



Appeal Decisions

Site visit made on 24 January 2023

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal A Ref: APP/L5240/W/22/3303386

58-60 Westow Hill, Upper Norwood, London SE19 1RX

- 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 Jove Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref 19/04423/FUL, dated 16 September 2019, was refused by notice dated 18 May 2022.
 - The development proposed is described as the demolition of a standalone ancillary storage building and the erection of a three storey height building, to provide five flats together with the refuse store, cycle parking, and private amenity space for each flats.
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Appeal B Ref: APP/L5240/W/22/3303211

58-60 Westow Hill, Upper Norwood, London SE19 1RX

- 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 Jove Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/01297/FUL, dated 12 March 2021, was refused by notice dated 4 May 2022.
 - The development proposed is described as the demolition of existing rear ancillary storage building, erection of a three storey building comprising 1 three bedroom flat and 4 one bedroom flats, provision of associated refuse storage and cycle storage.
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Decision

Appeal A Ref: APP/L5240/W/22/3303386

1. The appeal is dismissed.

Appeal B Ref: APP/L5240/W/22/3303211

2. The appeal is allowed and planning permission is granted for the demolition of existing rear ancillary storage building, erection of a three storey building comprising 1 three bedroom flat and 4 one bedroom flats, provision of associated refuse storage and cycle storage at 58-60 Westow Hill, Upper Norwood, London SE19 1RX in accordance with the terms of the application, 21/01297/FUL, dated 12 March 2021, subject to the conditions set out in the attached schedule.

Procedural Matters

3. For ease of reference, I refer to the different cases as Appeals A and B, as set out in the headers above. I have dealt with each appeal on its individual merits but to avoid duplication I have considered the proposals together in this decision.
4. Both appeals would be sited on a very similar footprint and have a very similar height and both propose a three-storey apartment building to the rear of 58-60 Westow Hill. The same quantum and mix of homes would be proposed. The key difference would be Appeal B proposes an area of communal amenity space to the rear of 62 Westow Hill.
5. The appellant has submitted a 'Planning Fire Statement' with Appeal A which identifies evacuation routes, emergency exits, assembly points and positions for firefighter's vehicles. The Council has confirmed the information provided would be satisfactory and complies with the requirements of Policy D12(A) of the London Plan 2021.
6. This is a similar Planning Fire Statement to what was submitted with Appeal B and which was also considered acceptable by the Council. If either appeal is acceptable in all other respects, compliance with the Planning Fire Statement could be acceptably controlled by a planning condition.
7. Since the Council made its decision, the Croydon Suburban Design Guide Supplementary Planning Document (2019) was revoked (25 July 2022) with immediate effect. Therefore, the reference to this SPD in the reason for refusal is no longer relevant and in reaching my decision I have not had regard to it.
8. The Council states that a Local Plan Review is in progress, and this has been through Regulation 19 consultation. The Council has provided limited information as to whether there are any unresolved objections or whether submission to the Secretary of State for Examination in Public has occurred. As such, I have relied upon the policies of the adopted development plan.

Main Issues

9. Therefore, the main issues are whether the proposal would provide adequate living conditions for:
 - Neighbouring occupants; and
 - Future occupants with particular reference to communal amenity space and children's play provision.

Reasons

Living Conditions Neighbouring Occupants

10. To the front of the appeal site a building with a ground floor commercial use and upper two floors of residential, 58/60 Westow Hill, and to the rear of the appeal site the back gardens and houses of Brunel Close are sited. To one side of the appeal site a car park / servicing area and to the other side an area of hardstanding and the flats of St Aubyn's Road are beyond.

