



Appeal Decision

Site visit made on 20 June 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/N5660/W/23/3314652

Land to rear 20-22 Beardell Street, Beardell Street, London SE19 1TP

- 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 Hillroad Developments Ltd against the Council of the London Borough of Lambeth.
- The application Ref 22/02156/FUL, is dated 27 May 2022.
- The development proposed is erection of 4no. residential units with associated works.

Decision

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

Preliminary Matters

2. I have taken the description of development from the application form, omitting wording that is not an act of development.
3. The appeal was made following the failure of the Council to give notice of their decision on the application within the statutory period. The Council have confirmed that were they to have issued a decision, they would have refused planning permission. I note that while the Council did not determine the application, they set out their concerns in an email to the appellant dated 12 December 2022. I have been provided with what would have been their reasons for refusal as part of their statement, which the appellant has also commented upon. I have had regard to this statement and third party representations in framing the main issues.
4. Additional plans and documents have been provided by the appellant at the final comments stage of the appeal. These include plans identifying the extent of the beer garden at the rear of No.23 Westow Hill and a cross section of the proposed private outdoor amenity space for Plot 3 indicating boundary treatment, a Daylight and Sunlight Assessment¹ (DSA), and a Noise Report² (NR).
5. In terms of this additional information, the appellant was aware of the Council's concerns during the planning application process. The submission of plans and documents at the final comments stage has meant that interested parties have not had the opportunity to consider them and could be prejudiced if they were accepted. Therefore, having regard to the Wheatcroft³ principles, I am not accepting the plans, the DSA nor the NA.

¹ Herrington Consulting Limited 'Assessment for the Provision Daylight and Sunlight within the Development at Land r/o 20-22 Beardell Street, Lambeth SE19 1TP' dated May 2023

² Planning Noise Report, Adnitt Acoustics Plot 3 Ref:E23003/EBF/R2- dated 30 April 2023

³ *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37

6. A Deed of Variation (DoV) under s106 of the Town and Country Planning Act 1990 (as amended) has been submitted by the appellant with the appeal. This seeks to vary a planning obligation relating to an extant planning permission⁴ (the 2019 permission). The DoV is a bilateral agreement requiring the signature of the Council and because the appeal has been made following the failure of the Council to give notice of their decision, neither the putative reason for refusal nor the heads of terms were apparent to the appellant. I therefore allowed the opportunity for the Council to comment upon the DoV and have taken account of it in my consideration of this appeal. I will return to this matter later in this decision.

Main Issues

7. Although there is no formal decision from the Council, they have offered putative reasons for refusal. Based on these and matters raised in the appeal documentation, the main issues are:
- Whether the proposed development would create an accessible dwelling with regard to the relevant policies of the development plan;
 - The effect of the proposed development on the living conditions for future occupiers of the flats, with particular regard to noise, overlooking, outlook, daylight, sunlight and outdoor amenity space; and,
 - The effect of the proposal on the adjacent highway with regard to parking and the use of sustainable modes of transport.

Reasons

Accessible dwelling

8. Policy D7 of the London Plan seeks development that provides suitable housing and genuine choice for London's diverse population including disabled people and includes a requirement that at least 10% of dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings'. All other dwellings should meet M4(2) 'accessible and adaptable dwellings', which would include step-free access. Flat 1 would meet the M4(3) requirement but Flat 2 would not meet either requirement as it is accessed via a considerable number of external steps inhibiting access for those with mobility and disability issues.
9. The appeal proposal would be a small-scale infill development, as defined in Policy D7. As such, regard should be had to Policy H2 of the London Plan with regard to accessibility. The supporting text to this states *Homes that are not on the ground floor on minor developments can comply with the M4(1) standard, which does not require step-free access, where provision of step-free access would be unfeasible*. It is clear that Policy D7 allows flexibility in the application of the policy.
10. The appellant suggests that due to the significant change in levels across the site, there should be some expectation that stairs would be required within the proposed development. I recognise that the provision of a lift to allow step-free access to the first floor would be difficult without disrupting the proposed ground floor layout. Nevertheless, it has not been demonstrated that a lift could not be provided within the building and there is no robust evidence

⁴ LPA Ref: 19/04232/FUL

before me to indicate that the proposed development would amount to an exceptional circumstance such that flexibility of Policy D7 would be warranted in this case.

