



Appeal Decision

Site visit made on 17 January 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/A5840/W/21/3276227

28 Nunhead Green, London SE15 3QF

- 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 M Johnson of Cantel Developments against the decision of the Council of the London Borough of Southwark.
 - The application Ref 21/AP/0634, dated 22 February 2021, was refused by notice dated 20 April 2021.
 - The development proposed is a change of use of the rear part of an existing bar 'El Vermut' (Class Sui Generis) to residential floorspace (Class C3) together with a rear extension at first floor to create a new 1 bed maisonette.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr M Johnson of Cantel Developments against the Council of the London Borough of Southwark which is the subject of a separate decision.

Preliminary Matters

3. The planning application form states that the proposal relates in part to 'a new 2 bed maisonette'. However, it is clear from the submitted plans that only one bedroom would be provided within the maisonette and the description of development as stated on the appellant's appeal form is 'a new 1 bed maisonette'. The description of development in the banner heading above is taken from the appeal form, as this is more accurate than the one given on the application form.
4. On 20 July 2021, the Government published a revised version of the National Planning Policy Framework (the Framework). However, the revised Framework does not materially alter the national policy approach in respect of the issues raised in this appeal.
5. The decision notice refers to Policy 41 of the emerging New Southwark Plan (NSP). In accordance with paragraph 48 of the Framework, given that the NSP is at an advanced stage, I consider that emerging Policy 41 carries due weight.

Main Issues

6. The main issues are:
 - The effect of the development proposed on the character and appearance of the host property and the surrounding area, including whether or not it

would preserve or enhance the character or appearance of the Nunhead Green Conservation Area;

- The effect of the proposal on the viability of the bar;
- The effect of the proposal on the living conditions of the neighbouring occupiers of the first floor flat at 28 Nunhead Green, with particular regard to outlook; and,
- Whether the proposal would provide for a satisfactory standard of accommodation for occupiers of the proposed maisonette, with regard to outlook and provision of external amenity space.

Reasons

Character and appearance

7. The appeal site is located within the Nunhead Green Conservation Area (Conservation Area), which covers a large area including a variety of built forms. The significance of this part of the Conservation Area derives partly from the many historic buildings, including attractive nineteenth and early twentieth century two and three storey terraced properties, with the Green at its centre. While there are differences in appearance and roof types between buildings, the consistency of design and appearance within individual terraces is a significant feature of the area.
8. 28 Nunhead Green is a three-storey mid terrace property with a part two storey, part single storey rear outrigger, which is currently used as a drinking establishment at ground floor level with residential accommodation at first and second floor levels. The appeal building and the terrace of which it forms part include butterfly roofs concealed by a parapet. On the front elevation there are decorative window and door openings at first floor level with a regular rhythm of window openings at second floor level. The ground floor shop fronts project forward slightly, some with balcony railings above. To the rear of the terrace there are a variety of outriggers, which results in a more informal appearance to the rear elevation. Notwithstanding this, I consider that the appeal building, and the terrace as a whole, make a positive contribution to the character and appearance of the Conservation Area.
9. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. This is reflected in paragraph 199 of the Framework which requires that great weight should be given to the asset's conservation when considering the impact of a proposal on its significance.
10. The proposed first floor extension would be a flat roof structure with a parapet wall, which would be constructed in line with the footprint of the existing single storey rear extension with a set back from the south eastern corner. A terrace would be formed on the existing flat roof between the proposed first floor extension and the existing two storey outrigger.
11. Given that there are a variety of rear outriggers on this terrace, there is no uniform appearance to the rear of the terrace. However, the existing rear outriggers are of relatively modest proportions. The proposed extension would project much further from the rear than the existing two storey outriggers to the

rear of the terrace. This increased bulk and massing would impart a dominant appearance that would be insensitive to the proportions of the host property and the rest of the terrace.

