this regard.
39. The site's contribution to the significance would be markedly changed by the proposal. With its overall height, and the resultant mass and bulk, it would be far from inobtrusive. The scale of the proposal would mean that it would be an incongruous feature at this gateway to the conservation area. Its greater height compared to its immediate surroundings would be most apparent, and so it would appear uncomfortable.
40. I have been referred to the Camberwell on the Green development on the far side of the cathedral and other developments that have taken place along Camberwell New Road and Camberwell Road. Where these developments are of comparable heights they are more towards central Camberwell, where such buildings would be expected, rather than on the periphery. In the immediate vicinity of the site, buildings are of a noticeably less height, whether they are on a domestic scale or in commercial use. It is this immediate vicinity which is of importance because it forms the significance of the setting and defines the sensitivity of the location.

41. The view into the conservation area down Camberwell New Road would also be significantly disrupted because the eye would be drawn to the scale of the building, rather than towards central Camberwell. From the opposite direction, it would not be effectively screened by the cathedral and the trees, because of its mass and bulk. The overall design would appear out of context.
42. It would also detract from the contribution of the cathedral to the significance of the conservation area. The cathedral would no longer form such an important reference point with the backdrop of the proposed much higher building directly next to it and as the proposal would extend partially behind the cathedral because of the angled nature and length of the shared boundary. How the cathedral is appreciated when the conservation area is either entered or exited would be much diminished.
43. Conflicting views were expressed at the hearing about the relevance of aspects of the Framework's approach to conserving and enhancing the historic environment and the development plan policies cited in the Council's related reason for refusal. As they provide for the protection of the historic environment, they are applicable to my decision. The Council did accede that the 2015 Technical Update to the Residential Design Standards Supplementary Planning Document (2011) (RDS SPD) was of no particular relevance in this regard and I see no reason to disagree. The related reason for refusal also includes Saved Policy 3.2 of the Southwark Plan. As this seems more to relate to living conditions matters, it is of limited relevance as regards character and appearance issues. However, none of this addresses the conservation area concerns that arise.
44. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area, including on the setting of the conservation area. As such, it would not comply with Strategic Policy 12 of the Core Strategy, Saved Policies 3.12, 3.13, 3.16 and 3.18 of the Southwark Plan, and Policies HC1, D3 and D4 of the London Plan where they concern design and conservation matters, including the protection afforded to conservation areas and their setting. It would also not comply with the Framework where it concerns achieving well-designed places.
45. For the purposes of paragraph 196 of the Framework, 'less than substantial harm' would arise to the significance of a designated heritage asset. This harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
46. The proposal would make a contribution towards the Government's objective of significantly boosting the supply of homes, including the Council's delivery of housing, and it would make use of previously developed land. Some of the homes would also be aimed at family accommodation. There would also be economic benefits during construction, resulting from the spend of the future occupiers and through receipts that the Council would receive. There would also be measures concerning energy efficiency and encouraging the use of travel modes other than the car. I do not, though, consider the removal of the existing building on the site to be of public benefit because, as I have set out above, it has a neutral effect.
47. I am mindful that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The significance of the setting of the conservation

area would be much diminished, as would be the contribution of the cathedral to the significance. Overall, the public benefits would not outweigh the 'less than substantial harm' to the designated heritage asset, under the Framework. The proposal would not comply with the policies in the Framework in this regard.

St Mary's Greek Orthodox Cathedral

48. The cathedral is a red brick structure with a small cloister that faces towards Camberwell New Road. It contains 2 pinnacle type structures towards the front of the building, which along with a lychgate and smaller architectural elements, give the building a decorative appearance and contribute favourably towards its significance. It was the subject of bombing during World War 2 and rebuilding works have taken place afterwards. It contains an unsympathetic extension, although this is located well away from the streetscene. Overall, it maintains a pleasing appearance and it is a notable local landmark. There is agreement between the main parties that it constitutes a non-designated heritage asset and that the site falls within its setting.
49. With the height, mass and bulk of the proposal and its proximity to the cathedral, the significance of this asset would be much reduced. How it would be experienced would be diminished with the presence created by the overall scale of the proposal. Its most pleasing features towards the front of the site would be largely seen against the backdrop of the proposal as it would be readily visible over the roofline of the cathedral.
50. Where there is already a taller building in view to the rear of the cathedral, this appears distant and does not have the same level of adverse effect as would arise from the proposal. Whilst I was made aware that the appellant has had discussions with the custodians of the cathedral and there is not an objection, this only has a limited bearing on the effect on the setting of this asset.
51. The effect of the proposal would be to, in effect, hem in the cathedral, with the Camberwell on the Green development on the opposite side. 'Bookending' the cathedral would not be to the benefit of its significance as it would result in the loss of much of its landmark qualities. Rather, the more modest size of the existing building on the appeal site provides some relief in order that the significance of the setting of the cathedral can still be appreciated.
52. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area, including on the setting of the cathedral. As such, it would not comply with Strategic Policy 12 of the Core Strategy, Saved Policies 3.12 and 3.13 of the Southwark Plan, and Policies HC1, D3 and D4 of the London Plan where they concern relevant design and conservation matters, and with the Framework in respect of design.
53. In relation to a non-designated heritage asset, paragraph 197 of the Framework sets out that a balanced judgment is required having regard to the scale of any harm or loss and the significance of the heritage asset. The loss of the significance that would occur would be considerable. The benefits that would arise would not outweigh the scale of the harm.

