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## Appeal Decision

Site visit made on 23 February 2022

**by Rory MacLeod BA (Hons) MRTPI**

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

**Decision date: 30 March 2022**

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**Appeal Ref: APP/N5660/W/21/3280385**

**2-12 Ernest Avenue, London, SE27 0DJ**

- 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 Counterpoint Properties Limited against the decision of London Borough of Lambeth.
  - The application Ref 21/00880/FUL, dated 2 March 2021, was refused by notice dated 28 April 2021.
  - The development proposed is change of use of the existing office floorspace (Use Class E(g)(i)) to residential (Use Class C3), minor alterations to the access arrangement to create refuse, recycling and bicycle storage, and minor alterations to the fenestration of the building.
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### Decision

1. The appeal is allowed, and planning permission is granted for change of use of the existing office floorspace (Use Class E(g)(i)) to residential (Use Class C3), minor alterations to the access arrangement to create refuse, recycling and bicycle storage, and minor alterations to the fenestration of the building at 2-12 Ernest Avenue, London, SE27 0DJ in accordance with the terms of the application, Ref 21/00880/FUL, dated 2 March 2021, subject to conditions set out in the attached schedule.

### Preliminary Matters

2. The appeal relates primarily to the building's first floor. This benefits from an extant prior approval for a change of use to four residential units, under Class O, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (application ref: 18/05482/P3O). The appellant contends that this approval forms a fallback position in the event that the appeal is dismissed.
3. Subsequent to the issue of its decision notice, the Council has adopted the Lambeth Local Plan 2020-2035 (2021) (LLP). This now forms the development plan with the London Plan (2021).
4. The Council's fifth refusal reason relating to the absence of a contribution towards affordable housing has been withdrawn following adoption of a revised affordable housing policy in the LLP.

### Main Issues

5. The main issues are:
  - (a) the acceptability of the loss of the business use,

(b) the adequacy of living conditions for future occupiers in relation to outlook and amenity space provision,

(c) the impact of a proposed window on the eastern elevation on the development potential of adjoining land, and

(d) the impact of the proposal on on-street parking stress.

## **Reasons**

### *Business use*

6. The appeal site comprises a two storey brick built building adjacent to a single storey yellow clad warehouse. The proposal is to create 4 flats on the first floor of the two storey building, currently vacant office space. The ground floor and warehouse are used by a beer company. Access to the upper floor is from an entrance at the eastern end of the frontage to Ernest Avenue, a busy one-way street. A second door alongside would provide access to the proposed bike store. Parking and servicing are from Beadman Street at the western end of the site, which forms a spine to a designated Key Industrial and Business Area (KIBA) that includes the appeal site.
7. Policy ED3 of the LLP states that development in KIBAs will be permitted only for business, industrial, storage, waste management and other compatible industrial and commercial uses. The proposed residential use would be contrary to this policy. Neither would it sit comfortably with Policies E4, E6 and E7 of the London Plan which set out a strategic approach to the provision of industrial floorspace. However, the thrust of these policies relate mainly to uses in classes B1c, B2 and B8 rather than to offices, to encourage the designation of Locally Significant Industrial Sites and to distinguish these from local employment areas that can accommodate a wider range of business uses.
8. The extant prior approval residential scheme is a material consideration. The appellant has submitted marketing information from a property specialist offering the opinion that "*the long-term viability of the premises as an office is very limited*". Notice of conditional passing of plans has also been obtained from the Council's Building Control team. These circumstances increase the extant approval's attractiveness if the appeal were to be dismissed.
9. The Inspector's findings in allowing the appeal for the extant approval were that the premises comprise two separate planning units, with the first floor being put to a straightforward office use co-located with the ground floor warehouse rather than amounting to a composite use of the building. Its loss to a residential use would not adversely affect the efficient operation of the ground floor warehouse. The access to the first floor office is peripheral to the KIBA and close to mixed commercial and residential uses on Norwood High Street to the east of the site.

### *Living conditions*

10. Two of the units would be single aspect, a 2-bedroom flat that would be south facing, and a 1-bedroom flat that would be north facing. None of the units would have any private amenity space, such as provision of a balcony, and there would not be any communal amenity space. Whilst all four units would satisfy standards relating to minimum internal floor areas, their sizes would not be so generous to compensate for the absence of external amenity space.

11. In these respects, the proposal would be contrary to the provisions of Policy D6 of the London Plan and Policy H5 of the LLP which require housing development to maximise the provision of dual aspect dwellings and normally avoid the provision of single aspect dwellings. Policy H5 also requires 10m<sup>2</sup> per flat as external amenity space.
12. The office space has an elongated east-west axis with all windows either north or south facing. Given that the sole access would be from the staircase at the eastern end of the building, it would be difficult to devise a conversion without reliance on predominantly either north or south facing windows. Provision of communal amenity space on the ground floor would result in loss of industrial floorspace, contrary to policies for the KIBA. The appellant comments that inclusion of a roof terrace would not be a realistic prospect for townscape and overlooking concerns, and that there are several public open green spaces nearby within easy walking distances. These would compensate for the shortfall to some degree but do not provide an exemption from policy requirements.
13. The existence of the extant approval is also a material consideration. This also shows 4 flats on a similar layout but with three single aspect units. The appeal proposal offers the advantage of an additional dual aspect unit through provision of a bathroom window in the eastern flank elevation. Ventilation would also be improved to another unit through insertion of windows in the western flank wall. The appellant claims that it would not be possible to provide the additional internal floor area required to satisfy adopted policies to compensate for the shortfall of external amenity space and still retain all four units. A reduction to three units to achieve this would increase the likelihood of implementation of the fallback scheme of four units.

