



Appeal Decision

Site Visit made on 22 June 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal Ref: APP/A5840/W/20/3265337

63-65 Old Kent Road, London, SE1 4RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Canterbury Properties Ltd against the London Borough of Southwark.
 - The application Ref 19/AP/5141, is dated 16 August 2019.
 - The development proposed is demolition of the existing building and the erection of a five storey building with a basement to provide flexible commercial use on the ground floor and basement and 9 self-contained residential units (1 x one bed, 1 x two bed and 7 studio units) on the upper floors with associated refuse storage, cycle storage and landscaping works.
-

Decision

1. The appeal is allowed, and planning permission is granted for demolition of the existing building and the erection of a five storey building with a basement to provide flexible commercial use on the ground floor and basement and 9 self-contained residential units (1 x one bed, 1 x two bed and 7 studio units) on the upper floors with associated refuse storage, cycle storage and landscaping works at 63-65 Old Kent Road, London, SE1 4RF in accordance with the terms of the application, Ref 19/AP/5141, dated 16 August 2019, subject to the conditions in the attached schedule.

Applications for costs

2. The appellant has made an application for an award of costs. This is the subject of a separate decision.

Preliminary Matters

3. The National Planning Policy Framework (the Framework) was updated in July 2021. Whilst appeal submissions have referred to the 2019 version of the Framework, I have noted changes made to the content and paragraph numbers in preparing this Decision.
4. The Council has not prepared an officer report nor an appeal statement. Their concerns with the proposal in contesting the appeal are set out in appendices to the appellant's appeal statement detailing dialogue between the parties.

Main Issues

5. The main issues are (a) the effect of the proposal on the character and appearance of the area and (b) the adequacy of internal layouts and floor to ceiling heights proposed for residential and commercial areas.

Reasons

Character and appearance

6. The appeal relates to a four storey mid-terrace building in commercial use on the lower floors with residential above accessed via a passageway from the street to rear staircases. The terrace is between Aberdour Street and Leroy Street and faces a supporting wall to the Old Kent Road flyover. Other buildings in the terrace are of mixed design, height and appearance.
7. The replacement building would have a vertical emphasis to window openings and use of materials that would complement vertical features elsewhere on the terrace. The recessed top floor would be constructed from materials to contrast with the lower floors. The main eaves lines would reasonably align with eaves to adjacent buildings. Reasoning for the massing and design is set out in the design and access statement and townscape visual impact assessment.
8. The site currently has an unduly large shop fascia sign overlapping upper floor windows. The proposal would incorporate a more discreet shopfront and fascia which would be lower than the fascia to the adjacent care service premises at 59-61 Old Kent Road. This building has contrasting proportions compared with Nos 67 and 69 to the other side which do not have shopfronts. At street level there would remain a diversity in appearance to buildings in the terrace, but the proposal would nonetheless result in a greatly improved and satisfactory ground floor appearance to the site and to the terrace as a whole.
9. The proposal would accord with the objectives in chapters 11 and 12 of the Framework in making effective use of land and in achieving well designed places. There would not be conflict with the design provisions of Policy 12 of the Southwark Core Strategy (2011) or with Saved Policy 3.13 of the Southwark Plan (2007). Similarly, there would not be conflict with Policy 7.6 of the London Plan (2016) in relation to architecture and the public realm.

Internal layouts

10. The flats would all have satisfactory internal layouts and adequate floor areas for the number of bedspaces. The central positioning of the internal staircase and lift shaft would provide convenient access to all flats but would form a partial divide to the ground floor commercial area. Nonetheless, this would be a wide unit with about 94 square metres of floor area and a useable layout.
11. Seven of the flats would have a private amenity area in the form of a balcony with a privacy screen. These would be of satisfactory size and shape. Two front facing units would not have a private balcony, but this would be compensated for by provision of a communal amenity area of about 41 square metres at ground floor level to the rear of the commercial unit. Given the constraints of the site, I consider that overall amenity space provision would be acceptable.
12. The Council has raised concerns that not all floors would achieve a target floor to ceiling height of 2.5m. But all would exceed the minimum 2.3m stipulated in Southwark's Residential Design Guidelines as well as Policy 3.5 of the London Plan. Both documents encourage a 2.5m floor to ceiling heights for at least 75% of the gross internal area, but this is not a requirement. The building's height and massing has been designed around that of adjacent buildings. The benefit of achieving 2.5m for all floors would be marginal and would not warrant an increase in height or losing a whole floor from the scheme.

