



Appeal Decision

Site visit made on 19 July 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2021

Appeal Ref: APP/A5840/W/21/3268279

(Rear of) 258 Old Kent Road, London SE1 5UB

- 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 Mr Gerald Copeland against the Council of the London Borough of Southwark.
 - The application Ref 20/AP/3096, is dated 19 October 2020.
 - The development proposed is the demolition of existing buildings and redevelopment of the site to provide new residential development consisting of 9 No. apartments (5no. 1bed, 4no. 2bed) with private balconies and communal garden.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and redevelopment of the site to provide new residential development consisting of 9 No. apartments (5no. 1bed, 4no. 2bed) with private balconies and communal garden at (Rear of) 258 Old Kent Road, London SE1 5UB in accordance with the terms of the application, Ref 20/AP/3096, dated 19 October 2020, subject to the conditions in the attached Schedule 1.

Background and procedural matters

2. This appeal stems from the Council's failure to determine the planning application within the prescribed period. The Council has not prepared an officer report, nor has it submitted any appeal statement. I address the implications of this in my reasons below.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Reasons

4. The appeal site is small group of single-storey industrial buildings alongside an open yard on Madron Street, a narrow side street off Old Kent Road. The site has previously been used as a car repair garage, although by the time of my site visit the garage business had ceased trading and the forecourt area was boarded off from the street. The site lies between mixed use buildings on Old Kent Road, which are generally three or four storeys with commercial uses at ground level and residential accommodation on upper floors, and housing on

Madron Street, including the five storey Swanley House flats immediately to the south. Planning permission was granted in November 2016 for the redevelopment of the appeal site to provide 9 apartments ("the 2016 permission")¹; this was not implemented, and it lapsed in November 2019. The appellant subsequently submitted a planning application in October 2020 seeking permission for the redevelopment of the site, again for 9 apartments.

5. The existing buildings on the site would be demolished, and a five-storey residential block built; this would have 2 one bedroom flats on the ground floor, 1 one bedroom flat and 1 two bedroom flats on each of the first, second and third floors, and a two bedroom flat on the fourth floor. Each flat would have a private terrace or balcony, and there would be communal amenity space at the rear of the building. A single storey wing (with sedum roof) on the Madron Street frontage would accommodate a bin store and cycle storage room. The building elevations would be of orange and dark grey brick, with dark grey powder-coated aluminium window and door frames. The proposal is, on the face of all the evidence before me, a resubmission of the exact same scheme as the 2016 permission.
6. The planning application for the 2016 permission was primarily assessed against the saved policies of the 2007 Southwark Local Plan ("the SLP") and the policies of the 2011 Southwark Core Strategy ("the SCS"). The Council is preparing a New Southwark Plan ("the NSP"), but at present the 2007 and 2011 plans remain current. While both the London Plan and the Framework have been revised since the 2016 planning permission was granted, there is nothing before me to suggest that the proposal conflicts with either. The only relatively up-to-date understanding I have of the Council's view on the acceptability of the appeal proposal is contained in an e-mail they sent to the appellant on 15 January 2021, stating that:

"We have considered the application in detail at the end of last year and although it is historic and has lapsed our view on its appropriateness in the view of emerging policy remains the same in that in respect of height, massing and the detail of the application based on the plans submitted we would be recommending that planning permission be granted."

Nothing in the evidence before me or my observations on site leads me towards a different conclusion on any of those points. The proposed development would be acceptable in terms of its character and appearance, it would provide adequate living space (including private and shared amenity space) for future occupiers, and would not lead to any unacceptably harmful impacts on living conditions for the occupiers of the surrounding properties.