#### *Eastern window*

14. The new eastern window would be small, obscure glazed and set high in the flank wall. It would provide natural light and ventilation to a bathroom. The wall abuts a strip of land that serves as an access at the rear of properties fronting Norwood High Street. The appellant confirms that these properties have rights of way over the land so it is unlikely that the land would be developed.
15. The property on the corner of Norwood High Street and Ernest Avenue abuts the rear access opposite the appeal site. If it were to be developed, including up to its rear boundary, the proposed window would not materially impact on the site's development potential having regard to the separating distance, its high position and obscured glazing.
16. There would not be conflict with LLP Policy Q7 which requires new development to not prejudice the optimum future development of, or access to, adjoining plots.

#### *Parking*

17. The appellant has submitted a Unilateral Undertaking to address the Council's concerns regarding the proposal adding to local on-street parking stress. This would ensure that occupiers of the units would not be entitled to a residents parking permit within a controlled parking zone, should the Council designate one in the site's vicinity, and secondly for a contract with a car club operator to be made to enable occupiers of the units to obtain car club membership.

18. Moreover, the site has very good access to public transport options having a PTAL Level of 5. In these circumstances the London Plan and Policy T7 of the LLP favour car free housing and car club membership. The proposal with the Unilateral Undertaking would satisfy these policy expedients. The undertaking is complete and would satisfy the 3 tests set for planning obligations in Regulation 122 of the Community Infrastructure Levy Regulations (2010).

### *Planning balance*

19. The proposal would not be compatible with development plan policies relating to the loss of a business use within a designated employment area and also relating to optimum standards on outlook and amenity space provision for new residential accommodation. There would be the benefit of 4 additional dwellings to contribute towards the general need for housing in Lambeth and across London. But such need should not usually be met through provision of residential development in a designated employment area.
20. But the extant prior approval is a material consideration. In my judgement, there is more than a theoretical possibility that the approval would be implemented prior to expiry in November 2022 if the current appeal were to be dismissed. The marketing information on a successful long term let is pessimistic. The Council's Building Control team has also issued a conditional passing of plans and the scheme would not be difficult to implement.
21. The extant approval would have the same shortfalls relating to outlook and amenity space provision, but the current proposal would have benefits including additional fenestration to aid ventilation and natural lighting and would provide improved bicycle, refuse and recycling storage. It would be a preferable conversion if a residential scheme is to be implemented. Unlike the current proposal, the extant approval did not require to be examined in relation to development plan policies relating to the loss of a business use. But the loss of that business use would not result in substantial harm to the KIBA given the status of the appeal site as an independent planning unit on the periphery of the designation and close to other residential units.
22. I therefore attach significant weight to the fallback position and conclude that the planning balance lies in allowing the appeal.

### **Other Matters**

23. Representations have been received against the proposal in that a residential use may give rise to complaints from future occupiers about noise. The site is close to Norwood Bus Garage and to other commercial uses in the KIBA. Reference is made to the 'Agent of Change' principle set out in Policy D13 of the London Plan which places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development.
24. The appellant has submitted an Environmental Noise Assessment by 'Adnit Acoustics' in relation to the building's external fabric which concluded that the effects of noise can be mitigated to comply with relevant policies. Moreover, the principle of the residential use of the site has been accepted through the extant prior approval. This includes a planning condition in relation to noise mitigation measures. A similar planning condition could be used for the appeal proposal which would recognise the Agent of Change principle.

## Conditions

25. In addition to the statutory condition limiting the lifespan of the permission, conditions are necessary to list the plans and key documents, in the interests of certainty, and to require approval of final details of the cycle parking, waste and recycling storage and enlarged porch indicated on the plans to ensure the efficient operation of the site and a satisfactory appearance. In view of the proximity of business premises below and adjacent to the site and the bus garage opposite, a condition is needed to ensure adequate noise mitigation for the occupiers of the flats. Finally, it is necessary to include a precautionary condition on contamination remediation, as on the extant approval.

## Conclusion

26. 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: PL 100; PL 101; PL 102; PL 103; PL 104; PL 105 and PL 106 ; Environmental Noise Assessment, prepared by Adnitt acoustics, 10 February 2021; Contaminated land risk assessment, prepared by Soil Environment Services, January 2021.
- 3) The development hereby permitted shall not be occupied until details of the cycle parking and waste and recycling storage have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full and kept available thereafter.
- 4) Prior to the erection of the replacement entrance porch hereby permitted, detailed drawings and a schedule or details of the materials to be used (including RAL numbers where appropriate) shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be built in accordance with the approved details.
- 5) A scheme for protecting the proposed dwellings from noise from the adjacent business area and bus garage shall be submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any of the dwellings are occupied and shall be retained thereafter.
- 6) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted to and obtained written approval from the local planning authority for, an amendment to the remediation strategy detailing how this unsuspected contamination will be dealt with. The amended strategy shall thereafter be carried out as approved.