11. Comparison is made by the appellant to the 2019 permission. It is asserted that the approved development only provides compliance with Part M4(2) for one dwelling whilst the proposed scheme would provide Part M4(3) compliance for one dwelling. Although this would provide flexibility for future occupiers, it is not a policy requirement of this small-scale scheme. Even if there was some benefit to the provision of a M4(3) compliant unit at Flat 1, this would be tempered by the lack of inclusive access for all future occupiers and visitors to Flat 2.
12. In the context of the overall scheme, the proposal would fail to create an accessible dwelling. Accordingly, it would conflict with Policy Q1 if the LLP and Policy D7 of the London Plan.

Living Conditions - noise

13. The appeal site is surrounded on all sides by existing development. The rear elevations of properties to the south of the appeal site, along Westow Hill, sit at a higher land level to the appeal site. Amongst these properties are two public houses (PHs), The Westow Tap PH at 23 Westow Hill (No.23) and Faber Fox PH at 25 Westow Hill (No.25). Both these PHs have outdoor seating and drinking areas which adjoin the appeal site.
14. An area of private outdoor amenity space, approximately 4m in depth, would separate the proposed building from the beer garden of No.23 to the west. The ground floor bedroom and living area windows and doors of Flat 1, first floor bedroom windows of Flat 1 and living area windows of Flat 2 would face towards the beer garden. These openings provide the only windows to the main living areas of both flats. Even if the M4(3) compliant ground floor layout were implemented, the only window and opening to the bedroom would face towards the beer garden. Additionally, the beer garden of No.25 to the south sits at the approximate same height as the first floor of the proposed building and would be very close to the window and door openings of main living areas of both flats.
15. With people sitting in the beer gardens in the evenings, particularly during summer months when the weather is warmer and at a time when future occupants may also wish to have their windows open, the use of the beer gardens is likely to cause noise and disturbance. Furthermore, I saw at my site visit that there were sheltered areas of the beer garden at Faber Fox, which could also result in the use of the beer garden during inclement weather and for longer periods in the year. Both beer gardens are a reasonable size and could accommodate several people which would cumulatively contribute to a significant amount of general noise and disturbance. This is likely to lead to conflict between future occupants and the existing businesses.
16. In addition, the direct and close relationship with two beer gardens would be likely to lead to noise and disturbance for future occupiers of Flats 1 and 2 when using their private outdoor space.
17. Policy D13 of the London Plan 2021 (London Plan) requires that the responsibility for mitigating impacts from existing noise and other nuisance-

generating activities or uses is placed on the proposed new noise-sensitive development, taking into account the 'Agent of Change' principle. The appellant has proposed mitigation measures including a timber acoustic fence on a brick retaining wall along the southern boundary and block retaining wall planters. There is no substantive evidence before me to demonstrate that the proposed mitigation measures would alleviate noise disturbance for future occupants of the flats to an acceptable degree or that the measures would not result in unreasonable restrictions being placed on the existing neighbouring PHs.

18. I acknowledge that future occupants of the proposed dwelling would be aware of the district centre location and the proximity to the PHs and their beer gardens. They would therefore expect a degree of noise when deciding to live here. However, this would not mean that should noise and disturbance arise that they would not raise a complaint about this.
19. Moreover, I note the adverse effect of noise on the living conditions of future occupiers of the approved four-bedroom dwelling from the beer gardens of the PHs has been recognised in the appellant's Design and Access Statement (LIME-Living In Modern Environments, undated) as 'not conducive to family living and therefore more suited to flatted accommodation which is likely to have a younger demographic'. Regardless of the occupier, the adverse effects of noise would be evident to any residential occupant of the building.
20. On the above basis and on the evidence before me, the proposed development would have a harmful effect on the living conditions of future occupiers of Flats 1 and 2, with particular regard to noise.

