



Appeal Decision

Hearing Held on 5 April 2022

Site visit made on 6 April 2022

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28th April 2022

Appeal Ref: APP/N5660/W/20/3260876

279 Rosendale Road, London SE24 9EG

- 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 Lipman Properties Limited against the Council of the London Borough of Lambeth.
 - The application Ref 20/01933/FUL, is dated 2 June 2020.
 - The development proposed is retention and restoration of front façade; demolition of buildings behind; the erection of part two, four and five storey buildings to provide 33 residential dwellings, communal amenity space, cycle parking and hard and soft landscaping; and other associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the submission of the appeal against non-determination the Local Planning Authority (LPA) presented 6 putative reasons for refusal within their appeal statement of case. An agreed Statement of Common Ground (SoCG) was presented by the appellant prior to the hearing. Section 11 of the statement reaffirms those residual areas of disagreement which reflect the LPAs putative reasons for refusal. This has informed my assessment of what I consider to be the main issues for this appeal.
3. The appeal scheme has been amended since the planning application was submitted in June 2020 and the description revised to reflect that the proposed scheme would comprise 33 residential units (reduced from 34). This amended description is agreed with the LPA, as affirmed at Section 6 of the SoCG, and reflected in the decision banner above. Given the consultation on the planning application and further notification to comment on the appeal I consider no one would be prejudiced by my assessment of the appeal proposal on the basis of the 33 units as amended.
4. The plans on which the appeal proposal should be considered have evolved since the application was originally submitted. The plans of the development proposed reflect two scenarios dependent on the affordable housing requirement (50% or 35% subject to the status of the site). The layout and elevations remain the same for both tenure scenarios and these comprise the relevant Rev03 plans submitted in October 2020. The proposed floor plans for the tenure mix under a 50% scenario are also presented in the same bundle of

Rev03 plans. I am satisfied that as part of the appeal, there has been opportunity to consider and comment on the scheme against these proposed Rev03 plans. In respect of a 35% affordable housing scenario, the appellant submitted Rev04 proposed floor plans (dated April 2022) shortly before the hearing. These plans reflect amendments to the tenure mix of the proposed units and do not alter the design or layout of the scheme, including in relation to principal matters of concern to the LPA. Accordingly, I have determined the appeal proposal against the combination of the relevant Rev03 and Rev04 plans and consider that no one would be prejudiced by my doing so.

5. Prior to the hearing, the appellant circulated a draft Unilateral Undertaking (UU) containing provisions for planning obligations under Section 106 of the Town and Country Planning Act 1990. A signed and dated version of the UU was submitted at the start of the hearing. The UU contains obligations in relation to affordable housing, measures to support car free housing, carbon offsetting, local employment and training and off-site play space provision. I return to the planning obligations later in this decision.

Main Issues

6. The main issues in this appeal are as follows:

- (i) Whether the appeal proposal would result in the harmful loss of premises for employment generating purposes;
- (ii) Whether the development would make adequate provision for affordable housing in accordance with development plan policy;
- (iii) Whether the proposed development would provide acceptable living conditions for future occupiers, with regard to privacy, daylight, outlook and standard of private amenity space provision; and
- (iv) Whether the proposed development would be appropriate to its location having regard to the adjacent railway arches and the agent of change principle.

Reasons

Status of the site as 'industrial' and potential for employment generating uses

7. The appeal site comprises of a range of buildings constructed towards the end of the Nineteenth Century to serve as a dairy depot. Some of the buildings have been variously adapted and altered over time. The appellant's Heritage Statement illustrates through a series of plans how the site accommodated areas for delivery vehicles (including covered areas), an ancillary shop fronting onto Rosendale Road, cold stores for dairy products and various office accommodation. The appellant's evidence, corroborated by statements from local residents, identifies that the site ceased operation as a dairy depot in the 1980s.
8. The appellant submits that the dairy depot use has been abandoned and invites the site to be considered as having a nil use. I appreciate this was not part of the appellant's original statement of case but given the length of time taken to determine the appeal, the appellant was permitted by the Inspectorate to submit an ancillary statement in November 2021 (13 months after the appeal

was lodged) in which the abandonment case was presented¹. The LPA therefore had approximately 5 months prior to the hearing to consider the appellant's supplementary evidence, including the case for abandonment. Accordingly, it is valid that I consider the abandonment evidence.

9. Abandonment is a concept which is permitted in the planning system and the appellant directs me to the relevant case law². I accept the LPAs submission that a high bar should be set for abandonment, but it should be no higher than the four objective criteria established in case law. These are: (1) physical condition of the buildings; (2) period of non-use; (3) whether there has been any other use; and (4) the owner's intentions.
10. The buildings at the appeal site are in a moribund condition, with the decline in general maintenance and upkeep stemming over a sustained period of time, and clearly before the appellant acquired the site in early 2019. Various parts of the first-floor accommodation are structurally unsafe, and most parts of the site have varying degrees of water ingress and damage due to the poor condition of the roof and various openings. Maturing scrub vegetation has become well-established in various walls and roofs causing further structural deterioration. The condition of the buildings has been further compromised by vandalism, including unauthorised occupation and activities at the site in recent years. Overall, the appeal site is in a state of considerable disrepair and the physical condition of the buildings at the appeal site is very poor.
11. In terms of the period of non-use, the precise date as to when the dairy depot use ceased is not clear other than it occurred at some point in the 1980s. Long-standing local residents advise that the depot closed in the early 1980s and I have no reason to dispute their evidence. Taking a precautionary approach, the appeal site has not been in a dairy depot use for at least 35 years to the date that the planning application for the appeal proposal was submitted in June 2020. On any reasonable measure, that is a long period of non-use.
12. The evidence on the past use of the site is that it served as a local milk processing and distribution depot which would now fall within Use Class E(g)(iii) having previously been Use Class B1(c) (light industrial). References have been made to the storage of motor vehicles at the site prior to 2018/9 but there is no evidence that this was other than an occasional, informal activity. There is no planning history for the site following the cessation of the dairy depot use. As such I find any ad hoc use of the building for the storage of motor vehicles does not amount to a material change of use at the appeal site in the intervening period since the dairy depot use ceased.
13. In terms of the owner's intentions, there is no evidence of a plan at any point since Express Dairies ceased their operations in the 1980s to reactivate a dairy depot or related/similar industrial use at what is a relatively small and constrained site, immediately adjacent residential properties at the Peabody Estate. Given the deteriorating condition of the site, a substantial amount of work would be required to bring the site back into use to meet modern food handling and processing standards. As such I find that there has been an intention to abandon the lawful use of the site.