12. The existing flat roof extension currently reads as a subservient addition which respects the scale and massing of the host property. The addition of a first floor above part of this existing extension would result in an uncomfortable arrangement of different roof structures to the rear of the building, which would step down from the existing two storey rear outrigger to the single storey extension before rising again to two storeys. This would result in a complex rear roof-scape which I consider would be harmful to the character of the host property and the terrace of which it forms part.
13. Although the proposed extension would be located to the rear of the building, it would nevertheless be a noticeable and discordant feature when viewed from Cheam Street and from neighbouring properties.
14. The appellant has referred to an appeal decision at 24 Nunhead Green, where the demolition of the existing building and redevelopment to provide a new four storey property with part two, part three storey extension to the rear was allowed¹. In terms of massing the Inspector noted that the scheme would be similar to the corresponding end of terrace property at 26 Nunhead Green and other nearby properties, such as No 38. However, during my site visit I observed that the rear outriggers at No 26 and No 38 do not result in a disjointed arrangement of rear roof structures or project as far from the rear as the proposal before me. Moreover, the Inspector for the previous appeal found that proposal to be more sympathetic to the host terrace than the building that it was to replace, with an enhancement to the Conservation Area. That would not be the case with the appeal proposal. Consequently, the other development referred to is not comparable to the appeal proposal. As a result, whilst I have had due regard to the development at No 24, I have assessed the appeal scheme on its own merits and the other development does not justify the harm I have found.
15. Whilst I acknowledge that the proposed extension would be constructed in matching brick and that its overall massing has been reduced since a previous application, I consider that the appeal proposal would cause unacceptable harm to the character and appearance of the host property, the surrounding area and it would fail to preserve or enhance the character or appearance of the Conservation Area.
16. Accordingly, the proposal would conflict with saved Policies 3.12, 3.13, 3.15, 3.16 and 3.18 of the Southwark Plan (2007) (SP), Strategic Policy 12 of the Southwark Core Strategy (2011) (CS) and Policy D4 of the London Plan (2021) (LP), which seek, amongst other things, to promote quality in design and well-designed places, and which seek to preserve or enhance the character or appearance of conservation areas. The proposal would also fail to comply with national policy outlined in the Framework, where it requires development to be sympathetic to local character and history, including the surrounding built environment, and seeks to sustain the significance of heritage assets. Policy D5 of the LP, which the Council consider to be relevant, refers to inclusive design which I do not find pertinent to this main issue.

¹ Appeal Ref APP/A5840/W/18/3202097

Viability of the bar

17. Policy HC7 of the LP seeks to protect public houses where they have a heritage, economic, social or cultural value to local communities, or where they contribute to wider policy objectives for town centres. The policy states that applications that propose the loss of public houses with heritage, cultural, economic or social value should be refused unless there is authoritative marketing evidence that demonstrates that there is no realistic prospect of the building being used as a pub in the foreseeable future. It also outlines that proposals for redevelopment of associated accommodation, facilities or development within the public house's curtilage that would compromise its operation or viability should be resisted. Policy 41 of the NSP is similar stating that alterations leading to a loss of cellarage, other functional or ancillary space or changes to a pub that make it unviable will not be permitted.
18. The Council is concerned that the viability of the bar would be undermined by the proposed reduction in its floor area, which would create issues for future occupiers with typical bar requirements which may require a larger floorspace. The appeal proposal includes the change of use of the rear ground floor part of the bar to residential floorspace. As I understand it, the floorspace to be converted relates principally to the rear extension that was approved under a previous planning application². The floorspace proposed to be converted amounts to around 43 sqm. That would leave the bar with a remaining floor area of about 64 sqm, which would include two seating areas. The premises would effectively revert to the floor area that existed prior to the construction of the rear extension. The onus is on the appellant to show that the impacts of the development would be acceptable. In this respect, I have carefully considered the appellant's supporting information, including the letter from the current proprietors in support of the reduced floorspace.
19. Following the Covid-19 pandemic, the bar has remained closed and has operated as a shop for takeaway drinks. The appellant envisages that the premises will continue to operate in this manner until it is safe and viable to re-introduce indoor drinking, and the proposed reduction in floorspace would reflect their evolving business model. However, there is no substantive evidence before me to demonstrate that the proposal would enable the business to continue to operate successfully, for example, by comparably sized bars which operate successfully with a similar floorspace. There would be a significant reduction in capacity with a potential fall in the number of customers, which calls into question whether the premises could continue to operate as a viable business. Although the proposed reduction in floorspace is favoured by the current proprietors, in my view it is likely that the reduced floor area would render the premises unattractive to others in the long term.
20. The loss of the bar's access to the area to the rear would mean that servicing would have to take place through the front entrance and over the public highway. That arrangement would be akin to other commercial premises along this terrace and within the wider area, many of which do not have rear service yards and are serviced from the front. The evidence indicates that the cellar is currently used for refuse storage. There appears to be sufficient space for bin storage to the front of the unit, as noted by the Council. The current proprietor states that the front entrance is used for deliveries and refuse disposal. Be that as it may, the area to

² Council Ref 17/AP/3371

the rear of the premises appears capable of being utilised for servicing, including deliveries. The change of use to residential accommodation and the loss of access to the rear of the bar would, in my view, make the premises less attractive to potential future operators which would further undermine its long term viability.

