



Appeal Decision

Site visit made on 10 October 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/C5690/W/21/3287376

Unit 1, Ashby Mews, London SE4 1TB

- 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 J Lowe against the decision of London Borough of Lewisham.
 - The application Ref DC/21/121776, dated 11 May 2021, was refused by notice dated 26 August 2021.
 - The development proposed is the partial demolition of existing light industrial (B1c use) building, alterations and extensions to provide a terrace of 4 two-storey residential dwellings (C3 use) and associated refuse collection facilities, cycle parking and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In determining this appeal, I have had regard to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended). This requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

Main Issues

3. The main issues are the effect of the proposed development on:
 1. Employment land provision;
 2. The significance of designated heritage assets;
 3. The living conditions of future occupiers with particular regard to natural light and outlook; and,
 4. The living conditions of future occupiers with particular regard to bicycle use.

Reasons

4. Ashby Mews is a private gated road that has a tarmac surface for the northern third of its length, including outside the appeal site; the southern part is partly surfaced with gravel. Located between the residential streets of Manor Avenue and Upper Brockley Road, the mews separates the rear gardens of the dwellings on these streets for much of its length.
5. The mews contains a mix of buildings and uses, including domestic garages, sheds and car parking for dwellings on Manor Avenue and Upper Brockley Road; various live/work buildings and small scale commercial buildings, and

some wholly residential buildings, including Ashby House at the junction with Ashby Road.

Employment land

6. The appeal site is not in a designated employment location but there are commercial uses in the vicinity, including live/work units. The appellant received pre-application advice from the Council on 11 December 2020 that did not address the loss of employment land¹. The Council's justification for this was that at this time, an extant prior approval for a change of use from Use Class B1(c) (light industrial) to Use Class C3 (residential) to provide 4 residential units² existed at the appeal site. The prior approval was deemed to have consent because the Council did not issue a determination within the required timescale.
7. However, this prior approval has since lapsed, removing this fallback position and rendering the Council's pre-application advice contrary to its first reason for refusal. Whilst there is a gap between the pre-application advice and the submission of the application, I find the Council's actions in this regard to have been very unhelpful to the appellant. This is particularly so given the importance the Council subsequently attached to this issue in refusing planning permission, and which is substantiated by a number of development plan policies.
8. A new class of permitted development rights, under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), was introduced in 2021. Whilst a change of use from light industrial to residential is included under Class MA of the GPDO, it is subject to various conditions and limitations that may require the prior approval of the Council.
9. Whilst the principle of development is established through the grant of permission by the GPDO, some of the conditions and limitations under Class MA concern issues that the Council has used to substantiate its refusal of planning permission for the appeal proposal. For this reason, I do not accept that Class MA provides a fallback position in the way that the appellant suggests; it is not clear that the Council would grant prior approval should an application be submitted.
10. This appeal is against the refusal of planning permission by the Council, not prior approval, and in such circumstances the Council was right to have appropriate regard to the development plan, pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004.
11. Policy 5 of the Lewisham Core Strategy 2011 (LCS) and Policy DM11 of the Lewisham Development Management Local Plan 2014 (LDMLP) concern employment locations such as the appeal site, and amongst other things, require that where an employment use is to be lost it is demonstrated that such a use is no longer viable or suitable. The appellant has provided statements from two firms regarding the marketing of the appeal property in its employment use.