13. Cycle storage would be at basement level accessed by the lift. Whilst this would not be as convenient as storage at ground floor level, this arrangement is workable and enables greater areas to be retained for the commercial unit and for a communal amenity area.
14. The internal layout of the development would be acceptable. There would not be conflict with Policy 3.5 of the London Plan or with Saved Policy 4.2 of the Southwark Plan on the quality of residential accommodation.

Other Material Considerations

15. A representation has been received expressing concern about the impact of the massing and depth of the development on the living conditions of occupiers in flats at 67 Old Kent Road. As the rear of the terrace faces north-east and flank windows in a recently constructed first floor extension at no.67 face north-west, little sunlight will currently be received at these windows. The appellant has submitted a Daylight and Sunlight report estimating the daylight impacts on these windows. Whilst there would be some daylight reduction in rear facing windows, particularly on lower floors, the degree of change would not be excessive. As these rooms appear to be used as bedrooms and the Building Research Establishment (BRE) recommend that the guidelines are used flexibly, the impact would not warrant refusal of permission on these grounds.
16. There is no planning record for the first floor extension at no.67 which is the subject of an enforcement investigation by the Council. Outlook would be affected from the flank windows here, but they are already overlooked by the access arrangements to the existing flats at the appeal site. There is the potential for mutual overlooking between flank windows at close quarters, but the flank windows proposed are secondary in nature and could be fitted with obscured glazing, a matter that can be addressed through planning conditions.
17. There would be no material impact on living conditions at other neighbouring dwellings. The proposal would not conflict with Saved Policy 3.2 of the Southwark Plan on protection of amenity.
18. The proposal would result in a net increase of 7 units. The majority of these would be small in size but the proposal would nonetheless contribute towards housing supply in Southwark and in meeting future housing need. This is a benefit which attracts weight in the planning balance.
19. Paragraph 64 of the Framework (2021) reaffirms the Government's view that *"Provision of affordable housing should not be sought for residential developments that are not major developments"*. The proposal for 9 units is not a major development. Whilst draft Policy P1 of the emerging New Southwark Plan encourages provision of affordable housing contributions for minor applications, I can only attribute limited weight to this policy. Although the Council has consulted on this policy, from the information before me there appears uncertainty on the timing of adoption and content of the emerging plan. Refusal of the proposal on the grounds of a lack of a contribution towards affordable housing in the absence of a viability assessment is not warranted under the circumstances.
20. The proposal would be in accordance with local, London wide and national planning policies relating to housing provision.

Conditions

21. The main parties have suggested several planning conditions which I have considered against the advice in Planning Practice Guidance. I have amended some of these for clarity but consider others not to be necessary to make the development acceptable in planning terms.
22. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the plans submitted to me. Details of external materials, cycle storage and refuse storage have been submitted; conditions are required to ensure the development proceeds in accordance with the proposal rather than submission of further details. A soft landscape condition is not required given the limited opportunity for such a scheme to contribute to the public realm. But approval of boundary treatments and site security measures are necessary to ensure a satisfactory appearance to the site and to enhance the safety of occupiers. Conditions are necessary to approve the details of side windows to certain flats and balcony treatments to safeguard the privacy of adjoining occupiers. As the site is close to a busy flyover, a condition is needed to ensure the provision of satisfactory noise attenuation within the flats.
23. Conditions are necessary to approve a construction method statement and working hours to minimise disruption on the highway and to safeguard living conditions for neighbouring occupiers. No evidence has been submitted in relation to suspected archaeological remains or contamination at the site, but precautionary conditions to cover these matters are warranted. Conditions suggested relating to surface water drainage and energy efficiency are necessary in the interests of sustainability. To safeguard subsurface sewerage infrastructure a condition is necessary to approve any piling to be undertaken. Finally, to ensure that a prolonged vacant site does not detract from the appearance of the area, a condition is needed to validate a contract for contemporaneous demolition and construction works.
24. No evidence has been submitted to me to justify the Council's suggested condition requiring provision of bat tubes and swift bricks. Given the details in the Design and Access Statement, I consider the condition requiring approval of detailed drawings of all façade variations to be unnecessary. The suggested conditions relating to monitoring of arboricultural protection measures and finished floor levels do not appear to relate to the appeal proposal as there are no trees on site and no living accommodation proposed at basement or ground floor levels.