21. I consider that the proposed servicing arrangements would not result in unacceptable pressure on the public highway and there would be no conflict with the requirements of saved Policy 5.2 of the SP, where it requires development proposals to make adequate provision for servicing, circulation and access to, from and through the site. However, for the reasons given above, I conclude that it has not been demonstrated that the proposed development would not undermine the ongoing viability of the bar. The proposal would thereby conflict with Policy HC7 of the LP and Policy 41 of the NSP as set out above. It would also be contrary to paragraph 93 of the Framework, which requires planning decisions to plan positively for the provision of shared spaces such as public houses.

Living conditions of neighbouring occupiers

22. The first floor flat partly occupies the existing two storey rear outrigger which includes a rear facing window. The plans indicate that this window would be replaced with a door which would lead out to a new terrace. Although it is unclear which room the window currently serves, its outlook is very limited because it is fitted with obscure glass. A 1.7m high privacy screen would be erected facing the new door. However, given the limited outlook from the existing window and that the privacy screen would be positioned a reasonable distance away, I find that this neighbour's outlook would not be detrimentally affected.
23. For the above reasons, I conclude that the scheme would not adversely affect the living conditions of the occupiers of the first floor flat at 28 Nunhead Green, having regard to its effect on outlook. Accordingly, there would be no conflict with saved Policy 3.2 of the SP or the 2015 Technical Update to the Residential Design Standards Supplementary Planning Document (2011) (SPD), which, amongst other things, seek to protect the living conditions of the occupiers of neighbouring properties.

Standard of accommodation

24. The proposed maisonette would comprise a one bedroom unit of accommodation arranged over two floors, including a living/dining room and a kitchen at ground floor and a bedroom at first floor level leading to a terrace. The plans indicate four windows to the ground floor accommodation which would all be located in the south western elevation of the building and provide an outlook towards Cheam Street. The first floor accommodation would be served by three windows in the same elevation, and a further two windows to the north western elevation facing towards the terrace and would therefore provide a dual aspect. All windows would be of a reasonable size and in my view provide a satisfactory outlook.
25. Due to the small size and confined nature of the turning area to the rear yard, it is unlikely that the proposed accommodation would be significantly overlooked or suffer undue disturbance from car headlights turning into the space at night.
26. The appeal scheme allows for a limited area of external amenity space for the proposed maisonette, which would comprise a terrace. The terrace would be marginally below the space standard recommended in the SPD and the Council is concerned that it would be boxed in by the proposed privacy screens. However,

the terrace would be enclosed by a combination of obscure glazed screens and lower railings, which would provide an acceptable outlook. The terrace would be a reasonably sized and private outdoor space which I consider would be adequate for the likely number of occupiers.

27. For these reasons, I consider that the proposal would provide for a satisfactory standard of accommodation for occupiers of the proposed maisonette, having regard to outlook and the provision of external amenity space. The proposal would therefore not conflict with CS Strategic Policy 5, saved Policy 4.2 of the SP, Policy D6 of the LP, and the SPD, where these seek to ensure good standards of living accommodation. It would also not conflict with the Framework, where it seeks to ensure that development would provide a high standard of amenity for future occupiers. Policy D5 of the LP, referred to in the reason for refusal, is of little relevance to this main issue.

Planning Balance and Conclusion

28. I have found that the proposal would harm the character and appearance of the host property and the surrounding area, including the Conservation Area. The appellant contends that the proposal would enable the existing business to continue to occupy the site, thereby retaining an active commercial presence within the shopping parade. However, I consider that it has not been demonstrated that the proposed development would not undermine the ongoing viability of the bar.
29. On the other hand, I consider that the proposed development would provide satisfactory living conditions for future occupiers for the proposed maisonette and would not be harmful to the living conditions of the neighbouring occupiers. However, the absence of harm in relation to those matters is effectively neutral in the planning balance rather than weighing positively in favour of the development proposed.
30. In relation to designated heritage assets, Paragraph 202 of the Framework indicates that where there would be harm that is less than substantial, as in this case, it must be weighed against the public benefits of the proposals. The appellant argues that the proposal would make more efficient use of land by using the airspace above the existing premises. However, in the manner proposed this would be at the expense of the character and appearance of the host property and the surrounding area, including the Conservation Area. It is also put to me that the proposed change of use would improve natural surveillance onto Cheam Street and over the turning head area, thus reducing the potential for anti-social behaviour. However, there is no evidence to suggest that anti-social behaviour is a major issue in the area or that the site would be at increased risk of such in the absence of the development taking place. I therefore give limited weight to these matters.
31. The proposal would provide an additional dwelling in a sustainable location. It would also have economic benefits through employment opportunities created during the construction phase of the development, Council tax revenue and spending in the local area by future occupants. However, given the modest scale of the development proposed, the weight attributable to these matters is limited. Therefore, as public benefits, these would not outweigh the harm I have identified, including the less than substantial harm to the significance of the Conservation Area.

32. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal should be dismissed.

M Offerenshaw

INSPECTOR