¹ LPA Ref. PRE/20/119343

² LPA Ref. DC/18/106947

12. However, little detail is provided regarding the marketing of the property, and no information similar to that provided by the appellant at appendix F of their statement is before me. The first marketing attempts were in 2017, almost five years ago; the second attempts were made in 2020/2021, during the Covid-19 pandemic.
13. I note that another similar change of use application at the appeal property was refused permission by the Council and the loss of employment land was not a reason for refusal in this case³. I am not familiar with this proposal and in any event each proposal should be considered on its individual merits. However, I surmise that the aforementioned extant prior approval may have shaped the Council's decision in this case.
14. I note the appellant's comments about the effective use of land⁴ and the introduction of Class E to the Town and Country Planning (Use Classes) Order 1987 (as amended), which encompasses a range of commercial uses of which there are said to be a plentiful supply of vacant units in the area. I also note the importance of small, brownfield and windfall sites for the delivery of housing⁵.
15. However, no compelling evidence regarding the availability of commercial properties in the area has been provided and I note that making effective use of land would apply to employment uses as well as housing.
16. Ashby Mews is surrounded by residential development and whilst I observed no industrial activity occurring there during my visit, such activity has historically taken place here. The appellant states that the condition, design, materials and size of the appeal building, would require considerable investment, and there is limited access and parking for large commercial vehicles, making it unattractive for commercial use.
17. However, the presence of live/work spaces and other small-scale commercial or workshop buildings that could be used by craftsmen, artisans or artists suggests that such employment uses can operate at the northern end of the mews successfully, notwithstanding the residential developments and constraints stated by the appellant. Any redevelopment of the appeal building would require significant investment.
18. The appellant is not seeking live/work spaces, which are said to be difficult to finance, although the appellant has provided very little evidence to substantiate this statement. The appellant acknowledges that the design and scale of the proposed dwellings would allow for some home-working to take place. However, the primary use of the properties would be residential.
19. Moreover, from the very limited marketing information provided and the elapsed time, it has not been demonstrated to my satisfaction that an employment use at the appeal premises is not viable or suitable at the present time.
20. For these reasons the proposal would adversely affect employment land provision and would conflict with Policy 5 of the LCS and Policy DM11 of the LDMLP, and with the Framework, in this regard.

³ LPA Ref. DC/20/116637

⁴ Chapter 11 National Planning Policy Framework 2021 (the Framework)

⁵ Paragraph 69 the Framework

The significance of designated heritage assets

21. The appeal building is located on the eastern side of a gated mews in the Brockley Conservation Area (BCA), which is a designated heritage asset. The Council has undertaken a Character Appraisal (CA) and produced a Supplementary Planning Document (SPD) for the BCA. The BCA is divided into seven sub areas in the CA, of which one concerns the various mews, which are part of the historical street pattern of the area dating from the 19th century.
22. The CA states that the mews in Brockley are somewhat rarer than in other parts of London and that development along the mews in the late 19th and early 20th centuries was also limited. The consequence of this is that mews developments from this time are rare, have a significant historical value and make a positive contribution to the character of the BCA.
23. The mews are described in the CA as 'unmade service roads running behind houses in some of the larger streets' and 'leafy lanes containing many mature trees, single-storey garaging and views to the rear elevations of houses and long, verdant gardens'.
24. Ashby Mews is surfaced with tarmac for over one hundred metres from Ashby Road and in this area, is largely built-up on both sides, including several 2-storey buildings, and with very limited vegetation. Some mature trees are visible in the adjoining residential gardens and streets, and occasional glimpses of the rear of these dwellings are still possible. However, from the description in the CA, Ashby Mews is somewhat out of keeping with the other mews in the BCA, certainly at its northern end, where the appeal building is located.
25. The northern part of Ashby Mews has a mixed urban character and appearance, within which a light industrial building, single storey garages and workshops, 2-storey live/work units and the 2-storey flats by the junction with Ashby Road all sit comfortably. I consider that the significance of this part of the BCA stems from its historical development, including the design and function of the streets and buildings.
26. The appeal site contains a 2-storey light industrial building with brick walls and a part-glazed, shallow-pitched roof. The building is positioned at the rear of the site along the boundary with the residential properties on Manor Avenue and has been extended in parts to the north and west by single-storey elements. The walls of these single storey elements are flush with Ashby Mews and are punctuated by windows and doors. A larger opening with a substantial solid metal gateway leads to a small courtyard at the northern end of the site, whilst at the southern end there is a timber construction at first floor level.
27. The design, scale, massing and materials of the proposal would not be out of keeping with the character or appearance of this part of Ashby Mews and would preserve its significance. The front elevation onto the mews would maintain a semi-industrial appearance, including the presence of ground floor courtyards accessed via solid panel gates for three of the proposed dwellings. The fenestration and doorways would be similar to the existing front elevation and the 2-storey elements do not appear incongruous, given the design, scale and massing of the existing light industrial building. In views from the rear the scale, massing and appearance of the proposal would not be dissimilar to the existing building.

