



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

Appeal Ref: APP/N5660/W/22/3292352

19-25 Beardell Street, London SE19 1TP

- 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 CPBD Limited against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/03816/FUL, dated 29 September 2021, was refused by notice dated 24 November 2021.
 - The development proposed is erection of a three storey plus lower ground floor building providing a Class E unit at lower ground floor and five residential units across the upper floors, with associated refuse and cycle storage facilities.
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Decision

1. The appeal is dismissed.

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. When I visited the appeal site I was approached by several people, including local residents and the proprietor of the existing business at 19-25 Beardell Street, who enquired who I was and what I was doing in the area. I explained to them that I was the Planning Inspector appointed to determine the appeal at this address and that I was conducting an unaccompanied site visit, on the basis that neither the Council nor the appellant considered I needed to enter the site.
4. Furthermore, I advised the parties that whilst I had access to all the valid written submissions that had been made in relation to the appeal, I could not listen to or have regard to any verbal representations they may wish to make. In any event, no verbal representations were made in relation to the appeal and I did not enter the appeal site during my visit.
5. From the appeal file the appellant's Statement of Case for this appeal was not initially submitted as evidence and a Statement for another appeal was submitted by mistake. The appellant's actual Statement of Case was subsequently submitted to the Council and published on its website.
6. After raising this matter with both the Council and the appellant I am satisfied that the appellant's Statement of Case for this appeal was submitted and published on the Council's website in a timely manner, allowing interested parties sufficient time to comment.

Main Issues

7. The main issues are the effect of the proposed development on:
- Industrial capacity;
 - The living conditions of future occupiers with particular regard to outlook and privacy;
 - The living conditions of nearby occupiers with particular regard to outlook, natural light and privacy; and,
 - Transport and parking provision in the area.

Reasons

Industrial capacity

8. The appeal site is some 314m² in size and at the time of my visit was occupied by a garage business operating from a building, with associated structures and areas of hardstanding where various vehicles were parked.
9. I note from the Relevant Planning History section of the Council's Officer report that in April 2021 the existing use was established as Class B2¹ and was described as a car repair garage².
10. I note the comments from the appellant regarding the current use of the appeal site being *Sui Generis*, involving MOT testing as well as general vehicle repairs. However, no compelling evidence has been provided to demonstrate that the existing lawful use of the appeal site is not still B2 and I have considered it to be so.
11. There are various policies in the development plan that seek to protect existing B2 uses on non-designated sites such as this one from harmful redevelopment. I note the amount of light industrial space to be provided as part of the proposal, which is said to have been informed by discussions between the appellant and the Council.
12. With reference to Policy ED4 (non-designated industrial sites) of the Lambeth Local Plan 2020 – 2035 (LLP) and Policies E2 (providing suitable business space) and E7 (industrial intensification, co-location and substitution) of the London Plan 2021³ (SDSGL) the development of mixed use schemes such as is proposed are acceptable in principle.
13. However, the supporting text to Policy ED4 of the LLP notes that 'There is a shortage of lower-cost workspace for small businesses across Lambeth...Development proposals that involve the loss of existing industrial space outside of KIBAs [Key Industrial and Business Areas] will be assessed against the tests in London Plan policy E2C'⁴.
14. The existing business at the appeal site has been operating there for some time which means that the proposal would conflict with Policy E2 (C1) of the SDSGL.
15. The appellant proposes to provide some 167m² of light industrial floorspace as part of the redevelopment of the appeal site, excluding external areas. On the

¹ Of the Town and Country Planning (Use Classes) Order 1987, as amended (the UCO)

² LPA Ref. 21/00576/LDCP

³ Spatial Development Strategy for Greater London - March 2021

⁴ LLP Paragraph 6.41

application from the existing industrial floorspace is said to be some 139.5m² and so the proposal would represent an increase in industrial floorspace using these metrics.

