



Appeal Decisions

Site visit made on 18 July 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal A Ref: APP/L5240/W/22/3303958

44A Westow Street, Crystal Palace SE19 3AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Fitzgerald of Opal Investments Ltd against the decision of London Borough of Croydon.
 - The application Ref 22/01146/FUL, dated 4 April 2022, was refused by notice dated 27 May 2022.
 - The development proposed is demolition of existing Class E premises and replacement with three storey building with Class E use on the ground floor, and two x 1 bed flats above.
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Appeal B Ref: APP/L5240/W/22/3309668

44A Westow Street, Crystal Palace SE19 3AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Fitzgerald of Opal Investments Ltd against the decision of London Borough of Croydon.
 - The application Ref 22/03359/FUL, dated 9 August 2022, was refused by notice dated 3 October 2022.
 - The development proposed is demolition of existing Class E premises and replacement with three storey building with Class E use on the ground floor, and two x 1 bed flats above.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made by Mr M Fitzgerald of Opal Investments Ltd against the London Borough of Croydon in respect of both appeals. These applications are the subject of a separate decision.

Preliminary Matters

4. The correct postcode for the appeal site is that given on the decision notice rather than the application form. I have used that in my banner headings above.
5. Correspondence between the appellant and the Council has confirmed that no financial contribution to sustainable transport schemes, in this case an on-street car club with electric vehicle charging, would be required for a scheme of this size. Therefore, the Council's ninth reason for refusal in respect of both appeals insofar as it relates to this matter has been addressed. I have

therefore proceeded on the basis that the outstanding matter is car free housing.

6. During the course of both appeals, the appellant has submitted a unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended). This makes provision for car free housing through restricting future occupants of the residential units from obtaining a parking permit.
7. The Council's decision notice in respect of Appeal A made reference to the Suburban Design Guide Supplementary Planning Document 2019 (the SPD). Since that decision was issued and prior to a decision being made on Appeal B, the SPD was formally revoked on 26 July 2022 so that it would no longer be used as material guidance for determining planning applications. I have proceeded on this basis.

Main Issues

8. The main issues in both appeals are:
 - the effect of the proposal on the character and appearance of the area, including the Upper Norwood Triangle Conservation Area;
 - the effect of the proposed development on the supply of employment land;
 - whether satisfactory delivery and servicing arrangements would be provided for the proposed commercial use;
 - whether the proposed development would provide adequate cycle parking;
 - the effect of the proposed development on the living conditions of nearby occupants on Westow Street, with particular regard to a sense of overbearing, loss of outlook, overlooking and increased noise disturbance;
 - the effect of the proposal on protected species;
 - whether the proposal would provide satisfactory living conditions for future occupants, in respect of outlook and provision of amenity space;
 - whether or not the proposed development should contribute to family sized accommodation;
 - whether the proposal would provide accessible and adaptable homes;
 - whether the proposal would be acceptable, having regard to its location on potentially contaminated land; and
 - whether the proposed development would secure car-free housing.

Reasons

Character and appearance

9. The appeal site is located on Haynes Lane, a narrow lane which slopes down quite steeply from Westow Street which is the main shopping street running through the Crystal Palace District Centre. The appeal property is a traditional and simple, part single / part two-storey workshop building which occupies most of the footprint of the site. It has its frontage on Haynes Lane but lies to

the rear of Number 44 Westow Street (No 44), a two-storey building located at the corner of Westow Street and Haynes Lane.

10. Haynes Lane is characterised by traditional buildings, including an attractive terrace of two-storey Victorian cottages which step down to the west of the site and a small development of light industrial buildings opposite these. The cottages are locally listed. A modern service yard and substantial single-storey building forming part of the Norwood Heights shopping centre is directly opposite the appeal site.
11. The site lies within the Upper Norwood Triangle Conservation Area (the UNTCA). The *Upper Norwood Triangle Conservation Area Appraisal and Management Plan Supplementary Planning Document 2014* (the CAAMP) sets out that the UNTCA derives its special character from its fine urban grain, varied scale of building and historic buildings of high architectural quality. The UNTCA is enclosed by three main streets, Westow Street, Westow Hill and Church Road which form a triangle. Within this area there are a series of smaller-scale interconnected streets which have a more intimate character, with residential and light industrial uses. Historically the area developed for housing, with light industrial uses developing in the first half of the 20th century.
12. Haynes Lane is such a small-scale street. The traditional buildings along the street, including the appeal property, the mix of uses and the intimacy of the street arising from its narrowness, all contribute to its character. The appeal property, as a traditional workshop building, provides a link to the industrial heritage of the area. The CAAMP identifies it as making a positive contribution to the character and appearance of the UNTCA.
13. The demolition of the appeal property would result in the loss of a building that makes a positive contribution to the UNTCA. Its replacement, in both cases, would be of a more substantial building.
14. The proposed building in Appeal A would be a contemporary three-storey, flat-roofed building with aluminium doors and windows and balconies. Its design would be unrelated, out of character and in stark contrast with surrounding development which features traditional architecture and pitched and hipped roof forms. As a three-storey, flat-roofed building it would be bulky and would appear tall. It would not be in keeping with the low rise character of development along Haynes Lane.
15. The proposal in Appeal B would follow a more traditional form including a slight pitch to the front elevation to give it the appearance of a mansard roof design and a lower overall height than the earlier proposal. The windows would have a more traditional appearance, with sash style window frames. The reduction in height and use of more traditional design features would be an improvement on the proposal under Appeal A. The building would nevertheless have a three-storey appearance. It would be of a scale and mass that would make it visually prominent, larger and unrelated to surrounding development and out of character on Haynes Lane.
16. The proposed buildings in both schemes would have balconies. In Appeal A, the balconies would be substantially enclosed by brickwork, whilst in Appeal B, they would be enclosed by metal railings. Balconies are not a characteristic form of development along Haynes Lane. However, given the variation in

building design along this road and the presence of a roof terrace directly adjacent to the proposed building, the provision of a balcony would not be harmful. However, the enclosure of the uppermost balconies by a 1.8m high screen to provide mitigation against harmful impacts upon neighbours would add to the bulk of the buildings in both appeals.