Living Conditions – Overlooking

21. Customers in the beer garden at No.23 would have close range views towards the proposed first floor windows on the west elevation of the proposed building, over the proposed boundary treatment, even with the lower section of the first floor window being obscure glazed.
22. It has not been robustly demonstrated that it would be unlikely that people within the beer garden would have views into these rooms, two of which are the only openings in the main living area. Although a taller boundary treatment would prevent any significant overlooking and could be required by the imposition of a condition, without such details, I cannot be certain this would be sufficient or would not create other issues such as outlook.
23. Although the proposed second floor windows on this elevation would be visible from the beer garden at No.23, due to the position of the windows within the roof of the building, set back from the eaves, and the height of the windows above floor level, I consider the angle when viewed from customers in the beer garden would ensure there would be no significant overlooking into these rooms.
24. While I find there would be no significant overlooking of the proposed second floor windows in the western elevation, I cannot be certain, on the evidence provided, that there would not be overlooking of first floor windows in the western elevation such that the proposal would be harmful to occupiers of those rooms.

Living Conditions – Outlook

25. The ground floor living area of Flat 1 would include a window and doors in proximity to a very high proposed acoustic fence along the boundary with No.25 and would face a boundary fence with No.23 at close distance. Whilst there would be some outlook above the western boundary fence to trees beyond, the cumulative effect of an additional enclosure around the outdoor amenity space for Flat 2 close to the ground floor living area of Flat 1 would not provide an appropriate outlook for occupiers of this room. Moreover, were a higher boundary treatment to be required along the boundary with No.23 in order to address concerns regarding privacy to the proposed first floor windows as referred to above, this would exacerbate the poor outlook for occupiers of the living area.
26. Even if the boundary treatment remains as proposed, given the single aspect of the ground floor living area and the height and proximity of proposed surrounding boundaries, there would be an oppressively poor outlook for occupiers of this room.

Living Conditions – Daylight and Sunlight

27. The proposed bedrooms for Flat 1 would be dual aspect and would receive sufficient daylight and sunlight. Likewise, the bedrooms for Flat 2 would include windows on two elevations and would receive sufficient daylight and sunlight.
28. However, the living areas for both flats would be west facing single aspect rooms. The living area for Flat 2 would be on the first floor and incorporate two large vertical windows. While the proposed boundary treatment along the southern boundary would be high, it would not reach the height of the top of these windows and would be a reasonable distance from the central window. The proposed boundary treatment along the western boundary would not reach the height of the bottom of the first floor windows, thus adequate daylight and afternoon sunlight would reach this room.
29. The ground floor living area for Flat 1 is enclosed by boundary treatment of significant height in proximity to the window and door openings to this room. As the DSA cannot be accepted, insufficient evidence has been presented to demonstrate that the proposal would provide adequate daylight and sunlight to this room.
30. I note Figure 2 of the Council's statement indicates the location of beer gardens at No.23 and No.21 Westow Hill. However, this is incorrect. The area hatched blue is No. 25 and the area hatched purple is No.23. In addition, I have not been provided with information about the new beer garden at No.23 or the likely inclusion of boundary treatment that has been referred to by the Council. Nonetheless, this has no bearing on my assessment of daylight and sunlight above.

Living Conditions – Outdoor amenity space

31. Although not referred to in the putative reasons for refusal, Policy H5 of the LLP is referred to in the Council's statement. The amount of proposed outdoor amenity space for each flat would meet the requisite size. However, the supporting text to Policy D6 of the London Plan clarifies that private space should be practical in terms of its shape and utility, and care should be taken