16. However, the existing B2 space at the appeal site uses both internal and external space. In their Statement of Case, the appellant recognises this and so has calculated the total replacement industrial floorspace to be 191.6m² by including external areas.
17. On this basis, given the size of the site (and so the existing B2 use) is some 314m², there would be a substantial reduction in total industrial space as a result of the proposal. This is manifestly not 'an equivalent amount' of B use class business space to that which would be lost.
18. I also note that there is no intention for the existing business to occupy the proposed light industrial space and continue to trade. The scale, design and layout of the proposed development show it would be almost certainly impossible. Furthermore, there is no evidence that the appellant has considered the possibility of retaining the existing business as part of the proposal.
19. This means that the proposal would also conflict with Policy E2 (C2) of the SDSGL.
20. Whilst the proposal would include the provision of some industrial floorspace, the existing use would certainly be compromised and so there would also be conflict with Policy E7 of the SDSGL.
21. The Council's focus on 65% replacement floorspace in its Officer report, and seemingly in discussions with the appellant, to determine what is 'an equivalent amount' of industrial floorspace is not at all helpful. This matter does not form part of Policy E2 or E7 of the SDSGL or Policy ED4 of the LLP and from the evidence before me, I cannot disagree with the appellant that it is not relevant to this proposal.
22. In the absence of any substantive direction to the contrary, I have considered the industrial space to include the external spaces in this case; and, 'an equivalent amount' to be as would be conventionally understood - the same amount. Whilst the appellant claims the proposed industrial space would be of a better quality, there is no substantive evidence that the existing space is unsuitable and certainly not in relation to the existing use.
23. In their final comments, I note the appellant has not disputed the Council's position regarding the absence of a fallback position due to changes in legislation and maintains that the current garage use of the site is inappropriate in this predominantly residential area.
24. However, I do not find the appellant's statement that the proposed light industrial use would be far more compatible with the area than the existing industrial use to be compelling. Whilst I note the similarities with the wording of some of the representations made by third parties there are none that raise any concerns with the existing use, which is generally referenced in positive terms. No evidence of any formal complaints about noise or other disturbance from the existing use have been provided.

25. I note the appellant's comments regarding the sub-letting status of the current occupiers of the site and that they could leave the site at any time. No substantive details have been provided in this regard. There is no evidence before me that the existing occupiers are considering leaving the site, and I note their objection to the proposal. Whilst there can be no certainty that any small business would continue to operate in the future, there is no powerful evidence that the existing business is unlikely to continue here.
26. Whilst the redevelopment of the site to provide residential accommodation would be a benefit of the scheme, this would not outweigh the harm that would be caused by the substantial net loss of industrial space to the area and the loss of the existing business.
27. For these reasons, the proposed development would adversely affect the industrial capacity of the area. It would, therefore, conflict with Policy ED4 of the LLP and with Policies E2 and E7 of the SDSGL, in this regard.

Living conditions of future occupiers – outlook and privacy

28. As part of the appeal submission, the appellant has proposed to alter the status of the ground floor flat R.0.02 from being M4(3) compliant to not being M4(3) compliant. A revised upper ground floor plan was submitted, which removed the references to M4(3) compliance, but the layout of the proposed flat was unchanged.
29. However, Government guidance is clear that the appeal process should not be used to evolve a scheme⁵ and I am not satisfied that interested parties would not be affected by this amended status. I have determined this appeal on the basis of the plans before the Council when it refused planning permission.
30. The proposed ground floor flat R.0.02 contains a rear outdoor amenity space, the design of which means that the outlook from this space, and from the adjacent bedroom window, would be very limited. A 1.8m high wall would separate the space, which is some 1.9m deep, from the rear gardens of dwellings on Woodland Road, whilst one end would be formed by the obscure glazed stairwell serving the upper floors of the building.
31. The supporting text to Policy H5 (housing standards) of the LLP states that in exceptional circumstances, where site constraints are shown to prevent the provision of private amenity space of acceptable standards, the provision of additional internal living space equivalent to the amenity space requirement (in this case 10m²) may be acceptable. Policy Q2 (amenity) of the LLP states that adequate outlooks should be provided in developments and that outdoor amenity space should, amongst other things, be free from oppressive enclosure.
32. Private outdoor amenity space is an important consideration for the proposed dwellings. The redevelopment of small sites in urban areas such as this one can be challenging, and exceptionally in this case, I accept that the constraints of the appeal site, including the terrain, and neighbouring uses, means that it is not possible to provide outdoor amenity space compliant with Policies Q2 or H5 of the LLP.