¹ Supported by the legal advice note from Town Legal LLP dated 25 March 2021

² Hartley v MHLG [1970]; and The Trustees of Castell-y-Mynach Estate v Ely-Taff Borough Council [1985]

14. In conclusion, I find that the relevant objective criteria for abandonment have been satisfied such that the appeal site no longer has a light industrial use. In determining that the appeal site in effect has a nil planning use it therefore follows that the site would not comprise a 'non-designated industrial site' to be purposefully protected through the relevant development plan policies³.
15. Nonetheless, given the strategy and policy framework in the development plan to support the local economy, taking into account the non-residential character and former use of the appeal site, I consider it appropriate to assess the LPAs reasonably precautionary approach regarding the potential of such sites to support employment generating capacity, including low cost workspaces, storage and distribution (notably last mile distribution to support the Central Services Area (CSA) and other light industrial uses. In this context, the appellant has provided various evidence of marketing activity at the appeal site⁴ together with a wider assessment of the commercial property market⁵.
16. The LPA has set out in its Marketing of Employment Premises and Sites Guidance Note (2015) the specific parameters by which it expects the potential of market demand of industrial sites to be tested. The Guidance Note is of some vintage and was not widely consulted upon in its preparation, and whilst it is cross-referenced in the Lambeth Local Plan 2021 (the LLP)⁶, in my view it is a material consideration of only moderate weight in this appeal. More broad-brush requirements of what is required to demonstrate 'no reasonable prospect' of demand for non-designated industrial sites are provided at paragraph 6.7.5 of the London Plan 2021 in support of Policy E7. I find on examination of the appellant's evidence that there has been broad compliance with the requirements of both the LPAs Guidance Note and those in the London Plan. The evidence which informed the marketed value for a commercial use on the appeal site is clearly set out in the Acorn Marketing Report [Document 1.52]. Whilst there are relatively few comparable sites to derive a value, perhaps unsurprising given the unique nature of the appeal site, nonetheless the two cases that inform the guide price are appropriately based on relatively recent local examples in the SE24 and SE5 postcode areas. On this basis, I consider the site has been marketed at a fair and reasonable value for commercial use or redevelopment.
17. The marketing has occurred over at least 12 months as required. I find little deficiency in the approach taken in terms of the sales material published, the databases used to contact perspective purchasers, the periodic use of the Estates Gazette and the photographic evidence of sales boards at the appeal site. Contrary to the LPAs concerns, the site has clearly been advertised also as a redevelopment opportunity for (then) B class uses. Whilst it may have been desirable to see greater transparency around the enquiry schedule, I do not find surprising, given the condition of the site and proximity to residential development that there has been little interest in the site for industrial uses.
18. The appellant's wider analysis of the commercial property market [document 1.49], sets out that the site is within the wider South London Functional Market Area where there is good availability of commercial and industrial floorspace, including in Lambeth. The LPA conceded it had not considered this evidence

³ Principally Policy E7(C) of London Plan 2021 and Policy ED4 of Lambeth Local Plan 2021

⁴ Estate Office Property Consultants 2019/2020 and Acorn Marketing Report 2018/9

⁵ Propertonomics Property Market Analysis – April 2020 [Document 1.49]

⁶ Paragraph 6.2

and offered no counter evidence that the loss of the appeal site would exacerbate any kind of harmful shortfall in the supply of employment premises. I note the LLP references the need for a portfolio of sites to support the Central Services Area (CSA) including for sustainable 'last mile' distribution and other services and functions to support the CSA. I also note the supporting text to Policy ED4 of the LLP identifies a role for non-designated sites to help meet the demand for lower cost workspace for small businesses, particularly in the creative sectors. However, the dilapidated condition and lowkey location of the appeal site means it would not readily be part of this portfolio of reasonable sites for these sectors. This is reflected in the limited interest from the marketing undertaken. Accordingly, residential redevelopment of the appeal site would not adversely affect the ability to maintain a strong, competitive economy in the Borough.

19. Overall, I find the appeal site to no longer have an established light industrial use, having been abandoned since the dairy use ceased nearly 40 years ago. In terms of a wider economic potential of the site, I am satisfied that this has been suitably tested by the appellant, in broad compliance with the relevant requirements. The appeal site is not a high calibre prospect for modern commercial activity and so the appellant's efforts have been proportionately robust given the condition, background and location of the site.
20. I therefore conclude there would be no harmful loss of premises where there would be a reasonable prospect of securing employment generating purposes. Accordingly, the appeal proposal would not be contrary to Policies E2, E4 and E7 of the London Plan 2021 and Policy ED4 of the Lambeth Local Plan 2020-2035, adopted in 2021 (*the LLP*). Collectively these policies seek to retain a sufficient supply of land and premises to support the economic of the Borough and London more widely. This policy framework does not prevent the release of industrial land, or in this case former industrial land now that the use has been abandoned, provided criteria are met. The chief one in this case, being the satisfactory demonstration that there is no reasonable prospect of the site being used for industrial or related purposes, which is the case here.