11. The proposed developments are supported by a Daylight and Sunlight Assessment. The report finds the proposed developments would be compliant with guidance in relation to daylight and sunlight impacts to the windows and gardens of surrounding properties. There is no clear substantive evidence before me to challenge these findings and I have therefore had regard to it in coming to my decision.
12. The dwellings in Brunel Close feature moderately sized rear gardens which separate these neighbouring dwellings from the shared boundary. While there would be a modest change in land levels, the garden of one of the proposed ground floor flats would further separate the proposed building from the shared boundaries with these neighbours.
13. I also noted some tree coverage on the shared boundary, and this would provide relief from the proposed developments to some of the properties in Brunel Close. Additionally, further evergreen planting to supplement this screening along the whole boundary could be controlled through a planning condition in the event either appeal was successful.
14. While set further from the shared boundary, I acknowledge the proposed developments would be taller than the building they replace. Although the outlook would change, to a degree, when viewed from the closest dwellings in Brunel Close, for the reasons set out above, the screening, siting, scale and mass of the proposed developments would not cause this change to be severe or lead to an adverse loss of light, be overbearing to or create a sense of enclosure. The proposed developments would, therefore, not be unacceptably harmful to the outlook enjoyed by the neighbouring occupants of Brunel Close.
15. The first and second floor primary windows facing Brunel Close would have obscure-glazed windows to their bottom two-thirds. The top third of these windows would be clear glazed and the height of these clear glazed sections could be conditioned to prevent adverse overlooking. Any secondary windows facing these neighbours, on these floors, would be obscure glazed. For these reasons, the appeals would not adversely harm privacy enjoyed by the neighbouring occupants of Brunel Close.
16. The dwellings at St. Aubyn's Road are situated on the upper floors with the ground floor comprising communal circulation areas and integral garages. An area of hardstanding also separates these neighbours from the shared boundary with the proposed developments also set further in from the boundary. There is also some tree coverage along the boundary, and this would provide relief from the proposed developments. Additionally further evergreen planting to supplement this screening could be imposed in the event either appeal was successful.
17. I acknowledge the outlook would change to a degree when viewed from St Aubyn's Road. However, when considering the distance, screening and relative relationship between the proposed developments and these neighbouring occupants; the siting, scale and mass of the proposed developments would not cause an unacceptable loss of light, nor would it be overbearing to or create a sense of enclosure which would be adversely harmful to the outlook enjoyed by the neighbouring occupants at St Aubyn's Road.
18. As indicated above, the ground floors of these neighbouring dwellings do not contain any primary accommodation. The proposed developments would be

reasonably separated by an area of hardstanding from the dwellings in St Aubyn's Road and there is some tree cover on the shared boundary which could be supplemented by additional evergreen planting by way of a planning condition in the event either appeal was successful. For these reasons, the appeals would not adversely harm privacy enjoyed by the neighbouring occupants of St Aubyn's Road.

19. The first and second floor windows which would face the car park / service area would be fully obscure glazed. The windows that would face the rear of 58/60 Westow Hill would have obscure-glazing to their bottom two-thirds and the top third would be clear glazed. The height of any clear glazing could be conditioned to ensure an acceptable level of privacy is maintained. For these reasons, the appeals would not adversely harm privacy enjoyed by these neighbouring occupants.
20. The residential occupiers of 58/60 Westow Hill are sited on the first and second floor. Given the separation between the proposed developments and the proposed siting, massing, and height. No adverse loss of light or loss of outlook would occur to these neighbours.
21. The proposed developments would be well separated or oriented from any other neighbouring occupiers. This would ensure the living conditions of any other residential dwellings would not be adversely affected by the proposed developments.
22. I note there appears to be disagreement between the parties as to the actual dimensions of the proposed developments and its separation to neighbours. From my observations during the site visit, I considered the physical separation to the surrounding neighbours. I also considered the existing and proposed boundary screening and the design of the proposed developments in relation to these surrounding properties in coming to my decision. From what I saw during my site visit, I am satisfied that I can come to a decision having personally experienced the site layout and its environs.
23. Reference has been made to the London Plan Housing SPG 2016. However, this document is not before me. I have therefore considered the appeals on their relative merits as set out above.
24. Both Appeal A and Appeal B would consequently have an acceptable effect on the living conditions of neighbouring occupants. The proposals would therefore comply with the relevant provisions of Policy DM10 of the Croydon Local Plan 2018 (the Local Plan). This policy, amongst other things, address the need for high quality design therefore respecting the living conditions of neighbouring occupiers.

Living Conditions Future Occupiers

25. Policies DM10 of the Local Plan and D6 of the London Plan require new development to incorporate high quality communal outdoor amenity space and children's play provision.
26. No communal amenity space or children's play provision would be provided with Appeal A. I acknowledge that future occupiers of all the units would have their own private amenity areas and the quantum of development proposed would be modest.