Redevelopment of the Bus Depot Site

54. The adjacent bus depot site is identified in the emerging New Southwark Plan (NSP) as a site allocation (NSP27) which supports a mix of residential and

other uses, including the potential retention of a bus garage use. The NSP is currently at the Examination stage. The principle matter of contention is whether the proposed windows on the side of the proposal facing the bus depot site may compromise the development potential of that site coming forward.

55. The distances from the proposed windows to the boundary would be in the region of 2.4 metres (m) to 6m, based on the evidence submitted. Whilst these are short distances, the windows would be positioned at an angle to the boundary. This would assist in avoiding unacceptable levels of direct overlooking between facing windows if the bus depot site comes forward for redevelopment and if comparable distances are also provided on that site. Where window positions are shown on the boundary, the appellant confirmed at the hearing that as shown on the plans these are dummy window positions or similar. This is a matter which could be dealt with through a planning condition if I was minded to allow the appeal. It would also not leave the respective rooms without adequate light and outlook.
56. The Council made reference at the hearing to much greater separation distances that it applies. In this regard, context is also important and the site lies on the edge of an area with a high density of built development. When this is considered with the positioning of the proposed windows, the separation distances would not be unacceptable.
57. The proposal satisfactorily achieves the objective of considering the relationship with this neighbouring site when the positioning of the proposed windows is considered. If the redevelopment of the bus depot site did come forward, then it would similarly have to pay proper regard to the appeal site. This does not amount to comprising the development potential because it is part of the course in bringing a successful development forward.
58. At the hearing, I heard various views on the likelihood of the redevelopment of the bus depot site coming forward, based on the NSP and proposals through the Mayor of London, Mayor's Transport Strategy (2018) (TS), along with the associated timescales. In any event, I have assumed that a redevelopment would come forward and have considered the proposal on this basis. The Council's related reason for refusal also refers to the effect on legitimate activities, which it is also understood concerns the bus depot site. Noise is not, though, now a matter of dispute between the Council and the appellant. It is an issue that I deal with later in my decision.
59. I conclude that the proposal would not have an unacceptable effect on the potential redevelopment of the adjacent bus depot site. Thus, it would comply with Strategic Policies 1 and 5 of the Core Strategy, Saved Policies 3.11 and 5.2 of the Southwark Local Plan, and Policy T1 of the London Plan where they concern transport interests and impacts, providing new homes and not compromising development potential. It would also accord with the TS in relation to new homes and jobs, and development in and around operational sites. I also do not find conflict with the Framework in this regard.

Communal Amenity Space Provision

60. The proposed outdoor amenity space provision would take the form of communal terraces at the rear of the building at 4th floor level and at the front of the building at 5th floor level, on the basis of the revised plan. It is not in dispute that the amount of communal amenity space would accord with the

RDS SPD, but rather the disagreement concerns access and security matters. In this regard, the RDS SPD refers to that communal amenity areas must be designed appropriately to be used by all the residents, as well as overlooking by way of passive surveillance and safety matters.