Affordable Housing

21. As the appeal proposal would not result in the loss of existing industrial premises the relevant affordable housing requirement is set out at Policy H5 of the London Plan, which is reaffirmed through Policy H2 of the LLP. The threshold requirement is at least 35% and must be consistent with the relevant tenure split (70% low-cost rent and 30% intermediate products as per Policy H2(iv)).
22. On the basis of the submitted Rev04 set of plans, the appeal proposal would deliver the required quantum and tenure mix of affordable housing in accordance with development plan policy. The mechanisms for securing the required 35% affordable housing are set out in the submitted UU, principally under 'Obligation B' and 'Plans 3' at Schedule 1 of the Deed. I note that the UU would obligate a three month period of "reasonable endeavours" to dispose/transfer the completed affordable units. This would be to the Council in the first instance and then to the Council's approved providers. Whilst that timeframe seems stringent, given the demand for affordable housing in Lambeth I am satisfied that the proposed units could be expediently transferred.

23. The submitted UU also contains provisions for an early viability review trigger, linked to whether substantial implementation has occurred. This is countenanced in London Plan Policy H5, and further detailed in the Mayor's Affordable Housing and Viability SPG, where schemes are providing affordable housing requirement in accordance with the applicable fast-track threshold (the 35% in this instance). Overall, I find the early review mechanism and formula to be acceptable.
24. I therefore conclude on the basis of the amended Rev04 plans, together with the obligations contained with the submitted UU, the appeal proposal would make adequate provision for affordable housing in accordance with Policy H5 of the London Plan and Policies H2 and H4 of the LLP. In this way, the scheme would also comply with Policy H4 of the London Plan in terms of positively contributing to the overall London strategic target of 50% of all new homes to be genuinely affordable, including the threshold approach on major developments.

Living Conditions

25. The appeal proposal would occupy the footprint of the existing buildings on the site such that proposed residential units would immediately border adjoining land uses. This includes the four and five storey mansion blocks of flats on the Peabody Estate to the south and south-east of the site, which would be separated by a modest pedestrian passageway and service area. Broadly to the west/south-west of the site is woodland adjoining the railway which is owned by Network Rail. To the north-west is the elevated railway line on brick arches. The arches and a narrow strip of land separating the arches from the boundary of the appeal site are privately held by a commercial property company following Network Rail's disposal in 2019. The relationship of the appeal scheme to the height and separation distances to adjoining development and land uses is best shown on the appellant's Section DD plan⁷.
26. In support of its putative reason for refusal, the LPA has identified what it considers to be deficiencies with 28 of the 33 flats proposed. Rather than deal with the LPA's concerns on an individual proposed flat basis, I have considered the issues thematically.

Privacy

27. The appeal proposal would provide an appreciable area of enclosed communal garden at ground floor level that would in part off-set for most units what would be relatively modest private amenity spaces. This proposed ground floor communal garden space would be a spacious area likely to be highly attractive to future occupiers of the appeal scheme for sitting out, socializing and children's play. The proposed private amenity spaces of units 1 and 6 would directly adjoin this communal garden. Whilst these would be reasonably sized spaces for the size of the flats, I find the proposed juxtaposition of communal garden and amenity space to be unsatisfactory in that it would not provide sufficient privacy for future occupiers of units 1 and 6 when they would wish to sit out and relax.
28. The appellant suggested that the issue could be remedied by glazed partitions to these amenity spaces. That would still leave the issue of an uncomfortable

⁷ Dwg ref 0424 A 1203 03

degree of intervisibility when other residents of the appeal scheme would be enjoying the communal garden. Furthermore, in the warmer months when the amenity spaces are more likely to be used for sitting out, an enforced glazed partition for privacy would be unpleasantly claustrophobic. The appellant further suggested that defensible landscaping could be established between the amenity space openings and the communal gardens. Low vegetation would not remedy the privacy issue unless it was of considerable depth, which would detrimentally erode the available communal garden area. Taller vegetation or screening would result in these amenity spaces becoming particularly gloomy spaces. Overall, partition glazing and/or landscaping would not overcome my concerns regarding the harm that would arise from the lack of sufficient privacy to the proposed amenity spaces for units 1 and 6.

29. Various units within the scheme would rely on proposed one-way privacy glazing where openings directly adjoin the communal garden area and external walkways within the development. In broad terms this would be a sub-optimal approach given the perception of being looked in on, and people being visible at relatively close quarters. Nonetheless, I accept that the footfall on the external walkways passing these openings would be limited due to the very small number of flats accessed by these paths. In terms of one-way glazing at night when internal lighting undoes its effectiveness, it would be normal behaviour to deploy blinds or other means of screening to maintain privacy. On balance, I find the proposed use of one-way privacy glazing onto the walkways and communal open spaces within the scheme would maintain an acceptable standard of privacy.
30. In respect of ground floor unit 6, various openings to serve the kitchen, living room and a bedroom would be directly onto the pedestrian passageway which connects through the adjacent Peabody housing estate onto Rosendale Road. It is a desirable pedestrian access linking the Estate to local shops and facilities, public transport to the north and Brockwell Park. Whilst my site visits can only represent a snapshot in time, I observed that this passageway was reasonably well-used. To maintain privacy to these openings the appellant proposes recessed oriel privacy windows where the main central glazed element would be one-way privacy glazing and the smaller side reveals would be clear glazed. Despite the modest degree of set-back, the one-way glazing would not be especially effective in mitigating the presence of the appreciable pedestrian footfall passing close-by to these windows. This would bring the perception of being observed into the living room and bedroom on a frequent basis, especially as a pedestrians walk directly towards the openings. I accept blinds and screening could to some degree mitigate the night-time effectiveness of the one-way glazing but this would require a high degree of vigilance on the part of future occupiers in order to maintain reasonable privacy at all times. On balance I do not find the one-way glazing to achieve a necessary standard of privacy at this location.
31. Additionally, whilst I heard support from local residents that these proposed openings would provide natural surveillance as a deterrent for anti-social behaviour, this would unlikely be the case at night-time if future occupants are compelled to operate fulsome screening to maintain any sense of privacy. Furthermore, without effective enclosure or barriers, these large-scale openings directly onto the pedestrian passageway could become a focus for

congregation⁸. The submitted plans show planting in front of some of these openings but this is on land outside of the appeal site and it is therefore uncertain that this could be delivered and therefore effective. Overall, I find the degree of privacy within proposed unit 6 would be unacceptably poor.