7. The same e-mail from the Council also referred to Policy P1 of the NSP, which would seek to secure affordable housing contributions from small residential schemes of 9 or fewer units. However, although I understand that the NSP had its Examination in Public earlier in 2021 there is nothing before me to indicate either when that emerging plan might be adopted, or the form any policy in respect of affordable housing contributions might take in an adopted plan. I can therefore give that emerging policy only limited weight in determining this appeal. Having regard to the requirement in paragraph 64 of the Framework that *"provision of affordable housing should not be sought for residential developments that are not major developments"*, I do not consider that the

¹ LPA reference: 16/AP/1971

absence of an affordable housing contribution would justify a refusal of planning permission.

8. The Council did not receive any objections to the planning application, nor were any interested party representations submitted to me in response to the appeal notification. There are some matters where conditions are necessary to make the proposed development acceptable in planning terms, and I address these below. However, taking all of the above points together I conclude that the proposed development would comply with the requirements of the development plan.

Planning obligation

9. In response to my request for suggested conditions during the appeal, the Council submitted a document which also contained a list of items which it felt should be addressed by planning obligation. These included financial contributions towards archaeology, affordable housing, existing and new public spaces in the local area, buses, cycle hire, construction management contribution, and an "admin fee", as well as clauses in respect of a business relocation strategy, construction logistics plan, and reinstatement of the highway. No planning obligation is before me.
10. Given the site's proximity to surrounding dwellings there is a risk of harmful noise and other disturbance to nearby residents during construction. However, while I consider that a construction method statement is necessary to mitigate this risk, there is nothing before me to indicate why it would need to be secured by a planning obligation in this case. I have therefore addressed this matter by condition instead.
11. As no affordable housing contribution would be provided, a related monitoring contribution would not be necessary. The business which previously operated from the site is no longer active, so it is not clear what purpose a business relocation strategy could serve, and there is nothing before me to explain the extent to which highway reinstatement would be necessary. In respect of the financial contributions sought, while some have been broken down on a "per dwelling" basis, there is no detailed evidence as to the impact of the proposed development, how the sums presented have been calculated, or how and where they would be spent. Furthermore, I have not been directed towards relevant development plan policy or guidance which might support seeking such contributions.
12. Accordingly, I am unable to conclude that the suggested obligations would be necessary to make the development acceptable in planning terms so as to comply with Regulation 122 of the CIL Regulations² or the requirements of paragraph 57 of the Framework. In these circumstances, the absence of a planning obligation does not weigh against the proposal.

Conditions

13. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance. I note also the appellant's comments in response (which I paraphrase slightly) that the same (and no more) conditions as were attached to the 2016 permission should be reimposed. However, not all of the 2016 conditions would be

² The Community Infrastructure Levy Regulations 2010 (as amended)

necessary for various reasons (for example, some addressed matters dealt with by building regulations). At the same time, while not all would of the "new" conditions suggested would be necessary to make the development acceptable in planning terms, some are required to reflect updates to and changing priorities within the London Plan and the Framework. Where necessary I have altered the ordering and proposed wording, including merging suggested conditions, in the interests of clarity and effectiveness.