27. However, communal spaces play an important role in the social life of occupiers, they provide a semi-private shared facility for social contact and passive recreation. It is also not unreasonable to assume that families, some with young children, would occupy the proposed 3-bedroom flat.
28. Therefore, the provision of a communal area, closely linked to the development, would provide a valuable space for adult and children associated with the proposed development.
29. I acknowledge the proximity of public parks; however, these serve a different complementary function. A communal amenity space provides a more intimate space for residents. The presence of public parks does not alter my overall findings.
30. The appellant indicates that the London Plan does not require play provision for this scheme, however, they do not indicate where in the London Plan this is expressly set out. I therefore cannot attach any weight to this.
31. In addition, the appellant also indicates that paragraph 6.54 of the Local Plan is also in conflict with Policy DM10 of the Local Plan. This paragraph states that children's play space would be required where there would be 10 or more children living in the development.
32. While I note paragraph 6.54, Policy DM10.4 is quite clear that all flatted development must provide children's play space. Even if I am wrong on this point, paragraph 6.54 does not remove the need for a communal amenity area. Such a communal area could provide a multifunctional space including children's play.
33. While I appreciate the desire for effective use of land, Appeal A would not provide any communal amenity space or children's play provision. The absence of such facilities would be unacceptably harmful to the future occupiers of the proposed development.
34. A communal amenity space which could also make provision for children's play would be proposed in Appeal B. While part of it would be used for the parking of bikes and the storage of refuse, a reasonable amount of space would remain which would be appropriate to serve future occupiers.
35. I have therefore found unacceptable harm in relation to Appeal A and the absence of adequate communal space or children's play provision for future occupiers of the development in conflict with the relevant provisions of Policies DM10.4 and DM10.5 of the Local Plan and D6 of the London Plan. These, amongst other things, address the need for high quality design therefore respecting the living conditions of residential occupiers.
36. However, I conclude that the proposal under Appeal B would provide adequate communal space and children's play provision for future occupiers of the development in accordance with the requirements of Policy DM10 of the Local Plan and D6 of the London Plan.
37. While reference has been made to Policy 3.5 of The London Plan in the Council's Decision Notice, I have not been provided with this policy and it has not been clearly demonstrated why this policy is relevant or how much weight should be ascribed to it, if any. On this basis I have not referred to this policy in coming to my decision.

Unilateral Undertaking

38. Paragraph 57 of the National Planning Policy Framework requires that planning obligations should only be sought, and weight attached to their provision, where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
39. Unilateral Undertakings (UU) has been submitted with the appeal documents and they relate to restrictions on future residents applying for car parking permits in the area. The site would have good access to services and public transport and accordingly car free development is encouraged.
40. I am not aware of any dispute between the main parties, and I consider these to be necessary, directly related to the developments and fairly and reasonably related in scale and kind to the developments.

Other Matters

41. In respect of public use of the proposed communal amenity area and concerns about anti-social behaviour and safety. If these appeals are found acceptable in all other regards, a condition could be imposed to ensure this area would be gated to manage access to it. An additional condition could be imposed to ensure the appellant also applies for and achieves Secured by Design Certification.
42. The appeal site is within the boundary of the Upper Norwood Triangle Conservation Area (CA). It is described as having a lively and bustling character with a fine urban grain, varied scale of buildings and buildings of high architectural quality and detailing. These features all contribute positively to its significance.
43. The Council do not object to either appeal based on any harm to the CA or wider character and appearance of the area. Given both proposed developments' detailed design, scale, width, and depth, I am inclined to agree. The character or appearance of the CA and wider area would therefore be preserved.
44. The CA designation of the site ordinarily requires works to trees to have consent from the Council. The Council did not refuse either application in respect to tree impact, internal space, mix of units, noise or ecology. I have no substantive evidence to reach different conclusions on these matters.
45. The existing building is vacant, and the Council confirm it was previously used for ancillary storage purposes for a plumbing store which formally occupied the ground floor of 58- 60 Westow Hill. This former use has since ceased and the ground floor is now in use as a public house causing the ancillary building to become redundant. Given the ancillary building has not been historically used as a separate employment use, I agree with the Council that it's loss would not prejudice employment floorspace.
46. The developments would be 'car-free' and cycle parking would be provided. Unilateral undertakings have been submitted as set out above relating to restrictions on future residents applying for car parking permits. It has not therefore been shown that the proposed developments would adversely affect parking or the safe operation of the highway network.