32. Elsewhere on the ground floor, the appeal scheme proposes to utilise existing openings and insert new openings on the north-west elevation directly towards the arches and their ancillary land. A number of ground floor amenity spaces would also be located on this elevation. These openings are not proposed to be one-way privacy glazing. The proposed arrangement appears to rely on the arches area not returning to any active use in order to maintain privacy to these proposed openings, many of which serve proposed bedroom accommodation. From the representations from The Arch Company in response to the appeal notification, it would be unreasonable to assume that the arches and ancillary land would remain vacant. I deal with the arches in more detail below under a separate main issue but state here that future activity at the arches, which may not require planning permission, could detrimentally affect the privacy of ground floor rooms and amenity spaces. This is a notable shortcoming of the appeal proposal, meaning future occupants of ground floor flats 2, 3,4 and 5 cannot be assured of acceptable living conditions in relation to privacy.

Daylight

33. The appeal proposal is accompanied by an Internal Daylight Report⁹. There is no counter technical evidence from the LPA on daylight levels, but Mr Ball asserted that with the winter garden screens closed, the LPA considers there would be a marked reduction in daylight such that some 19 rooms would fail the required standards. In terms of the appellant's methodology for assessing the Average Daylight Factor (ADF) I find it generally accords with recognised BRE guidance and British Standards including the recommended levels for habitable rooms. I further find taking the measurements, where necessary, from the inside edge of the amenity spaces, and multiplied by a factor of 0.9, to be logical given the generous height of the openings, the glazed nature of the partitions and relatively shallow depths of the proposed winter gardens. With the exception of one room at ground floor level, the appeal scheme has been demonstrated to meet the required ADF when assessed against the current site context. In respect of kitchen/dining areas I find the applied 1.5% target to be acceptable given the appeal scheme generally combines these spaces with the principle use of a living room. There is also agreement that all of the proposed units would be at least dual aspect, such that natural daylight would not be confined to one elevation.
34. In respect of proposed openings to the south-west these would be onto woodland owned and managed by Network Rail and so beyond the appellant's control. I observed on site that some tree specimens are close to appeal site and would invariably affect light levels to lower openings on this elevation. The trees are not particularly densely arranged, and they are deciduous. During the critical winter months when light levels are at a premium, the open canopy of the trees would enable good levels of daylight to these openings. For those months when the trees are in leaf a diffuse daylight is likely to filter through, providing a pleasant degree of verdant shading to these openings in the hotter

⁸ The curiosity of trying to look through the windows or anti-social knocking on glass.

⁹ Point 2 Surveyors, Version 4 [Document 3.17]

summer months. Overall, I do not find the proximity of trees to the south-west would significantly harm daylight levels to openings on the south-west elevation.

35. The daylight analysis on ground floor openings on the north-west elevation is predicated on the railway arches remaining open. As discussed later in this decision, there is a reasonable prospect that some or all of these arches could accommodate commercial activity including proposals to infill the arches. The appellant submits that were this to occur, a pale colour finish to the exterior surface of any infilling would reflect sufficient daylight levels into the openings. I have relatively little before me to demonstrate the effectiveness of this but based on the appellant's modelling of the current conditions there appears to be some headroom in the ADF figures to accommodate any reductions arising from any infilling of the arches.
36. I deal with outlook separately but in respect of daylight levels I am satisfied on the basis of the appellant's technical assessment that the appeal proposal would secure appropriate levels of daylight to provide a sufficient standard of amenity in this regard for future occupants.

Noise

37. The appeal site is separated only a short distance from the Tulse Hill to Herne Hill railway line. Openings and winter gardens to those flats on the north-west side of the building would be less than 4 metres from the edge of the operational railway network as it crosses over the arches. Noise is also generated from Rosendale Road and would potentially arise from any reactivated commercial activity at the railway arches. Accordingly, the appeal proposal would require a standard of glazing to a necessary sound insulation performance. This could be secured by condition. I accept that openings would likely be shut by future occupants for prolonged periods due to the acoustic environment at the appeal location. However, alternative means of passive ventilation are proposed¹⁰ and again this could be secured by condition. Generally, I am satisfied, subject to appropriate conditions, that an acceptable standard of internal amenity would be secured for future occupants in respect of noise and vibration.
38. I note that proposed balconies/winter gardens on the north-west elevation, particularly on the second and third floors, are not shown on the plans to be enclosed glazed spaces (principally at flats 18, 19, 23, 24, 25 and 26). As such they would be directly exposed to the noise of passing trains at very close distances. However, I am referred to other examples of modern residential development in Lambeth constructed similarly close to railways. I observed a similar relationship between the Juliet balcony spaces and the same railway line, nearby at the rear of 89-91 Norwood Road. In this regard I accept that in order to secure an efficient re-use of a highly sustainably located brownfield site some flexibility would be required in relation to the ambient environment of these external amenity spaces. Accordingly, the appeal proposal should not be dismissed on this basis.

