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# Appeal Decision

Site visit made on 9 January 2023

**by A Parkin BA (Hons) DipTP MRTPI**

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

**Decision date: 31 January 2023**

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**Appeal Ref: APP/N5660/W/22/3300444**

**1-7 Paxton Place, London SE27 9SS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr Yavuz against the Council of the London Borough of Lambeth.
  - The application Ref 21/04712/FUL, is dated 3 December 2021.
  - The development proposed is erection of part one, two and four-storey building providing 3 no. one-bed flats and 1 no. two-bed flats (C3 use) and B1(a) commercial floorspace.
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## Decision

1. The appeal is dismissed and planning permission is refused.

## Preliminary Matters

2. I have amended the description of the proposed development from the application form to remove superfluous words, in the banner heading above.
3. The Council's Statement refers to the appeal being against a refusal of planning permission. The Council has provided a copy of its officer report, from which and from other evidence I have identified the main issues. However, no decision notice for the appeal proposal has been provided by the Council. I have determined this appeal on the basis it was made, against the failure of the Council to give notice of its decision within the appropriate period.

## Main Issues

4. The main issues are the effect of the proposed development on:
  - The character and appearance of the area;
  - The living conditions of future occupiers with particular regard to sunlight (ground floor flat) and outlook (second floor flat);
  - The living conditions of nearby occupiers with particular regard to outlook (6-12 Paxton Place) and privacy (177 Hamilton Road); and,
  - Transport and parking provision in the area.

## Reasons

### *Character and appearance*

5. Paxton Place is a narrow and winding back-street that slopes gently downhill from Gipsy Road to Hamilton Road. There is a narrow footpath on the opposite side of the road to the appeal site, and buildings are generally located at back

of pavement, or next to the carriageway; vehicular traffic may only enter Paxton Place from Gipsy Road.

6. The buildings on Paxton Place vary in scale, design and use. Opposite and to the north of the appeal site is 6-12 Paxton Place, a modern 3-storey brick apartment building, with a gambrel-style roof containing a further two levels of space above. There is a somewhat smaller 4-storey element, with similar brickwork and a pitched roof, that forms part of this building, and is also opposite the appeal site.
7. Next to the appeal site to the south, and accessed from Gipsy Road, is a 2-storey flat roofed building, whilst to the north are two 2-storey pitched roof buildings, with commercial uses at ground floor, facing onto Paxton Place.
8. Gipsy Road contains a range of shops and other high street uses at ground floor level, some of which contain flats above. The rear of these traditional 2/3-storey buildings back onto the appeal site and are visible from Paxton Place. On Hamilton Road to the rear of the appeal site are various traditional 2-storey houses. A short service alley from Hamilton Road leads to small scale offices by the appeal site.
9. The appeal proposal would entail the erection of a fourth storey above the 3-storey element of a previously approved scheme<sup>1</sup>, which would be of a similar design and materials, although set back a short distance further from Paxton Place than the first and second storeys. Above this fourth storey would be a roof garden, of a similar design and somewhat smaller scale than the previously approved roof garden at third floor level.
10. The proposed development would be visible from Paxton Place and from the surrounding buildings in this densely built up area, and to a much lesser extent from Hamilton Road, via the service alley.
11. The design of the proposed development is similar to the previously approved scheme and would occupy a very similar footprint. Whilst there would be an increase in the scale and massing of the proposal, this would not be disproportionate and the resulting building would not be out of keeping with the variety of building types and sizes to be found on Paxton Place.
12. Whereas the proposal would be significantly higher than the 2-storey buildings on either side, it would be appreciably smaller than 6-12 Paxton Place. The flat-roofed design and the set-back position of the proposed fourth storey would not dominate the area, including the narrow streetscene of Paxton Place. Given the sloping terrain of the area and the design, scale, massing and orientation of the surrounding buildings, the proposal would not be out of keeping with the diverse character and appearance of the area.
13. For these reasons the proposed development would have an acceptable effect on the character and appearance of the area. It would, therefore, not conflict with Policies Q2 (amenity), Q5 (local distinctiveness), Q7 (urban design: new development) and Q11 (building alterations and extensions) of the Lambeth Local Plan 2020-2035 (LLP) in this regard.

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<sup>1</sup> LPA Ref. 18/03927/FUL

*Living conditions of future occupiers*

14. The appellant has provided a Daylight and Sunlight Assessment (DSA) for the proposed development, which shows that the Living/Kitchen/Dining room (LKD) at the ground floor flat would fall just below the Annual Probable Sunlight Hours (APSH) recommended in the BRE Guidelines and would be well below the guideline level for winter months. This room faces onto Paxton Place in an east/north/easterly direction and in terms of APSH the Council states its performance is worse than the corresponding room in the previously approved scheme.
15. Whilst the APSH for the LKD in the proposed ground floor flat falls below the BRE Guidelines, I am satisfied that overall, the ground floor flat would receive sufficient sunlight. The Council has not provided any substantive evidence that the APSH for the LKD in the proposed ground floor flat would be significantly worse than the APSH for the corresponding room in the previously approved scheme. Indeed, the DSA<sup>2</sup> shows the APSH analysis for the ground floor flat dates from 25 May 2018, over a year before the approval of the previous scheme. I therefore assume that this was considered to be acceptable when the previous scheme at the appeal site was granted planning permission.
16. The Council also raises concerns that the rear garden of the ground floor flat would not enjoy the levels of sunlight specified in the BRE Guidelines for the Spring Equinox, due to nearby buildings and trees.
17. However, I note from page 12 of the DSA that the BRE Guidelines normally discount trees from such assessments. I am satisfied that the unaltered position of the rear garden of the ground floor flat means that there would not be a significant difference between the appeal proposal and the previously approved scheme in this regard.
18. The Council is also concerned that the outlook from the second floor flat would be worsened 'as a result of amending the balcony to a recessed balcony'. However, I can find no significant difference, including with regard to the balcony, between the approved layout and the proposed layout for the second floor flat. With reference to the next door building, the position of the front elevation of this part of the building is unchanged. With further reference to the approved and proposed front elevations, I am satisfied that there would be no material difference in outlook from the second floor flat.
19. For these reasons, the proposed development would have an acceptable effect on the living conditions of future occupiers, with particular regard to sunlight (ground floor flat) and outlook (second floor flat). Consequently, it would not conflict with Policy Q2 of the LLP or Policy D6 (housing quality and standards) of the London Plan 2021<sup>3</sup> (SDSGL) in this regard.