28. The SPD infers that Ashby Mews is unsuitable for residential development, in contrast to Harefield Mews. However, from my observations of the live/work units at the northern end of Ashby Mews, it is not clear why development that included a residential element would be unsuitable in principle here, as stated in the SPD.
29. Nevertheless, the replacement of a light industrial use with a residential development proposal would detract from the mixed character of the area, given the other uses to be found here, including the wholly residential development next door. No substantive evidence has been provided by the appellant regarding the stated difficulties of financing live/work units, such as are found nearby.
30. Whilst the northern part of the mews would continue to have some commercial uses, including workshop-type spaces, the extent of these would be significantly reduced. I accept that the dwellings would be suitable for home office uses, but these would be ancillary to the main residential use, and in any event would not be the type of activity traditionally associated with this area.
31. Consequently, the proposal would result in less than substantial harm to the character of the BCA, which in this area was historically light industrial; I afford great weight to the conservation of the BCA.
32. Any harm to a designated heritage asset should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I have already found that the loss of the employment land has not been adequately justified and I do not repeat my reasoning here.
33. The appellant does not accept that the proposal would cause harm to the BCA but has identified what they consider to be various public benefits of their proposal, including increasing the supply of housing in a location with good accessibility; increasing activity in Ashby Mews and the provision of construction jobs with consequent benefits for the local economy, and the financial benefits to the Council of each new home. The design of the proposal is also said to be a public benefit for the character and appearance of the mews.
34. The Government is committed to significantly increasing the supply of new homes and small brownfield infill sites should contribute towards this end. However, the Government also supports increased economic growth and productivity, and as I have found, the case for the loss of this employment site has not been satisfactorily made.
35. A good quality design that is appropriate to its setting is something that would be expected of any development. Whilst I have found the design to be satisfactory, this is not a public benefit that weighs in favour of the development.
36. This is a small scale proposal and consequently the benefits will be limited. The delivery of four new homes would be a largely private benefit for future occupiers. Together with the limited economic and financial benefits of the proposal, I am not satisfied that this would outweigh the less than substantial harm to the BCA that I have identified.
37. For these reasons the proposed development would adversely affect the significance of the BCA, a designated heritage asset. It would, therefore,

conflict with Policy HC1 (heritage conservation and growth) of the London Plan 2021⁶ (LP); Policies 15 (high quality design for Lewisham) and 16 (conservation areas, heritage assets and the historic environment) of the LCS; DM Policy 33 (development on infill sites, backland sites, back gardens and amenity areas) and DM Policy 36 (new development, changes of use and alterations affecting designated heritage assets and their setting: conservation areas, listed buildings, schedule of ancient monuments and registered parks and gardens) of the LDMLP.

The living conditions of future occupiers with particular regard to natural light and outlook

38. The appellant did not submit a formal daylight assessment when they made their application for planning permission to the Council but has submitted such an assessment with their appeal. It is not disputed by the Council that the Internal Daylight Assessment shows that all of the habitable rooms⁷ in the proposed dwellings would, as a minimum, meet the BRE standards for internal daylight. The Average Daylight Factor (ADF) standards specified by BRE are easily exceeded for the kitchen/living/dining rooms, which would be at first floor level, and also exceeded for the ground floor bedrooms, with the exception of bedroom 1 of Unit 2 where the minimum standard would be achieved.
39. It is not disputed that the first floor of the proposed development, which includes the open plan kitchen/dining/living room in all the dwellings would have a good outlook. However, the ground floor level, which includes the bedrooms and the 'study/home office' area would have a very limited outlook.
40. The submitted drawings show that the windows facing onto Ashby Mews would be obscure glazed in part for reasons of privacy, which is confirmed by the appellant in their final comments. This means that the outlook from these rooms would be very limited. Whilst a small rear courtyard would be provided for each dwelling this would be a manifestly small and enclosed space.
41. Nevertheless, Table 3 of the Council's officer report shows that the four dwellings would be more than double the expected internal space standards required for a 2-storey dwelling. The 'study/home office' would be part of a large open plan space that would extend from the front to the rear of the proposed dwellings. Most of the bedrooms would exceed the required space standards and whilst bedroom 3 of Unit 3 would not, this room would have a window onto Ashby Mews. I also note there would be large open plan kitchen/dining/living rooms at first floor level and front roof terraces for the proposed dwellings.
42. Whilst the outlook from the ground floor habitable rooms would be poor, the primary living accommodation would be at first floor level, and together with the dual-aspect and spacious internal layout, I am satisfied that in this case the overall outlook from each of the dwellings would be satisfactory.
43. Policy DM32 (housing design, layout and space standards) of the LDMLP recognises that new build housing would need to respond positively to constraints of sites, and for small, brownfield infill sites such as this one the constraints are significant. The site is located between two existing buildings