¹⁰ Table 5.1 in Document 1.26

Outlook

39. As the appeal proposal would occupy the footprint of the existing buildings there would be no buffer around the site under the appellant's control. Consequently, various ground and first floor openings on the appeal proposal would rely on an outlook directly onto adjoining land and structures. In relation to the treed land to the south-west of the appeal site, I find similarly to daylight matters above, that the trees would provide a reasonably pleasant sylvan outlook in this perspective, including in clement months when the tree canopy is in full leaf. There is little to indicate that this area is likely to be other than a verdant pocket of land. However, I share the LPAs concern that there is little control to prevent this woodland from being additionally enclosed, including along the boundary to The Arch Company's holding which includes a narrow strip of land immediately adjacent to the south-west elevation of the appeal site¹¹. A new boundary fence, for example, could detrimentally erode the outlook from ground floor openings at units 1 and 2. Accordingly, I am concerned that the reliance on immediately adjoining land, in the control of other parties, together with an assumption that it would remain unaltered is unreasonable. Future occupants would be at risk to their outlook being detrimentally diminished, including from within proposed habitable rooms and private amenity space.
40. Turning to the outlook from those openings on the north-west elevation on the ground and first floors, these would be directly towards the railway arches and the slither of ancillary land between the arches and the appeal site. The appellant stresses the open nature of the arches and calculates only 16% of the outlook in this perspective comprises the solidity of the arches' brickwork. As set out elsewhere, the appeal proposal cannot rely on the arches remaining open. Infilling has occurred recently on arches opposite on Rosendale Road of a comparable height, with broadly similar highway arrangements and proximity to the listed railway bridge. Nonetheless, even were the arches to remain open I have serious reservations about the quality of the outlook from the proposed ground and first floor openings given the proximity, scale (including depth) and height of the arches together with existing means of palisade enclosure already erected in some of the arches. There would be little sense of any openness in respect of the outlook towards the unfilled arches, resulting in a particularly oppressive and gloomy outlook. This would be particularly so for the ground floor openings where the adjoining narrow strip of ancillary land to the arches could be used with any reactivation of the arches for open storage. As set out above with the woodland, this could include new boundary treatments (i.e. fencing) very close to the various ground floor openings, over which future occupants would have little or no control. Accordingly, the proposed ground floor openings on the north-west elevation would have an unacceptably poor and gloomy outlook.
41. Furthermore, the outlook from first floor openings, and to a lesser extent, second floor openings, would be directly towards the solid brick parapet element of the arches. I am especially concerned that first floor openings and private amenity balconies/winter gardens would be facing the projecting, cantilevered parapet element at a distance appreciably less than 4 metres. This would be a particularly parsimonious outlook, inimical with the objective of securing a high standard of amenity.

¹¹ Figure 1, The Arch Company Letter of Objection April 2021 (Appendix 5 to LPA Statement of Case)

42. In respect of the proposed living room in flat 8 this would both benefit from an opening to the south-west towards the woodland such that the dual aspect would mean the poor outlook from the opening to the north-west would be mitigated. For those living/dining room spaces in flats 3 and 4, I accept the large glazed one-way openings towards the communal garden would offset the poor outlook opposite towards the arches in this dual aspect spaces. In respect of first floor flats 9, 19, 11 and 12 similarly there is a dual aspect albeit through smaller openings towards and over the communal garden space. Consequently, these spaces would feel more hemmed in given the proximity and prominence of the railway parapet in the larger openings on the north-west elevation but on fine balance, the smaller openings on 'aspect 1' as shown on the plans enable me to find that the overall quality of the outlook from these spaces would just about be adequate.
43. A number of the rooms in flats 2, 3, 4, 5, 9, 10 and 13 which only have openings towards the railway arches are bedrooms, particularly at ground floor level. Bedrooms are habitable spaces which are increasingly expected to be used for activities such as study, working from home, seclusion from the hubbub of activity elsewhere in the home and children's play. Accordingly, they should have a reasonable quality of outlook in the daytime. The appeal scheme, for the reasons set out above, would not provide for an acceptable quality of outlook for these rooms.
44. Additionally, the outlook from the proposed private amenity spaces for flats 3, 4, 5, 9, 10, 11 and 12 would be poor. This would especially be the case were commercial activity at the railway arches to utilise the strip of ancillary land directly adjacent to the private amenity spaces of flats 3, 4 and 5. In turn, the balcony/winter gardens of flats 9, 10, 11 and 12 face directly towards the brick parapet at very close quarters. Consequently, the poor outlook means they would not be attractive spaces for sitting out.
45. Overall, there would be notable deficiencies in the quality of outlook for various rooms and spaces in those ground and first floor flats with an aspect towards the railway arches and to the woodland. In respect of outlook the appeal scheme cannot rely on the status quo being maintained and assume that the directly adjoining arches land would not come back into use or fenced off, activities over which there may be little or no control through the planning system. Bringing this altogether I find there are instances of significant harm to the living conditions of future occupants in respect of the outlook from certain rooms and amenity spaces at ground and first floor levels.

Private Amenity and Open Space

46. There is agreement that the appeal proposal would provide a sufficient quantity of private amenity space and meet the requirements for open space including for children's play for most ages. The scheme would not provide sufficient space of facilities for provision in the 16-18 years cohort but the submitted UU would obligate the development to make a financial contribution. This obligation would meet the necessary requirements and ensure that the scheme complied with Policy H5 of the LLP, and in turn Policy S4 of the London Plan. Accordingly, I have taken the obligation into account. On the basis, the quantity of provision would be acceptable.
47. I have found above various deficiencies in the quality of some of the private amenity spaces due to privacy and outlook. I accept other flats would be

provided with a very high standard and quantum of private amenity space for an Inner London Borough, notably at units 16 and 17, but these would be very much the exception. They would not offset my wider concerns regarding the number of private amenity spaces were there would be qualitative shortcomings as identified.