61. The proposed dwellings would be arranged in a layout of 3 separate cores. Each would have its own stairwell or lift access, or a combination of both. The proposed communal terrace at the rear of the building would be accessible to the dwellings in that core by way of the stairwell and lift. Some ground and first floor dwellings would have less direct access but would still be able to readily utilise the stairwell and lift to this communal terrace. The dwellings in the core to the front of the building would be able to easily access the proposed communal terrace at the front of the building.
62. The Council anticipate that a good quality doorstep play area for children under 5 would be needed due to the size of the proposal. Clearly, whichever proposed communal terrace this facility would be located on would be less convenient for the occupiers of the dwellings which are in a different core, including those which may be occupied by families. However, it would still be of no great distance and it is not uncommon on a residential development for a play area to be more convenient for some of the occupiers.
63. Natural surveillance of the proposed communal terrace areas would be of a limited nature because the layout would not lead to the proposed dwellings overlooking these areas. This is in order to protect the privacy levels of occupiers of those dwellings. However, the proposed communal terrace areas would not be readily accessible other than to the future occupiers, so the lack of overlooking is less of a concern in this case. In respect of younger children using these areas, it would not be unreasonable to expect them to be supervised by a parent or a guardian.
64. In taking these considerations together, the access for the future occupiers would not be inconvenient, and passive surveillance and safety matters would not be unacceptable. In overall terms, it would accord with the aspirations of the RDG SPD in relation to the communal amenity space for the type of residential development proposed.
65. Each proposed dwelling would also have its own private amenity space. Whilst the Council has raised concerns over the use of winter gardens due to their enclosed nature, the Mayor of London's Housing Supplementary Planning Guidance (2016) permits their use on dwellings on upper floors as private open space. This applies in this case and they would not unduly detract from the private amenity space provision or the overall quality of the accommodation.
66. I conclude that the proposal would not have an unacceptable effect on the living conditions of the future occupiers by way of the communal amenity space provision. As a result, it would comply with Saved Policy 4.2 of the Southwark Plan where it concerns high standards of space including suitable outdoor/green space, amidst other matters, and with Policy H6 of the London Plan where it concerns private outside space.

Other Matters

Noise

67. The main noise issue concerns the effect from the bus depot. This is in terms of the effect on the living conditions of the future occupiers of the proposal and, as a consequence, whether that would have the potential to impede the operation of the bus depot through complaints from those occupiers. It is understood that the bus depot is in operation 24 hours a day, 7 days a week and noise disturbance can occur at times when noise levels are usually expected to be at their quietest during the night time periods.
68. The appellant's position on noise is on the basis of a number of proposed mitigation measures. The appellant pointed out at the hearing that the windows facing the bus depot would be non-opening and that a mechanical ventilation system would be put in place so that fresh air would be provided to the respective dwellings. The windows would also be triple glazed. The winter gardens on the facing elevation would also be fully enclosed.
69. If the windows were to open, the concerns from Transport for London and the operator of the bus depot would be fully understandable. However, on the basis of the evidence before me, this would not be the case and so I find that the proposal would adequately protect the living conditions of the future occupiers from noise from the bus depot. A scheme which concerns the agreement of the mitigation measures is a matter which could be dealt with through the imposition of a planning condition if the appeal was to be allowed. The Council agreed to noise conditions with the appellant in this regard.
70. Similarly, with the implementation of such mitigation measures, the occupiers would be unlikely to raise concerns over noise from the bus depot. Thus, the proposal would also be unlikely to impede the operation of the bus depot in this regard.

Air Quality

71. Mitigation is also proposed to address air quality issues, which it is understood arise from potential concentrations of nitrogen dioxide, as well as particulates. Triple glazed windows and mechanical ventilation are also of relevance in this respect, as is assessment work that could be carried out during the construction phase to accord with the guidelines³ that operate in London as regards planning and air quality. These are matters that could also be addressed through a planning condition, which the main parties have agreed would concern an air quality neutral assessment. There is not a compelling reason to disagree.

Light

72. Residential properties are found nearest to the site at 298-314 Camberwell New Road (Nos 298-314) and there is also residential accommodation provided in the cathedral. Nos 298-314 are on the opposite side of the road to the site and due south from it. As such, the effect on sunlight levels to those properties would not be unacceptable with the direction of the sun. Similarly, with regard to the cathedral, as this is found to the east of the site and with

³ London Councils, Air Quality and Planning Guidance, Revised version – January 2007.

the reported window positions, the effect on the levels of sunlight that it receives would also not be unsatisfactory.

73. The appellant has submitted an Average Daylight Factor Report with the appeal, in line with BRE guidelines⁴. Applying these guidelines, the assessment states that the reduction in daylight levels would not be noticeable. With the separation provided by the road from the properties opposite, such a conclusion is unsurprising and I have no substantive evidence to the contrary. There would be more of an impact on the daylight levels that the cathedral receives, although as it is understood that the associated accommodation is occupied on a temporary basis, this would not be unacceptable.