- to ensure the space offers good amenity with a balance of openness and protection.
32. Policy H5 of the LLP sets out that ground floor flats should preferably have direct access to a private garden. The submitted plans indicate that the external amenity space for each flat would be gated and enclosed. Due to the internal layout of the flats, occupants of each flat would have views of the external amenity space belonging to each flat, thus the space would not be completely private. Nevertheless, this is not an unusual situation in residential areas, particularly within flatted and terraced developments. I therefore find the outdoor amenity space that would be provided for future occupants of Flat 1 would be acceptable.
33. However, the outdoor amenity space for the proposed Flat 2 would be very small and hemmed in by the boundary fence. While the exact design and height of this fence has not been specified by the appellant and could be conditioned, in order to provide a private area of space, it would necessarily be of substantial height. In the context of the site and its surroundings, I consider the users of the outdoor amenity space would experience a small, enclosed environment, lacking in quality with particular regard to shading by the boundary fencing and noise associated with the adjacent beer garden at No.23.
34. Furthermore, occupants of Flat 2 would be required to exit their main entrance door, navigate a flight of stairs before passing in front of the property around a bin store and vehicle turning head. Consequently, they would be unable to access any outdoor amenity space immediately from their property, resulting in a lack of seamless connection between their indoor and outdoor spaces.
35. This fragmented arrangement would pose difficulties for future occupiers in carrying out daily activities such as clothes drying or enjoying garden activities and relaxation with outdoor seating. Furthermore, this disjointed setup would not provide a practical or secure environment for children to play freely without constant supervision. The proposal would yield an indirect outdoor amenity space that is disconnected from the proposed development. Such a configuration would prove neither convenient nor practical for future occupiers. This would result in a poor standard of outdoor amenity space being provided.
36. I recognise that the redevelopment of small sites in urban areas can be challenging, and exceptionally the constraints of a site, including the terrain, and neighbouring uses in this case, means that it is not possible to provide outdoor amenity space compliant with Policies Q2 or H5 of the LLP. I also acknowledge that there are recreational spaces within a reasonable walking distance of the appeal site. However, as the recreational spaces are public spaces they would be shared with non-residents and are therefore not a private space. Moreover, the 2019 permission demonstrates to me that it might be possible to provide appropriate outdoor amenity space for an alternative form of development and I therefore find no exceptional circumstance in this case sufficient to nullify the LLP requirement in relation to the provision of private outdoor amenity space.

Living Conditions - Conclusion

37. For the reasons given above, I conclude that the proposal would not provide acceptable living conditions for future occupiers of Flats 1 and 2 with particular regard to noise and overlooking. It would also not provide suitable living

conditions for occupiers of Flat 1 with particular regard to outlook, daylight and sunlight and Flat 2 with particular regard to outdoor amenity space.

38. The proposal therefore conflicts with Policies Q2 and H5 of the LLP and Policies D6, D13 and D14 of the London Plan. Collectively, these policies seek, amongst other things, development that avoids significant adverse noise impacts on health and quality of life and acceptable standards of privacy, outlook, daylight and sunlight. These policies also seek development that provides adequate outdoor amenity space that is, amongst other things, practical and free from excessive noise or overshadowing.

Highway and sustainable modes of transport

39. Although not specified in the Council's second suggested reason for refusal, had the application been determined, Policy T6 of the London Plan is referred to in the Council's evidence. This policy states, amongst other things, that car-free development should be the starting point for all development proposals in places that are (or planned to be) well-connected by public transport. This policy also requires the provision of car club memberships for new residential development.
40. The appeal site is located in an area with 'excellent' public transport accessibility (PTAL score of 6). It is not however located within a controlled parking zone (CPZ). I saw at my site visit, albeit a snapshot in time, that almost all of the on-street parking spaces in the surrounding streets were occupied. The proposed development includes one off-street disabled parking space in accordance with Policy T6. It is likely that other car-driving occupiers and visitors would be reliant upon roadside parking spaces nearby which are in short supply in this district centre location. I consider that additional demand for on-street parking would be likely to exacerbate existing pressure in the vicinity of the site.
41. Furthermore, I am mindful of the PTAL rating of the site and the requirement of Policy T1 of the LLP to promote a sustainable pattern of development by maximising trips made by sustainable modes and reducing dependence on the private car. As cycle parking provision would be provided onsite, and the location is well served by public transport and situated within walking distance of day-to-day amenities, the future occupiers of the dwellings would not therefore be dependent on private cars to meet their transport requirements. Consequently, providing car parking onsite would not promote sustainable modes of transport to the detriment of the highway network.
42. For the above reasons, I consider the proposal should be car free in order to comply with Policies T1 and T6 of the LLP and Policies T1, T2, T4, T6 and T6.1 of the London Plan. Policy T7 is referenced by the Council, however this concerns servicing and thus is not relevant to this main issue.
43. The supporting text to Policy T1 of the London Plan advises that Section 106 Agreements will be used to secure car-free development and contributions towards the introduction of parking controls and measures to promote sustainable travel would be expected of developers. The requirement for a planning obligation to secure a car-free development is made clear in the officer report and acknowledged and accepted by the appellant.