Conclusion on living conditions

48. The appeal site occupies a wedged position on what is a relatively narrow but deep site between tall residential buildings to the south-east, the railway arches to the north-west and woodland to the south-west. In many respects, the quality of design of the appeal scheme responds appropriately to these constraints and once above first floor level there is little issue or concern regarding the living conditions of these units. I accept there needs to be a degree of pragmatism and flexibility¹², particularly for highly sustainably located brownfield sites such as the appeal site, but the residual concerns regarding issues of privacy and outlook, in very large part because of the railway arches and ancillary land, go well beyond the appellant's assertion that these are of a magnitude of "pettifogging". In particular, for those ground and first floor units that are either very close to the parapet of the arches or rely on the existing voids of the arches and ancillary land remaining clear and unused, the impacts on privacy and outlook would be significantly harmful to the living conditions of future occupants. There would also be significant harm to the privacy of future occupants of ground floor units where private amenity spaces directly abut communal open space and where there are openings directly onto the pedestrian passageway at the Peabody Estate.
49. I therefore conclude, on balance, that the appeal proposal would not provide acceptable living standards in respect of privacy, outlook and quality of private amenity space. The proposal therefore conflicts with Policies D6¹³ and D13 of the London Plan and Policies H5 and Q2 of the LLP. These policies require new housing to accord with the principles of good design to achieve, amongst other things, an acceptable standard of amenity, recognising that qualitative aspects of a development will be key to ensuring successful sustainable housing. Moreover, it would also not create a place that promotes health and well-being, with a high standard of amenity for future users (my emphasis) as sought by paragraph 130(f) of the NPPF.

Railway Arches and the Agent of Change

50. Directly to the north-west of the appeal site is a span of 8 railway arches before the elevated railway tracks cross over the bridge on Rosendale Road and continue on similar arches towards Herne Hill station. The arches opposite on Rosendale Road are generally in active economic use, including a relatively recent brewery operation occupying the two arches immediately adjacent to the bridge. This has involved filling-in the arches with plain, solid blockwork. The access arrangements to these arches are broadly comparable to those adjacent to the appeal site. The brewery site relies principally on access by foot from Rosendale Road, indicating that direct vehicular access is not necessarily a pre-requisite for securing new commercial uses within these arches.

¹² NPPF paragraphs 124 and 125 on achieving appropriate densities

¹³ Supplemented by the Qualitative Design Aspects identified in accompanying Table 3.2 to Policy D6

51. As such, the activity in the arches opposite on Rosendale Road indicates similar commercial potential for the arches immediately to the north-west of the appeal site. On this basis I do not share the appellants pessimism that access, height of the arches and the proximity of the listed bridge would preclude economic development at these arches. The Arch Company confirm in their correspondence of April 2021 that the arches and the land adjacent to the north-west of the appeal site are currently vacant but that the site has a commercial history including simple open storage uses. This would correspond to what I observed on site, including the palisade fencing erected to secure some of the arches. Given what has happened recently in the arches opposite there appears to be little to inhibit some future use at these arches which are effectively a non-designated employment/industrial land resource under Policy ED6(B) of the LLP.
52. The appellant submits that the vacant nature of the arches adjacent to the appeal site is indicative of limited or negligible commercial interest and that the landholder of the wider railway arch portfolio is likely to focus on other locations. That is at odds with the April 2021 representation from The Arch Company, who are commercially incentivised to recoup their recent investment. As the landholders they indicate that their objective is to bring these arches back into use, including simple open storage in the first instance. This would be consistent with and supported by Policy ED6 of the LLP which at part B states that industrial uses¹⁴ will be supported in railway arches at locations such as Rosendale Road.
53. As set out above under the main issue on living conditions, 4 ground floor units would have a number of openings directly onto the arches and the intervening ancillary land. 6 first floor units similarly have openings directly towards and in proximity to the arches. I have set out above my concerns about commercial activity occurring on the intervening ancillary land (controlled by The Arch Company) to these units in respect of outlook and privacy. This activity could extend to open storage associated with the arches or a scenario comparable to opposite on Rosendale Road where comparable ancillary land has been used as pedestrian access to the brewery. Even if commercial activity was restricted to within the arches, this would be occurring only a matter of less than 4 metres from these ground floor openings.
54. Taking all this together, I find there is a realistic prospect of industrial activity, within the scope defined at London Plan Policy E4, occurring at the arches adjacent to the appeal site. As with matters under living conditions, the appeal proposal cannot rely on the arches site remaining open and vacant in perpetuity given their likely existing lawful use. At the very minimum, the current owners of the arches are signalling their intent to revive the past open storage use at the site as a prelude to explore other industrial uses. The recently adopted Local Plan clearly envisages a role for railway arches in Lambeth Borough providing for industrial uses to support the local economy over the period to 2035. Accordingly, the appeal proposal would detrimentally constrain the economic potential of the arches. It would also potentially sterilise land adjacent to the arches that could provide for ancillary activity to support their economic use.

¹⁴ Defined in London Plan Policy E4(A) as a reasonably broad list

55. Allied to this harm, is the agent of change principle, now embedded in Policy D13 of the London Plan. This places an onus on those proposing development not to prejudice existing and other noise-generating activities. The appellant relies on the vacant nature of the site to assert there is no “existing” use against which to apply the principle. From what I have read from the Arch Company and observed on site it is far from clear that open storage (one of the industrial uses identified in London Plan Policy E4) as an existing lawful use has been abandoned. Moreover, the arches have an existing designation through Policy ED6 of the LLP for industrial use. As a starting point the appeal proposal should approach its relationship to the arches and ancillary land on this basis.
56. I therefore conclude that the proposed development would not be appropriate to its location having regard to the adjacent railway arches and the agent of change principle. The appeal proposal, given its reliance on the arches site being kept open and fallow, would harmfully prejudice the employment potential of the arches as a resource for industrial activity, including failing to reflect the agent of change of principle. The proposal would therefore be contrary to Policy D13 of the London Plan and Policy ED6(B) of the LLP. The appeal proposal would also fail to accord with paragraph 187 of the NPPF which states that new development should integrate effectively with existing businesses such that the onus is on the ‘agent of change’ to mitigate its approach.