14. In addition to the standard time limit condition (1), in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).
15. The Ground Investigation Report submitted with the planning application indicated that, given the uses to which the site and the surrounding area have been put, there is the potential for significant ground contamination. In order to protect the health of neighbouring occupiers, future residents of the site, and to protect the secondary aquifer underlying the site, a condition in respect of contamination is necessary (3). A Construction Method Statement (4) is necessary to protect living conditions of surrounding residents and to prevent pollution and disturbance to the local area. Both of these are necessarily pre-commencement conditions in order to ensure that the development can proceed safely and without harming amenity for nearby occupiers.
16. The Historic Environment Desk-Based Assessment submitted with the planning application concluded that there was low to medium potential for the recovery of archaeological deposits from the appeal site, but in view of the Prehistoric and Roman activity in the area a "watching brief" should be kept during initial groundworks. Accordingly, I consider that a condition requiring a Written Scheme of Investigation for this watching brief, and foundation design and other mitigation in the event of features of archaeological significance being found (5), is necessary to ensure the protection of the historic environment in line with the requirements of saved Policy 3.19 of the SLP, Policy 12 of the SCS, and the provisions of paragraph 205 of the Framework.
17. A condition in respect of surface water drainage (6) is necessary to minimise the potential for surface water flooding arising from the site, although I have omitted some of the suggested text which appears to relate to another scheme altogether. A condition in respect of piling operations (7) is necessary to protect underground sewerage infrastructure in the surrounding area.
18. Madron Street in front of the appeal site is a narrow road with double yellow line parking restrictions; the wider area is a Controlled Parking Zone ("CPZ"). The officer report for the 2016 permission indicates that the site has a PTAL rating of 4/5, representing very good public transport connectivity. No car parking spaces are proposed within the development, which the appellant has described as being car free. Accordingly, a condition is necessary to ensure that occupiers of the proposed flats are not eligible for CPZ permits. The wording which the Council proposed sought to prevent any developer, owner or occupier seeking or being allowed to obtain a parking permit within the CPZ. It would therefore relate to the actions of individuals rather than being a control of the use of land, and such conditions have successfully been challenged (and thus rendered ineffective) elsewhere. I have therefore used an alternative wording which requires the addresses of the flats to be provided to the Council for the purposes of updating the relevant Traffic Management Order (8). Once

this condition is discharged, the onus would then be on the Council to update the TMO so that it excludes the appeal development.

19. Conditions requiring the approval of materials (9), for the approval, retention and maintenance of landscaping (10), and for the details and use of the green roof (11) are necessary to ensure that the development is well-designed and to protect the character and appearance of the area. Conditions (10) and (11), as well as a condition requiring the provision of bat and bird boxes (12), are also necessary to ensure that the development provides the maximum possible provision towards creation of habitats and valuable areas for biodiversity, and to ensure that the scheme is constructed in accordance with the submitted proposal. Conditions in respect of security (13), privacy (14) and lighting (15) are necessary to ensure the development provides good living standards for future residents and protects the amenity of neighbouring occupiers.
20. The appeal site is located within a flood zone area, and in order to ensure that residents are fully aware of the flood risk and existing flood warning and evacuation during an extreme event, in line with the findings of the submitted Flood Risk Assessment a condition requiring the preparation of a flood warning and evacuation plan (16) is necessary.
21. Details of cycle parking and bin storage have already been provided, so there is no need for a condition requiring those to be submitted for approval. However, a condition requiring them to be provided before the flats are occupied and retained for their original purposes thereafter (17) is necessary to protect residents' living conditions and, in the case of the cycle storage, to encourage the use of sustainable modes of transport. Finally, conditions in respect of noise levels within the proposed flats (18) and from plant (19) are necessary to protect living conditions for future occupiers of this development and occupiers of neighbouring dwellings respectively.
22. Notwithstanding the need to secure a high standard of design, there is no substantive evidence before me to justify imposing the suggested conditions requiring the approval of design details or preventing the fixing of "appurtenances" (such as meter boxes, flues or pipes) to the street elevations, as these matters are satisfactorily addressed in the Design and Access Statement and the submitted drawings. A condition requiring the approval of play equipment is not necessary; given the housing mix of the development it will not principally provide family housing, and no play equipment is proposed as part of the scheme.

Conclusion

23. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I conclude that the appeal should be allowed.

M Cryan

Inspector

Schedule 1: 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 approved plans listed in Schedule 2.
- 3)
 - a) No development shall take place, including any works of demolition, until an intrusive site investigation and associated risk assessment has been completed to fully characterise the nature and extent of any contamination of soils and ground water on the site, and full copies of the site investigation and findings submitted to the Local Planning Authority.
 - b) In the event that contamination is found that presents a risk to future users or controlled waters or other receptors, a detailed remediation and/or mitigation strategy shall be prepared and submitted to the Local Planning Authority for approval in writing. The strategy shall detail all proposed actions to be taken to bring the site to a condition suitable for the intended use together with any monitoring or maintenance requirements. The scheme shall also ensure that as a minimum, the site should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme (if one is required) shall be carried out and implemented as part of the development.
 - c) Following the completion of the works and measures identified in the approved remediation strategy, a verification report providing evidence that all works required by the remediation strategy have been completed, together with any future monitoring or maintenance requirements shall be submitted to and approved in writing by the Local Planning Authority.
 - d) In the event that potential contamination is found at any time when carrying out the approved development that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. Development on the site shall be suspended, and a scheme of investigation and risk assessment, a remediation strategy and verification report (if required) shall be submitted to the Local Planning Authority for approval in writing, in accordance with a-c above. These approved schemes shall be carried out before the development is resumed or continued.
- 4) 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. The Statement 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;
 - v) measures to control the emission of dust and dirt during construction;

- vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- vii) delivery, demolition and construction working hours.

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

- 5) No development shall take place (other than demolition to slab level) until a Written Scheme of Investigation in line with the recommendations of the submitted Historic Environment Desk Based Assessment (AB Heritage, dated 25 October 2016) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- i) the programme and methodology of site investigation and recording during initial groundworks;
 - 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/organization to undertake the works set out within the Written Scheme of Investigation.

In the event of features of archaeological significance being found, the applicant shall submit a detailed scheme showing the complete scope and arrangement of the foundation design, and all associated subterranean groundworks, including the construction methods. The submitted documents should show how archaeological remains will be protected by a suitable mitigation strategy. The detailed scheme will need to be approved in writing by the Local Planning Authority and the development shall only be carried out in accordance with the approval given.

- 6) No works (excluding demolition and site clearance) shall commence until full details of the proposed surface water drainage system incorporating Sustainable Drainage Systems (SuDS) have been submitted to and approved in writing by the Local Planning Authority, including detailed design, size and location of attenuation units and details of flow control measures. The strategy should achieve a reduction in surface water runoff rates during the 1% Annual Exceedance Probability (AEP) event plus climate change allowance. The applicant must demonstrate that the site is safe in the event of blockage/failure of the system, including consideration of exceedance flows. The site drainage must be constructed to the approved details.
- 7) 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. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

- 8) Prior to commencement of any construction above slab level of the development hereby permitted the Local Planning Authority shall be provided with the full postal addresses of the nine flats, so as to allow the Council to exclude those dwellings from the list of properties eligible for residents' parking permits.
- 9) No construction above slab level shall commence until samples of all external facing materials of the façades to be used in the carrying out of this permission have been presented on site to the Local Planning Authority and approved in writing (the façades to be mocked up to be agreed with the Local Planning Authority beforehand). The development shall not be carried out otherwise than in accordance with any such approval given.
- 10) No construction above slab level shall commence until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. The scheme shall include detailed drawings of a hard and soft landscaping scheme showing the treatment of all parts of the site not covered by buildings (including cross sections, surfacing materials of any parking, access, or pathways layouts, materials and edge details), shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall not be carried out otherwise than in accordance with any such approval given and shall be retained for the duration of the use.

The planting, seeding and/or turfing shall be carried out in the first planting season following completion of building works and any trees or shrubs that is found to be dead, dying, severely damaged or diseased within five years of the completion of the building works OR five years of the carrying out of the landscaping scheme (whichever is later), shall be replaced in the next planting season by specimens of the same size and species in the first suitable planting season. Planting shall comply with BS 4428 Code of practice for general landscaping operations, BS 5837 (2012) Trees in relation to demolition, design and construction, and BS 7370-4:1993 Grounds maintenance Recommendations for maintenance of soft landscape (other than amenity turf).

- 11) No construction above slab level shall commence until details of the biodiversity green roof have been submitted to and approved in writing by the Local Planning Authority. The biodiversity green roof shall be:
 - i) biodiversity based with extensive substrate base (depth 80-150mm);
 - ii) laid out in accordance with agreed plans; and
 - iii) planted/seeded with an agreed mix of species within the first planting season following the practical completion of the building works (focused on wildflower planting, and no more than a maximum of 25% sedum coverage).