Conclusion

25. The redevelopment of the site would result in a building of satisfactory appearance and internal layout. For the reasons given above I conclude that the appeal should be allowed.

Rory MacLeod

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:
 - 2928/PL_01 rev b - Proposed Basement Plan
 - 2928/PL_02 rev c - Proposed Ground Floor Plan
 - 2928/PL_02 rev a - Proposed First Floor Plan
 - 2928/PL_03 rev a - Proposed Second Floor Plan
 - 2928/PL_04 rev a - Proposed Third Floor Plan
 - 2928/PL_05 rev a - Proposed Fourth Floor Plan
 - 2928/PL_06 rev b - Proposed Roof Plan
 - 2928/PL_07 rev b - Proposed NE/SW Elevations
 - 2928/PL_08 rev b - Proposed Sectional Elevation
 - 2928/PL_09 rev b - Proposed Section AA & BB.
- 3) The development hereby permitted shall not be occupied until the cycle and refuse storage areas shall have been constructed in accordance with details shown on the approved plans and these areas shall be retained for their designated purposes thereafter.
- 4) The external surfaces of the development hereby permitted shall be constructed in the mixture of materials shown in the Design and Access Statement dated June 2019 and on plan no. 2928/PL_07 rev b.
- 5) Details of the proposed boundary treatments shall be submitted to and approved in writing by the local planning authority; the approved details shall be implemented prior to occupation of the development.
- 6) Prior to the commencement of any above grade works (excluding demolition), details of security measures shall be submitted to and approved in writing by the local planning authority; approved measures shall be implemented prior to first occupation of any of the flats.
- 7) Flats 1C and 2C shall not be occupied until details of their flank windows including any obscured glazing shall have been submitted to and approved in writing by the local planning authority; once installed any obscured glazing or restricted openings shall be retained as such thereafter.
- 8) Prior to any above grade works, details of obscured glazing or privacy screens to all balconies shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, with the obscured glazing or privacy screens provided prior to the occupation of the flats and retained as such thereafter.
- 9) Prior to any above grade works, a scheme including details of noise mitigation measures for all the flats shall be submitted to and approved in writing by the local planning authority. The scheme, including any validation tests, shall be fully implemented prior to first occupation.

- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. This shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) means of supporting adjacent buildings during demolition and construction works.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) Demolition or construction works shall take place only between the hours of 08.00 and 18.00 Mondays to Fridays and between 08.00 and 13.00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 12) No demolition/development shall take place until a Written Scheme of Investigation of archaeological evaluation works shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and cover the following matters:
- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 13) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development,

shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.

- 14) The building hereby permitted shall not be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 15) Prior to development above slab level, an Energy Statement incorporating 'as designed' Standard Assessment Procedure (SAP) outputs shall be submitted to and approved in writing by the local planning authority which demonstrates how the new dwelling will apply the Mayor's energy hierarchy (use less energy, supply energy efficiently and use renewable energy) to achieve at least a 35% reduction in CO2 emissions below the target emission rate (TER) based on Part L1A of the 2013 Building Regulations and at least a 10% reduction in total emissions (regulated and unregulated) through on-site renewable energy generation. The development shall exceed the minimum Part L1A emissions standards through energy efficiency measures alone and shall be carried out in accordance with the approved Energy Statement.
- 16) Prior to first occupation of the dwelling, 'as-built' Standard Assessment Procedure (SAP) outputs must be submitted to and approved in writing by the local planning authority to demonstrate that the development has been carried out in accordance with the approved details. If the development is unable to meet the required reduction in CO2 emissions through the approved energy strategy, then any shortfall shall be made up through the application of further sustainability measures.

- 17) No piling shall take place until a Piling Method Statement (detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure, and the programme for the works) has been submitted to and approved in writing by the local planning authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved Piling Method Statement.
- 18) Prior to commencement of demolition works, a valid construction contract (under which one of the parties is obliged to carry out and complete the works of redevelopment of the site in accordance with this planning permission) shall be entered into; evidence of the contract shall be submitted for approval in writing by the local planning authority.