Other Matters

Sustainable Transport, limited parking provision and air quality.

57. The appeal site is situated where the PTAL¹⁵ rating is very good. Accordingly, as a sustainable location, together with the need to improve air quality in the Borough, it is justified that the appeal proposal is largely car free other than making provision for disabled persons in accordance with development plan requirements. To support modal shift the appeal proposal would provide secure communal bicycle storage, conveniently situated towards the front of the building, close to the main access onto Rosendale Road. To further support the largely car-free nature of the proposal, the submitted UU contains provisions to fund membership of the Transport for London (TfL) self-service bicycle sharing scheme for a period of 3 years on the basis of one membership per each residential unit. This would be in accordance with the requirement for new residential developments set out at LLP Policy T3(H), which seeks to ensure development proposals contribute towards improvements to cycle access. Accordingly, I find the obligation in the UU to meet the relevant tests and so I have taken it into account.
58. In respect of provision for car parking, the submitted UU contains a provision for funding to secure the delivery of 3 on-street parking spaces for disabled persons together with a single electric vehicle charging point. The number of spaces sought would accord with development plan requirements at Policy T6.1(G) of the London Plan, which is backed up by Policy T6 of the LLP. I am satisfied that scope exists within Rosendale Road to deliver provision close to the appeal site. Overall, I am satisfied that the contribution towards car parking provision for disabled persons meets the required tests and so I have taken into account.

¹⁵ Public Transport Accessibility Level

59. More widely, to inhibit car ownership at the appeal proposal, the submitted UU contains two provisions. The first covenants that occupants of the appeal scheme would be restricted from obtaining parking permits, noting that parts of Rosendale Road close to the appeal site, together with various side streets and Norwood Road are covered by a Controlled Parking Zone (CPZ). From my observations additional on-street parking associated with the appeal proposal would likely lead to stress within the nearby CPZ given the general absence of off-street parking in this part of the Borough. I am satisfied that restricting the issuing of permits would be enforceable and altogether a proportionate approach given the very good access to public transport to support car free living. It would accord with the requirements at Policy T6(D(i)) of the LLP. Consequently, the obligation meets the necessary tests.
60. The second provision in the UU would secure funding to consult on an extension to the CPZ. I observed that an appreciable part of nearby Rosendale Road immediately to the south of the appeal site is not within a CPZ such that the absence of on-site parking within the appeal scheme could result in additional on-street parking pressure, given the proximity to the appeal site. The UU proposes a sum of £72,500 to consult on and implement a CPZ to operate in the area within which the appeal site is situated. Whilst such an obligation would meet the first two tests (NPPF paragraph 57 (a) & (b)), I have very little evidence on the cost of carrying out consultation and implementing a CPZ to conclude that it would be fairly and reasonably related in scale and kind to the development. As such I do not find the obligation meets all the tests, and so I have not taken into account.
61. To assist the generally car-free nature of the scheme, the submitted UU contains a provision to fund membership of a car club in terms of access to a pool of cars for flexible periods of time on a pay-as-you-drive basis. The contribution would cover the costs on a per household basis for a period of 3 years. The obligation would be in accordance with Policy T6(D(iii)) of the LLP, it therefore meets the relevant tests and so I have taken it into account.
62. In addition to measures to support sustainable travel choices, the submitted UU would also contribute towards carbon offsetting more widely, to support measures to reduce Carbon Dioxide emissions in Lambeth. The proposed contribution would meet the requirements of Policy SI2 of the London Plan and Policy EN4 of the LLP. Accordingly, I have taken the obligation into account.

Employment and skills

63. The submitted UU contains provision for an employment and training contribution to help support employment and training schemes geared to maximising local employment opportunities and addressing skills deficits in the local population. The relatively modest sum sought would accord with the requirements at Policy ED15 and Annex 9 of the LLP which allows for in-lieu financial contributions to secure more effective outcomes. As such, I find the obligation meets the relevant tests and so I have taken it into account.

Conclusion on transport, carbon offsetting and local employment matters

64. I therefore conclude that with those planning obligations that have been found to meet the necessary tests, the appeal proposal would make appropriate provision in relation to transport infrastructure, air quality and local employment opportunities directly related to the appeal proposal. Accordingly,

there would be no conflict with Policies T3, T4, SI1 and SI2 of the London Plan 2021 or Policies T1, T3, T6, EN4, ED15 and D4 of the LLP.

Heritage

65. site is situated within the Peabody Estate Conservation Area which principally encompasses residential development, in a mix of flats and cottages, constructed in the first decade of the Twentieth Century. The architectural quality, layout and social origins of this housing comprises the heritage significance of the Conservation Area. This includes 4 and 5 storey mansion blocks, containing flats, fronting onto Rosendale Road immediately to the south of the appeal site. The scale, massing and architectural detailing of the appeal proposal would appropriately complement the adjacent Peabody buildings and preserve the residential character of the Conservation Area. Furthermore, the run-down condition of the appeal site significantly detracts from the appearance of the Conservation Area, including the setting of the well-built, rhythmic mansion blocks fronting onto Rosendale Road. Accordingly, the appeal proposal would represent an enhancement, particularly within the street scene of Rosendale Road but also within various perspectives from the adjoining Peabody Estate development. Overall, the appeal proposal would not harm the heritage significance of the Conservation Area. Moreover, it would provide a heritage benefit in terms of enhancing the appearance of the area.
66. Immediately to the north of the appeal site is the grade II listed railway bridge over Rosendale Road. The heritage significance of this listed structure is its construction and relatively ornate appearance resulting from the quality of the brickwork. In terms of its setting, how the bridge is appreciated within Rosendale Road and from the Brockwell Park gates would remain largely unaltered. In some localised perspectives, the condition of the appeal site provides a somewhat shabby backdrop to the bridge, such that the appeal proposal would present an opportunity to enhance the setting of the listed structure. Fundamentally, the appeal proposal would not interrupt how the bridge is experienced. It would remain a dominant feature within the street scene, as intended at its conception. Accordingly, the appeal proposal would not harm the heritage significance of this listed structure.
67. The façade of the former dairy building fronting onto Rosendale Road is locally listed. The appeal proposal would retain and sensitively incorporate this interesting feature into the development preserving a degree of legibility of the historic use of the site. Additionally, the appeal proposal would remove various incongruous alterations to the frontage enabling an improved ground floor elevation onto Rosendale Road. The potential to enclose the frontage of the site with railing comparable with the adjoining Peabody Estate would further integrate the appeal proposal within its context. Overall, there would be no harm to heritage significance of the locally listed façade and the retention and restoration of this feature as part of the appeal proposal would be a moderate heritage benefit.