*Living conditions of nearby occupiers*

20. The Council has raised concerns that the height and massing of the proposed development would reduce the outlook from the ground floor windows at 6-12 Paxton Place and increase the sense of enclosure.

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<sup>2</sup> Appendix A.4 - Project No 2071 - APSH (Sunlight) Analysis to Proposed New Rooms

<sup>3</sup> Spatial Development Strategy for Greater London March 2021

21. The ground, first and second floors of the proposed building would be positioned the same distance from 6-12 Paxton Place as the corresponding parts of the approved scheme. The additional fourth storey would be set back from the front of the proposed building and so would be at greater distance from 6-12 Paxton Place.
22. The flat-roofed design and set-back position of the proposed fourth floor element would not have a significant effect on outlook from the windows at 6-12 Paxton Place and would not create a harmful sense of enclosure along the narrow street.
23. The approved proposal includes rear facing windows at first and second floor level, with a roof garden at third floor level, all of which provide opportunities to overlook the rear of properties on Hamilton Road, including No 177.
24. The additional fourth storey would be built above the three lower storeys at the rear and so would not be positioned any closer to the rear of the properties on Hamilton Road. The proposed fourth storey would include two rear facing windows, in contrast to the single rear facing window on each of the three lower floors in the approved scheme. However, the proposed fourth storey would be at the same height as the approved roof garden, and the rear windows of the flat would afford a similar level of overlooking as would exist from there.
25. Whilst the proposal would increase the scope for overlooking of the rear of properties on Hamilton Road, including from the roof garden above the proposed fourth storey, I do not consider that this would significantly worsen overlooking, or the perception of being overlooked, in comparison with the approved scheme.
26. For these reasons, the proposed development would have an acceptable effect upon the living conditions of nearby occupiers with particular regard to outlook (6-12 Paxton Place) and privacy (177 Hamilton Road). It would not, therefore, conflict with Policy Q2 of the LLP in this regard.

*Transport and Parking provision*

27. The appellant's Transport Statement indicates that the aforementioned previously approved scheme at the appeal site was a 'car free' development, controlled by way of a s106 agreement<sup>4</sup>. The Transport Statement confirms that the appeal proposal would also be a 'car free' development and that the appellant would be prepared to accept a similar s106 agreement for this proposal<sup>5</sup>.
28. The Council also considers that a s106 planning obligation would be required to promote sustainable transport modes and ensure that the proposed development would not adversely affect parking provision in the area. This would be done by (amongst other things) offering car club memberships and restricting future occupiers of the proposed dwellings from applying for / obtaining on-street residents parking permits to park a vehicle on the surrounding public highway.

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<sup>4</sup> Paragraph 2.3

<sup>5</sup> Paragraphs 5.3 and 5.4

29. I am satisfied that such a planning obligation would be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development<sup>6</sup>. However, no s106 Planning obligation is in the evidence before me, and I note from the appellant's final comments that they consider this matter can be adequately controlled by way of a condition requiring such an agreement prior to the first occupation of the proposed development.
30. The appellant has provided no exceptional reasons why such a condition would be appropriate in this case. Given that a s106 agreement was necessary for the previously approved scheme, and that the Transport Statement accepts it is needed for this proposal, it is unclear why the appellant thinks an alternative approach would be acceptable.
31. The Government's Planning Practice Guidance<sup>7</sup> is very clear that such an approach is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. I have no reason to diverge from the Government's position in this regard and I do not consider that this matter can be satisfactorily controlled by way of a condition.
32. For these reasons, the proposed development would have an adverse effect on transport and parking provision in the area. Consequently, it would conflict with Policy T6 (Parking) of the LLP in this regard.

### **Other Matters**

33. I note the comments from nearby occupiers regarding potential noise disturbance from the proposed roof garden. However, given the approved scheme at the appeal site includes a roof garden, I do not consider that a roof garden one storey higher, as part of the proposed development, would have a significantly greater impact.

### **Conclusion**

34. Whilst the proposal would have an acceptable effect on the character and appearance of the area, and the living conditions of future and nearby occupiers, this would be outweighed by the harm caused to transport and parking provision in the area.
35. For the reasons given above I conclude that the appeal is dismissed and planning permission is refused.

*Andrew Parkin*

INSPECTOR

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<sup>6</sup> Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

<sup>7</sup> PPG - Use of Planning Conditions - Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019