47. There is no evidence to demonstrate that the proposed developments would adversely affect house prices. Even if there was, this is not a material planning consideration. There is also limited evidence to suggest that the pub does not manage security, noise, or its waste appropriately. Even if this was an issue, any breach of planning control would be a matter for the Council's enforcement service.
48. I have not been provided with compelling evidence to demonstrate that planting would risk subsidence and damage to drains and services underground. I am therefore unable to ascribe this any weight.
49. Additionally, any disputes regarding access rights and land ownership would be civil matters which fall outside my consideration in this appeal.
50. The appellant has also expressed concerns regarding the time taken to reach a decision by the Council during the application process in respect of Appeal A. Whilst this must have caused the appellant some distress, this does not materially affect my consideration of the planning merits of the appeal proposals.
51. The proposals would each deliver additional housing stock on previously developed land which is a windfall site. The proposals would be an effective use of land, optimising the site in a location well connected to jobs, services, infrastructure, and amenities. I also acknowledge the key aim of the Framework to boost the supply of housing. However, given the scale of the developments, these benefits would attract modest weight in favour of the proposals.

Conditions

52. The Council has suggested a list of conditions which I have considered and where necessary amended in line with national policy and guidance. I have specified the approved plans as this provides certainty. Conditions are necessary to specify details of external appearance, floor levels and hard / soft landscaping, to ensure a satisfactory appearance.
53. Conditions are also necessary to ensure appropriate cycle parking and refuse storage would be provided to promote sustainable travel and provide appropriate waste provision. It would also be necessary to ensure the proposed development complies with fire safety standards in the interests of safety.
54. It is necessary to protect the living conditions of those living near to the site. I have therefore attached conditions regarding light pollution and the future use of flat roofs. For the same reasons, I have restricted the insertion of additional windows / openings and placed restrictions upon the glazing of some windows. Furthermore, in the interests of living conditions and to prevent adverse impacts on the transport network a Construction Logistics Plan and Delivery and Service Management Plan is also necessary.
55. Further conditions would be required regarding carbon dioxide emissions and water consumption to ensure the efficient use of energy and water. A drainage scheme would also be necessary as a means of managing flooding in the area.
56. Finally, I have also attached necessary conditions relating to security methods including details for the communal area as well as a requirement to achieve Secured by Design Certification. A condition is also necessary to ensure the

proposed development is accessible and adaptable to all sections of the community.

Conclusion

Appeal A

57. For the reasons set out, I conclude that the proposal under Appeal A would cause unacceptable harm to the future occupiers of the development, resulting in conflict with the development plan to which I afford significant weight. Material considerations advanced in this case would not outweigh this conflict. Therefore, I conclude that Appeal A should be dismissed.

Appeal B

58. For the reasons given, I conclude that the proposal under Appeal B would accord with the development plan. There are no material planning considerations which indicate that permission should nevertheless be withheld. Therefore, Appeal B should be allowed.

N Praine

INSPECTOR

Schedule of Conditions (Appeal B Only)

- 1) The development shall be begun within three years of the date of the permission.
- 2) The development shall be carried out entirely in accordance with the following approved drawings: Location Plan 60WHRL LP; 60WHRL-SP; 60WHRL-200-ELE; 60WHRL-200-ELW; 60WHRL 200 ELN Rev 1; 60WHRL 200 ELS Rev 1; 60WHRL-200-GA-rev3; 60WHRL-200-GA-00-rev2; 60WHRL-200-GA-01; 60WHRL-200-GA-02; 60WHRL-200-GA R; 60WHRL-200-SC; 60WHRL-300-CAA-01-rev2; 60WHRL-300-CAA-02; 60WHRL-300-DFD-01; 60WHRL-300-DFD-02; 60WHRL-300-DFD-03; 60WHRL-300-PFST and shall be retained as such for so long as the development remains in existence.
- 3) Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) External facing materials including samples of all facing materials and finishes;
 - b) Detailed drawings in plan/elevation and section at 1:5 through all typical external elements/details of the facades including all openings in external walls, including privacy screens and balustrades; and

- c) Detailed drawings in elevation and section showing finished floor levels for the approved flats.

The development shall be carried out wholly in accordance with the details thus approved and shall be retained as such for so long as the development remains in existence.

- 4) Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Hard landscaping materials (including samples as appropriate);
 - b) Soft landscaping details, including existing planting to be retained, the species, size and density of proposed new planting, as well as the dimensions of new trees; replacement trees, including no less than two semi mature trees and maintenance;
 - c) Measures to promote diverse ecology through flora and fauna enhancements;
 - d) Boundary treatments (including any partition fencing);
 - e) Details of communal amenity space, including any fixed external furniture; and
 - f) A maintenance/management plan for all aspects of the hard and soft landscaping, including the communal amenity spaces.

The details approved shall be provided and completed in accordance with this condition prior to the first occupation of the development and maintained for the lifetime of the development with the exception of new planting which shall be provided and completed in accordance with this condition prior to the end of the first planting season following completion of the development and maintained for a period of five years from the date of planting. Any new planting which dies, is severely damaged, becomes seriously diseased or is removed within that period shall be replaced by planting of a similar size and species to that originally planted.