The biodiversity green roof shall not be used as an amenity or sitting out space of any kind whatsoever and shall only be used in the case of essential maintenance or repair or escape in case of emergency. The biodiversity roof shall be installed strictly in accordance with the approved details and shall be maintained as such thereafter.

- 12) No construction above slab level shall commence until details of bird and bat nesting boxes/bricks have been submitted to and approved in writing by the Local Planning Authority, in line with the proposal in the submitted Design and Access Statement. The details shall include the exact location, specification and design of the habitats. The bird and bat habitats shall be installed prior to the first occupation of the development strictly in accordance with the approved details, and maintained as such thereafter.
- 13) No construction above slab level shall commence until details of security measures have been submitted to and approved in writing by the Local Planning Authority. Any such security measures shall be implemented prior to occupation in accordance with the approved details which shall achieve the "Secured by Design" accreditation from the Metropolitan Police.
- 14) No construction above slab level shall commence until details of proposed obscure glazing/privacy screens has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details thereby approved, with the obscure glazing and privacy screens provided prior to the occupation of the units affected and retained as such thereafter.
- 15) Prior to the installation of any lighting, a detailed lighting strategy and design for all internal and external lighting, demonstrating compliance with the Institute of Lighting Professionals (ILP) Guidance Notes, shall be submitted to and approved by the Local Planning Authority in writing. 23.00 hrs shall be the curfew for light pollution/light spillage assessment and implementation of the approved lighting strategy. If mitigation is required to avoid harmful light pollution or light spillage it shall be implemented prior to the first use of the building and retained as such thereafter.
- 16) None of the flats hereby permitted shall be occupied until a stand-alone Flood Warning and Emergency Evacuation Plan has been submitted to the Local Planning Authority and approved in writing.
- 17) None of the flats hereby permitted shall be occupied until the cycle parking and refuse storage areas have been constructed in accordance with the details shown on the approved plans. These areas shall be retained for their designated purposes and no other use thereafter.
- 18) The dwellings hereby permitted shall be designed to ensure that the following internal noise levels are not exceeded due to environmental noise:
 - Bedrooms - 35dB LAeq T†, 30 dB L Aeq T*, 45dB LAFmax T*
 - Living and Dining rooms- 35dB LAeq T†

* - Night-time - 8 hours between 23:00-07:00

† - Daytime - 16 hours between 07:00-23:00

Following completion of the development and prior to occupation, a validation test shall be carried out on a relevant sample of premises. The results shall be submitted to the Local Planning Authority for approval in writing. The approved scheme shall be implemented and permanently maintained thereafter.

- 19) The Rated sound level from any plant, together with any associated ducting, shall not exceed the Background sound level (LA90 15min) at the nearest noise sensitive premises. Furthermore, the Specific plant sound level shall be 10dB(A) or more below the background sound level in this location. For the purposes of this condition the Background, Rating and Specific Sound levels shall be calculated fully in accordance with the methodology of BS4142:2014+A1:2019.

[End of Schedule 1]

Schedule 2: Approved Plans

- Site Plan Overlay of site boundary, existing garage and proposed development.
- 00 001-A Site location plan
- 00 050-B Existing ground floor plan
- 00 051-B Existing roof plan
- 00 100-C Proposed ground floor plan GA
- 00 101-D Proposed first floor plan GA
- 00 102-D Proposed second floor plan GA
- 00 103-D Proposed third floor plan GA
- 00 104-D Proposed fourth floor plan GA
- 00 300-C Proposed NE elevation
- 00 301-C Proposed NW elevation
- 00 302-C Proposed SE elevation
- 00 303-C Proposed SW elevation
- 00 310-C Proposed Street Elevation A
- 00 311-B Proposed Street Section A
- 00 360-B Existing street elevation A
- 00 361-A Existing street elevations B and C
- 00 750-A Building Location Comparison
- 00-350-B Existing NW elevation

[End of Schedule 2]