Unilateral Undertaking

74. As I have set out earlier in my decision, I have misgivings about how the UU proposes to deal with affordable housing as it seems to put obligations on the Council and if it does not, whether it can be assured that requisite affordable housing provision would be made if the viability review proved favourable in this regard. There can be no assurance that the Council would act on the measures in the UU.
75. I have similar concerns over the proposed financial contributions that would be paid to the Council by way of the Carbon Green Fund and for Children's Play Equipment and Sports' Development. They would seem to obligate the Council in receiving these contributions or, if not, there is an absence of measures that would ensure that the financial contributions would be spent on these items. Any changes made to the Carbon cost per tonne through the London Plan do not change my views, in these circumstances. In relation to the car club scheme obligation, this does not set out a dispute mechanism and even if there was one, again, it is not clear how the Council would be obligated by it.
76. I do not dispute that these obligations would meet the tests that are set out in Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended, 2019) and the Framework. They are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. However, as these planning obligations are defective in the respects that I have set out, they carry limited weight in my decision.
77. The UU also concerns obligations in relation to wheelchair housing and car parking restrictions. These are not matters which place obligations on the Council and they are needed to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Hence, these aspects of the UU carry weight in my decision in so far as they would be required in order to make the proposal not unacceptable in these terms.

Planning Balance and Conclusion

78. With the conflict that I have identified with the development plan policies, the proposal conflicts with the development plan as a whole. This is because the policies are central in deciding whether or not the proposal would comply with the development plan. They are also consistent with the Framework and the conflict with them attracts significant weight in my decision. The Council also

⁴ Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice.

referred me to the objectives of the London Plan but as the policies that I have been referred to seek to deliver such objectives, there is not a reason to consider them further.

79. Prior to the hearing, Central Government published the results of the Housing Delivery Test 2020 (HDT). As is set out in the Supplementary Statement of Common Ground, the 2020 measurement for the Council is 72%. Whilst I was made aware at the hearing that the Council contested the result and was seeking to rectify what it sees as errors in the data, this is the HDT measurement as it stands for my consideration. As a consequence, under paragraph 11 d) of the Framework, the policies which are most important for determining the application are out-of-date.
80. In the context of paragraph 11 d), this means granting permission unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out these policies, which include designated heritage assets. The application of such policies related to designated heritage assets, namely the conservation area, provides a clear reason for refusing the development proposed. Hence, the proposal would not accord with the Framework's presumption in favour of sustainable development. Nor does paragraph 11 d) prescribe the level of weight to be given to the conflict with the development plan policies, which I have already set out above.
81. Nevertheless, there is still a need to carry out a broader planning balance in relation to whether or not there are material considerations that justify a decision that is not in accordance with the development plan.
82. In relation to the adverse impacts, these concern the lack of adequate provision for the need for affordable housing and the unacceptable effect on the character and appearance of the area, in relation to both the setting of the conservation area and the cathedral. I find the harm, when taken together, to be very significant. Set against this would be the net addition of 23 dwellings that would increase the supply of housing in accordance with Policy H1 of the London Plan and the Framework. Such benefits would also include the contribution to rectifying the deficit in the Council's HDT results and the provision of family accommodation, as supported by Policy H10 of the London Plan and the Framework. The proposal would also make use of previously developed land and there would also be the remaining economic, social and environmental related benefits that I have referred to earlier in my decision. The benefits attract significant weight.
83. In concluding, I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. For these reasons, I conclude that the proposal conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Dr David Hickie	Heritage Matters
John Hilton	Peter Pendleton & Associates Ltd
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FOR THE LOCAL PLANNING AUTHORITY:

Admas Habteslasie	Counsel
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Dipesh Patel	Noise and Air Quality
Richard Craig	Design and Conservation
Jacob G Kut	Avison Young (UK) Limited
Emma-Lisa Shiells	Team Leader – Planning Policy
Margaret Foley	Senior Legal Officer

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

- 1 Drawing ref: CAM-PR-4C 4th & Roof Level Plans
- 2 Titon Ventilation Systems Product Manual
- 3 Costs Application of the Local Planning Authority
- 4 UK House Price Index and Screenshots
- 5 Mayor of London, Housing Supplementary Planning Guidance (March 2016)
- 6 Appellant's Submissions on Costs
- 7 Closing Speech of the Local Planning Authority
- 8 Closing Submissions on Behalf of the Appellant
- 9 Avison Young (UK) Limited on behalf of the Council, response to the UK House Price Index and Screenshots, dated 24 February 2021

- 10 Appellant's response to Pre Commencement Conditions, dated 25 February 2021
- 11 Deed of Undertaking Pursuant to Section 106 Town & Country Planning Act 1990 Relating to 303 Camberwell New Road, London SE5 0TF (signed version)
- 12 Affordable Housing 106 Limited on behalf of the Appellant, review of comments on the Avison Young (UK) Limited response to the UK House Price Index and Screenshots, dated 2 March 2021
- 13 Appellant response regarding the published London Plan, dated 3 March 2021
- 14 Council response regarding the published London Plan, dated 9 March 2021