44. However, the DoV provided by the appellant has not been executed and certified and is not therefore complete. The Procedural Guidance – Planning Appeals England is clear that for a planning obligation to be taken into account, an executed and certified copy must be provided within 7 weeks of the start date. Even though this timescale was extended due to the circumstances of this case, the DoV remains unsigned and undated. In any event, the appeal proposal is a different description and development to the 2019 permission and would therefore require the provision of a new section 106 agreement.
45. On the above basis, I am not satisfied that the submitted planning obligation is legally sound or complete.
46. In the absence of a suitable mechanism to ensure that the proposal is a car-free development and makes provision for a car club membership, future occupiers would be more likely to use a private vehicle than sustainable forms of transport. This would result in an increase in on-street parking pressure to the detriment of highway safety and would conflict with Policies T1, T6 and D4 of the LLP and Policies T1, T2, T4, T6 and T6.1 of the London Plan which, together, amongst other things, seek sustainable transport measures.

Other Matters

47. I am satisfied that the 2019 permission represents a real prospect as a fallback position. The appellant suggests the proposed development is no more harmful. Whilst I have not been provided with a copy of all the approved plans pertaining to the 2019 permission, there is no dispute between the parties that the scale, external appearance, and outdoor layout of the semi-detached properties (Plots 1 and 2) reflect that of the 2019 permission, and I have no evidence to disagree.
48. However, the four bedroom detached property proposed in the 2019 permission would be replaced by 2 x two bedroom apartments (Flat 1 and Flat 2). Not only would this result in an additional residential unit, but the proposed building would also differ to the 2019 permission in other ways. The main entrance to Flat 2 would be on the first floor via a flight of steps, the western elevation would be closer to the beer garden at No.23, there would be two areas of outdoor amenity space rather than one and the internal room layout and fenestration would be different, resulting in single aspect main living rooms.
49. These differences would be significant and, for the reasons set out earlier in this decision, I have found that the appeal scheme would be unacceptable. The appeal scheme would thus have a more harmful effect than the 2019 permission.
50. The appeal property lies within the Westow Hill (North Side) Conservation Area. There is no dispute between the main parties that the proposed development would preserve or enhance the character and appearance of the conservation area. Pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the proposal and visited the site I concur with that view. The scale and design of the proposed development and its position behind the principal focus of the Westow Hill building frontage would harmonise with the character and appearance of the area. Accordingly, it is my view that the development proposed would preserve the appearance of the designated area.

51. The proposed development would be located in a sustainable location and contribute towards the supply of housing. This would deliver social and economic benefits both during construction and from future occupancy of the development in using facilities and services. However, given the scale of the scheme and that there is an extant permission on the site for 3 dwellings, the contribution would be small and this matter would not outweigh the harm that would be caused by the proposal.
52. My attention has been drawn to a previous appeal decision on the site⁵. However, this appeal related to a four bedroom detached property on the appeal site rather than the proposed flatted development now before me. As such, the circumstances of this appeal is not directly comparable to the appeal before me.
53. I have noted the appellant's comments highlighting absence of identified harm to the principle of residential development on the site, the housing mix, future occupiers space standards, scale and design, and neighbours' living conditions. Even if I were to agree that there would be no unacceptable effects on these issues, this is a neutral factor which would not outweigh the harm identified and conflict with the development plan as a whole.
54. The appellant refers to neighbouring landowners support for the development although I note an objection from a neighbouring resident. Even if there were no third-party objections to this development, my assessment of the effect of the development would be unchanged and a lack of objections is not a reason in itself to allow development that is unacceptable.
55. The appellant's statement of case includes extensive narrative as to the Council's handling of the application prior to the date of appeal. I note the frustrations expressed by the appellant that there was engagement with the Council while the application was under consideration and the proposal was amended and information provided in response to officer advice. However, this has had no bearing on the outcome of this appeal as I have only had regard to the planning merits of the proposal that is before me.

Conclusion

56. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.
57. For the reasons given above, I conclude that the appeal is dismissed.

A Veevers

INSPECTOR

⁵ APP/N5660/W/19/3224827