Other developments

68. My attention has been drawn to various other housing developments in Lambeth, close to railways and railway arches. I have visited those in Norwood Road and Milkwood Road which are close to the appeal site. The most directly comparable scheme are the apartments at Nos. 89-91 Norwood Road. Even so, I observed the building is modestly separated by a strip of land from

ancillary land to the railway arches such that it is not as proximate to the arches or constrained on its footprint as the appeal site. Moreover, the lower ground floor has been used for undercroft parking enabling a boundary to be site boundary to be constructed to the railway land. Additionally, the linear layout and depth of the site means that there is clear outlook from the front façade of the building over Norwood Road onto Brockwell Park. Accordingly, the scheme at Nos.89-91 does not set a precedent to support the various harms identified at the appeal proposal.

Planning Balance and Conclusion

69. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permissions be determined in accordance with the development plan unless material considerations indicate otherwise. With a recently adopted Local Plan and good performance against the Housing Delivery Test, this is a case where the tilted balance at paragraph 11(d) of the NPPF is not engaged.
70. As set out above, in relation to the main issues for this appeal matters are balanced. There would be no conflict arising from the redevelopment of the former dairy site with policies seeking to maintain a suitable supply of industrial sites to support the Borough's economy. Through the obligations contained within the submitted UU the appeal proposal would meet various development plan requirements in relation to affordable housing provision, local employment and skills, carbon off-setting and making the most of the appeal site's generally car-free nature and highly sustainable location. There would be no harm to the significance of heritage assets. There would be no harm to amenities of nearby residents. In terms of the amenities for future occupants of the proposed flats in relation to daylight, noise and quantity of private amenity space, the appeal scheme would secure acceptable living conditions. There is much to commend the scheme and aspects of the design approach which have sought to make an efficient use of what has been a long-standing moribund site. As such, the significant local support for the appeal proposal is understandable.
71. Nonetheless, for the reasons set out above the appeal proposal would result in significant harm to the privacy and outlook of future occupiers of various proposed flats, principally at ground and first floor level. The degree of harm identified would be contrary to the requirements of the development plan and national planning policy. Furthermore, by utilising and creating numerous openings directly on the site boundary to serve new residential accommodation, the appeal proposal would harmfully constrain the use of existing railway arches and ancillary land contrary to those development plan policies that seek to maximise the potential of this resource to support the local economy. Accordingly, these conflicts with an up-to-date development plan indicate that planning permission should not be granted.
72. Turning to material considerations in favour of the appeal proposal my attention has been drawn to the Borough's housing requirement, which is expressed at Policy H1 of the LLP, as the minimum to be achieved. Accordingly, in the context of the enduring need for additional housing, and in particular, affordable housing, the appeal proposal would deliver significant social benefits. On a wider social point, there is significant local support for the appeal scheme in terms of bringing an abandoned site which has attracted anti-social behaviour into positive use. I therefore ascribe a limited social

benefit in terms of the wider community appreciation for the proposed regeneration of this neglected site.

73. There would be moderate economic benefits in terms of jobs created and supply chains during the construction phase. Additionally, the appeal proposal would moderately benefit the economic well-being of shops and services opposite the appeal site on Rosendale Road. In terms of environmental benefits, I have set out above that the appeal proposal would bring modest heritage benefits in terms of enhancing the appearance of the Conservation Area and retaining and restoring the locally listed façade of the former dairy building.
74. Matters are finely balanced but notwithstanding the numerous, benefits in favour of the scheme, it is imperative that future occupants the appeal scheme have a reasonably high standard of living conditions over the lifetime of the development. The appeal scheme, in terms of outlook and privacy cannot rely on land outside of the appellants control remaining as it is. Nor should it unduly constrain or emasculate the reasonable economic potential of the adjoining arches and ancillary land. Consequently, the material considerations identified do not outweigh the identified conflicts with development plan policy. The appeal proposal would not, therefore, amount to sustainable development and so should not be permitted.
75. I have taken into account all other considerations, but there is nothing that leads me to conclude other than the appeal should be dismissed for the reasons given.

David Spencer

Inspector.

APPEARANCES

FOR THE APPELLANT:

Andrew Fraser-Urquhart QC
Alfie Yeatman – HgH Consulting
Roger Hepher – HgH Consulting
Maria-Louise Long - Architect
Chris Dyson – Architect
David Birkbeck – Design for Homes
Andrew Cartmell – Point 2 Surveyors
David McCormack – Railway Advisor

FOR THE LOCAL PLANNING AUTHORITY:

Gareth Ball – Senior Planner (Appeals)
Robert East – Principal Planner (Policy)
Ruth Smithson – Area Team Manager (Vauxhall, Stockwell & West Norwood)

INTERESTED PERSONS:

Robert Holden – Local Resident
Catherine James – Local Resident

DOCUMENTS received at the hearing:

- Doc 1. Signed and Dated Unilateral Undertaking
- Doc 2. Statement of Mr Holden