⁵ [Procedural Guide: Planning appeals – England 21 December 2022](#)

33. The size of the proposed ground floor flat R.0.02 would be sufficient to provide for 'additional internal living space equivalent to the requirement for 10m² outdoor amenity space'. I also note there is a large park nearby to provide space for outdoor recreation.
34. However, the outlook from the rear bedroom, a habitable room, would be similarly constrained by the 1.8m high wall a short distance away and would also suffer a poor outlook and sense of enclosure. In this case, I am not satisfied that the additional internal space is sufficient to overcome the poor outlook from the outdoor space and the rear bedroom.
35. From the proposed first floor and second floor plans, the two flats⁶ immediately above ground floor flat R.0.02 contain angled windows directly above the outdoor amenity space. From the limited evidence provided I note that the windows would be around 2.5 metres in height, with the lower half of these windows obscure glazed, whilst the eastern parts would contain louvres.
36. However, neither the size or position of the obscure glazing or louvres would prevent the harmful overlooking of the outdoor amenity space of the ground floor flat from these windows. Furthermore, the size and position of the windows above the outdoor amenity space would be likely to result in a harmful perception of overlooking.
37. For these reasons, the proposed development would adversely affect the living conditions of the occupier of the proposed ground floor flat R.0.02, with particular regard to outlook and privacy. It would, therefore, conflict with Policies H5 and Q2 of the LLP, in this regard.

Living conditions of nearby occupiers – outlook, natural light and privacy

38. Whilst there is no dispute between the main parties that the scale and massing of the proposal would be acceptable in townscape terms, concerns have been raised with regard to the effects on outlook and natural light for the occupiers of properties on Woodland Road and Beardell Street.
39. The appeal site is currently occupied by an over-sized single storey building, together with further structures and areas of hardstanding. The scale and massing of the buildings and structures on the appeal site affords the occupiers of Nos 7-13 Woodland Road, whose rear elevations face towards the appeal site and whose rear gardens adjoin it, a typically better outlook than other dwellings on the western side of Woodland Road, to the north and south.
40. I note that the design of the proposal has evolved over time, and that the scale of the proposal steps down from south to north, following the sloping terrain and with regard to the next door properties on Beardell Street. However, the scale, massing and position of the proposed development would undoubtedly worsen the western outlook from Nos 7-13 Woodland Road and particularly so for Nos 7-9.
41. The appellant's Daylight and Sunlight Assessment (DSA) uses the BRE Guidelines which are said to operate on the general principle that where the retained Vertical Sky Component (VSC) is 27% or greater, or where the retained VSC is not reduced to less than 0.8 times its former value, the

⁶ flats R.1.02 and R.2.01

reduction in daylight is unlikely to be noticeable and thus the impact can be deemed negligible.

42. On this basis, the DSA shows that there would be adverse effects on the occupiers of the basement rooms at 7, 9 and 13 Woodland Road and ground floor rooms at 7 Woodland Road and 20-22 Beardell Street. Whilst I have no reason to doubt the veracity of the DSA, I am not inclined to accept some of the conclusions it contains.
43. The ground floor window at 7 Woodland Road would have a retained VSC of 15.88%, 0.78 times its former value, whilst the ground floor window at 20-22 Beardell Street would have a retained VSC of 14.76%, 0.77 times its former value. Consequently, both of these habitable rooms would experience a noticeable reduction in daylight.
44. The basement windows at 7, 9 and 13 Woodland Road have low existing VSC values (11.57, 11.92 and 13.14 respectively) which would be reduced even further by the proposed development (to 8.6, 8.56 and 10.59 respectively). These habitable rooms would also, therefore, experience a noticeable reduction in daylight.
45. The retained VSC scores for these rooms conflict with the BRE Guidelines. Whilst I note the comments in the DSA that applying these standards in locations such as the appeal site may be misleading, these are based upon a draft SPG from the Mayor of London⁷, as well as evidence from the GLA regarding a separate matter⁸. Neither of these documents are in the evidence before me and I also note the SPG has not been consulted upon. This interpretation of the BRE Guidelines contained in the DSA is, therefore, one that attracts only very limited weight in my determination.
46. Whilst the proposed development would provide superior VSC values for comparable basement windows at 3 and 5 Woodland Road, this does not show that they are acceptable in this regard. Nos 3 and 5 are affected by the 5/6 storey building to the immediate south of the appeal site and have very low VSC scores. I also note the Council does not consider this existing arrangement to be acceptable, or to be consistent with the current development plan.
47. There is some disagreement as to the function of the basement rooms. However, even if I were to accept that they are bedrooms, they would still be habitable rooms, with low existing levels of daylight measured by VSC, which would be further reduced by the proposed development. The reference by the appellant to the reduced importance of bedrooms is based upon the No Sky Line (NSL) assessment rather than VSC scores and does not cause me to reach a different conclusion to the harm I have identified.
48. I note the Council suggested that for the room at 20-22 Beardell Street a mirrored development approach could be used, given the context of the site. Such an approach shows that the effect on the ground floor room at 20-22 Beardell Street would be less from the proposed development than if a building of a similar scale and massing to No 20-22 was constructed on the appeal site.
49. It is unclear why the Council considers this approach could be acceptable with regard to 20-22 Beardell Street, but not for the properties on Woodland Road.