- 5) The following details shall be submitted for written approval to the local planning authority, prior to commencement of above ground works:
 - a) Security lighting (siting and manufacturer details);
 - b) Balustrades to balconies;
 - c) Appearance and siting of rainwater goods; and
 - d) Green roofs to flat-roofed areas.

Once approved, the items above shall be implemented as specified and shall be retained as such for so long as the development remains in existence.

- 6) Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
- a) Full details of cycle parking provision (including the provision of a charging point for an enclosure and an electric cycle charging point), including the type of cycle stands; and
 - b) Full details of the refuse stores, including the size and number of bins, as well as a dedicated area for the storage of bulky waste.

The details approved shall be provided and completed in accordance with the approved details prior to the first occupation of the development and maintained for the lifetime of the development.

- 7) The development shall be carried out wholly in accordance with the Planning Fire Statement (no. 60WHRL-300-PFST) produced by 'Antic London' dated 08 June 2022 and shall be retained as such for so long as the development remains in existence.
- 8) The development shall achieve a reduction in carbon dioxide emissions of 19% beyond the 2013 Building Regulations.
- 9) The residential dwellings within the development hereby permitted shall endeavour to achieve a water use target of 110 litres per head per day.
- 10) No windows or other openings shall be formed at first floor level or above, other than those shown in the approved plans.
- 11) Prior to the commencement of development, a fully detailed Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the Local Planning Authority in consultation with the relevant Highway Authority. The CLP shall include the following information for all construction phases of the development:
- a) Hours of construction;
 - b) Hours of deliveries;
 - c) Parking of vehicles associated with deliveries, site personnel, operatives and visitors;
 - d) Facilities for the loading and unloading of plant and materials;
 - e) Details of any site hoardings;
 - f) Details of the precautions to guard against the deposit of mud and substances on the public highway; and
 - g) Dust control methods.

All construction phases of the development shall be carried out strictly in accordance with the approved details.

- 12) Prior to the first occupation of the development hereby permitted a Delivery and Service Management Plan (DSMP) shall be submitted to and approved in writing by the Local Planning Authority. The DSMP shall specify servicing hours and the number and frequency of servicing trips. The approved plan shall be adhered to thereafter and be maintained for the lifetime of the development.
- 13) Any upper-floor window located on the building hereby approved, as indicated on the approved plans as obscure glazed, shall be completed as such. These windows shall be obscure glazed and non-opening unless the parts of the window which can be opened (and are clear glazed) are more than 1.7 metres above the floor taken from a point immediately below the centre of the window upwards to the opening part of the window. Such measures shall be provided and completed prior to the first occupation of the development and retained for the lifetime of the development.
- 14) Prior to the commencement of above ground works, a detailed surface water drainage scheme incorporating the following measures shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Calculation of the existing and proposed run-off rate (which should achieve greenfield run-off rates unless an alternative rate is adequately justified and achieved);
 - b) Confirmation of the impermeable and permeable site areas used for the infiltration calculations;
 - c) Details of the on-site infiltration drainage;
 - d) Details of the on-site attenuation tank;
 - e) Details of further sustainable drainage measures;
 - f) An updated layout plan (to scale) of the proposed drainage scheme; and
 - g) Details of the ownership and / or maintenance agreement for the SUDS on the site.

The approved scheme shall be implemented prior to the first occupation of the development and maintained in accordance with the approved details thereafter.

- 15) In accordance with guidance from the Institution of Lighting Professionals, light from any proposed external illuminations shall not cause a nuisance to local residents.
- 16) The development hereby permitted shall achieve the relevant Secured by Design Certification prior to first occupation.

- 17) Prior to the commencement of above ground works, full details of the gated access to the communal garden shall be submitted to and approved in writing by the Local Planning Authority. The gated access shall be provided and completed in accordance with the approved details prior to the first occupation of the development and retained for the lifetime of the development.
- 18) All of the residential units at ground floor level within the development hereby approved shall be constructed and fitted out to comply with the Building Regulations 2010 (as amended) optional requirement M4(2) 'accessible and adaptable'. Such provision shall be reasonably maintained for the lifetime of the development.
- 19) The roof area(s) of the structure hereby permitted and approved on plan 60WHRL-200-GA-R shall not be used as a balcony, roof garden or similar area and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) no alterations shall be carried out to create access to it.

End of Schedule