⁶ The Spatial Development Strategy for Greater London, March 2021

⁷ Bedrooms, Kitchens and Living Rooms

and the need to avoid overlooking of the rear gardens of the dwellings on Manor Avenue limits the opportunity for outlook in this direction.

44. For these reasons the proposed development would have an acceptable impact with regard to the living conditions of future occupiers with particular regard to natural light and outlook. It would, therefore, accord with Policy D6 (housing quality and standards) of the LP; with Policy 15 (high quality design for Lewisham) of the LCS; with DM Policy 32 (housing design, layout and space standards) of the LDMLP, and with the Framework, in this regard.

The living conditions of future occupiers with particular regard to bicycle use

45. Policy T5 (cycling) of the LP seeks to promote cycling as a transport mode and specifies minimum cycle parking provision for dwellings. To accord with cycle parking provision standards in Table 10.2 of Policy T5, two long-stay cycle parking spaces per dwelling would be required and a total of two short stay spaces. The appellant's application proposed bicycle storage beneath the stairs in each of the four dwellings.
46. I note that this can be an acceptable solution for bicycle parking, but there are disadvantages with such an approach. Bicycles are inherently outdoor vehicles and can collect dirt and water on their wheels and frames through use. Moving a wet or dirty bicycle some distance through a home, and storing it in an enclosed space, is unlikely to be attractive to residents and so would discourage them from cycling. The use of the rear courtyards for bicycle storage would also entail moving the bicycles through the dwelling, and the small size of these areas means that this would be a cramped arrangement, that would also detract from their amenity function.
47. I am satisfied that the originally proposed bicycle storage arrangements would meet the minimum standards in Table 10.2 of Policy T5 and would be secure. However, the proposed internal or rear storage arrangements are likely to discourage residents from bicycle use.
48. The appellant has subsequently suggested that for Units 1 – 3 of the proposed development, the front courtyards could be used for bicycle storage, although the small size of the front courtyard at Unit 3 means that this would be a cramped arrangement.
49. However, Government guidance is clear that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought⁸. Even if I were to accept the provision of bicycle storage in the front courtyards of Units 1 – 3, for Unit 4, which does not have a front courtyard, this would not be an option.
50. For these reasons the proposed development would adversely affect the living conditions of future occupiers with particular regard to bicycle use. It would, therefore, conflict with Policy T5 of the LP, and Policy 14 (sustainable movement and transport) of the LCS.

Other Matters

51. The appellant submitted a draft Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 (as amended) with their planning

⁸ Paragraph M.2.1, Procedural Guide: Planning Appeals – England (April 2022)

application. This concerned waste and recycling, and measures to prevent occupiers of the proposed development from obtaining parking permits. The absence of a signed version of the document was a reason for refusal and a signed version has been submitted as part of this appeal. However, as I am dismissing the appeal for other reasons it has not been necessary for me to consider the submitted UU in any further detail.

Conclusion

52. I have found that the proposal would cause harm to employment land provision and to the significance of designated heritage assets. Whilst the proposal would have an acceptable effect with regard to the living conditions of future occupiers with regard to natural light and outlook, it would adversely affect future occupiers with regard to bicycle use.
53. For the reasons given above, and taking into account all matters raised, I conclude the appeal is dismissed.

A Parkin

INSPECTOR