⁷ Housing Design Quality and Standards (2020)

⁸ Ref. D&P/3067/03

Using different approaches to assess the effects of a proposal on different buildings is somewhat unusual and potentially raises issues of consistency. However, in any event, the mirrored approach does not cause me to reach a different conclusion with regard to the harm I have identified. The existing VSC scores for the identified rooms are below the BRE Guidelines and the proposed development would reduce these low scores further.

50. The rear first and second floor windows of flats R.1.02 and R.2.01 face towards the rear gardens and rear elevations of Nos 9-13 Woodland Road, at an oblique angle. The eastern part of these windows would contain vertical louvres, which would restrict harmful overlooking of these properties, whilst the lower half of these windows would be obscure glazed.
51. However, similar to my findings with the outdoor amenity space for the proposed ground floor flat, neither the obscure glazing nor the louvres would prevent harmful overlooking of the rear of 9 and 11 Woodland Road, including the rear gardens. The upper western part of these windows would be unobstructed and I am satisfied that the size and position of these windows would allow for the rear of these properties to be overlooked with a consequent reduction in privacy. I also consider the size and position of these upper floor windows would be likely to result in a harmful perception of overlooking at Nos 9 and 11.
52. For these reasons, the proposed development would adversely affect the living conditions of nearby occupiers, with particular regard to outlook, natural light and privacy. It would, therefore, conflict with Policies H5 and Q2 of the LLP, in this regard.

Transport and parking provision

53. The appellant's Transport Statement confirms that the appeal proposal would be a 'car free' development and the appellant's Statement of Case confirms that this matter would be addressed by 'a suitably worded legal agreement to secure parking permit restrictions, car and cycle hire memberships and monitoring fees'.
54. A Unilateral Undertaking (UU) under s106 of the Town and Country Planning Act 1990 (as amended) and s16 of the Greater London Council (General Powers) Act 1974 has been submitted by the appellant with this appeal.
55. 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. 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 development⁹.
56. Annexe N: Planning Obligations of the Procedural Guide¹⁰ states that 'The planning obligation must give details of each person's title to the land...In written representations cases...the applicant or appellant will need to provide evidence of title to the Inspector. Normally this is in the form of an up to date

⁹ Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

¹⁰ [Procedural Guide: Planning appeals – England 21 December 2022](#)

copy entry or entries from the Land Registry.¹¹ There is no evidence of title alongside the submitted UU.

57. Furthermore, I note from the application form and appeal form certificates, and Recital (A) of the UU, that the appellant was not the freehold owner of the appeal site on 14 November 2022. Again, with reference to the Procedural Guide, 'Where a developer has only an option to purchase the land, the current landowner(s) will need to be party to any obligation binding the land.'¹² Only the appellant and the Council are parties to the submitted UU and there is no evidence that the appellant is the registered proprietor of the freehold interest in the appeal site.
58. Finally, I am not satisfied that the wording of covenant (a) is grammatically correct and so would not be effective.
59. With reference to Government Guidance on Planning Appeals, I am not satisfied that the submitted planning obligation is legally sound or complete. It therefore carries no weight in my determination.
60. For these reasons, the proposed development would adversely affect transport and parking provision in the area. It would, therefore, conflict with Policies T3 (cycling) and T6 (parking) of the LLP and with the National Planning Policy Framework 2021 in this regard.

Other Matters

61. The appeal site is located within the Westow Hill (North Side) Conservation Area (WHCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area, and I have done so in this case.
62. I find that the proposal would not detract from the character or appearance of the WHCA and so would preserve it, as the Council did when it refused planning permission for the proposal.

Conclusion

63. For the reasons given above, and taking into account all relevant matters, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

¹¹ Paragraph N.5.2

¹² Paragraph N.5.3