17. The proposed building in Appeal B would be less bulky than that of the Appeal A proposal. Nevertheless, in both cases, the building would occupy the full width of the site with no setback from the pavement. Whilst this would not be dissimilar to the existing development on site, the appeal proposals are for substantially taller buildings. Both proposals would appear unduly large and cramped on this constrained site. The buildings would also be highly visible in views from both Westow Street and Haynes Lane and would detract from the character and appearance of the locality.
18. In both schemes, the height and prominence of the proposed buildings would also obscure views of the terrace of cottages when viewed from Westow Street. Neither of the proposed buildings would provide a transition between the commercial development along Westow Street and the residential on Haynes Lane as the building in both appeals would be visually jarring and out of character. Since the proposed buildings would occupy most of the site, there would be no meaningful space for soft landscaping to soften the appearance of the development and enhance the character of the area. The proposals would therefore be dominant and harmful to the streetscene and surrounding area.
19. Whilst I appreciate that the palette of materials proposed is drawn from those used in adjacent developments and would assist in respect of integrating with local character, this would not overcome the harm that I have identified.
20. I appreciate that local character evolves over time and that demands for housing may lead to change. However, the need for housing does not make development, unsympathetic to the character of the area in which it is located, acceptable. I also recognise that the modern retail development opposite also forms part of the character. However, this building has been identified as one that negatively impacts the character and appearance of the UNTCA. Therefore, to rely on this building to justify the proposals would be inappropriate.
21. There are examples of flat roofed properties in the vicinity of the appeal site, including the workshops on the opposite of Haynes Lane as well as properties fronting Westow Street. However, the flat roof in both appeal proposals, would be positioned between developments characterised by pitched roofs where it would appear incongruous and bulky. The mansard style front elevation, would not effectively screen the bulk of the flat roof of the proposed building in Appeal B.
22. The appellant has drawn my attention to Number 30-34 Westow Street (Nos 30-34) which has a similar mansard roof design to that proposed in Appeal B. However, this building has been identified as having a neutral effect on the UNTCA. A design based on this would not therefore justify the loss of a building that make a positive contribution to the UNTCA. Furthermore, the character along Westow Street is different to that of Haynes Lane, therefore the presence of Nos 30-34 does not justify the proposals before me.
23. Both proposals would detract from the character and appearance of the UNTCA being unrelated to those features that contribute to its significance. They would

not therefore overcome the harm that would arise from the demolition of a building that makes a positive contribution to the UNTCA. I find both appeals A and B would cause significant harm in that respect.

24. The proposed development in both appeals would cause significant but less than substantial harm to the character and appearance of the UNTCA. I attach considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
25. Paragraph 202 of the National Planning Policy Framework (the Framework) states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
26. The proposal would deliver 2 market dwellings in an accessible location although, as I set out below, the accommodation they provide is unsatisfactory. The scheme would also provide modern Class E commercial floorspace. However, as I conclude below, the servicing arrangements for this are unsatisfactory. I have no evidence that provision of commercial floorspace of the type proposed with inadequate servicing will be sought after and therefore maintained in that use. The modest public benefits associated with both appeals would therefore not outweigh the less than substantial harm to the designated heritage asset.
27. I therefore conclude that the proposed developments in both Appeals A and B would significantly harm the character and appearance of the area, including the UNTCA. The proposals would therefore conflict with Policies D3, D4 and HC1 of the London Plan 2021 (the LP), Policies SP4.1, DM10.1 and DM18 of the Croydon Local Plan 2018 (the CLP) and paragraph 197 of the Framework. These policies together require high quality development that respects and enhances local character and context, development patterns, scale, height and massing; conserves the significance of heritage assets. They would also not accord with the CAAMP which seeks the retention of buildings that make a positive contribution to the UNTCA and requires new development to respect the established urban grain of existing development within the area.
28. I have found no specific conflict with Policy D5 of the LP which relates to inclusive design in respect of this main issue.

Loss of employment land

29. The appeal property was in use as a glass workshop. It is now vacant. The lawful use of the property falls within Class E Commercial, Business and Service of the Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the UCO). This is not disputed.
30. The appeal property has a direct access onto Haynes Lane as well as access onto a narrow, shared alley which runs to the side and rear of the adjacent residential terrace. The internal space comprises a main workshop room with smaller rooms off this and a modest first floor area. The space is unmodernised and not particularly well lit. It is approximately 65 square metres (with loft space).

31. The proposal is for the redevelopment of the site as a mixed use development, including the reversion of a Class E use. The appellant has indicated that this would likely be a retail unit. This would be 57 square metres and at ground floor only.
32. Policy SP3 of the CLP sets out a 4 tier approach to the retention and redevelopment of land and premises relating to industrial/employment activity. The appeal site is considered to fall within Tier 4 as a 'Scattered Employment Sites'. The policy approach is to protect such sites. Uses that would be permitted would be Class B1 (excluding B1a office), B2 and B8 uses under the UCO prior to its amendment. It also states that planning permission for limited residential development will be granted subject to a number of criteria one of which is that if it can be demonstrated that there is no demand for the existing premises or for a scheme comprised solely of the permitted uses.
33. Whilst the policy position is clear, with the changes to the UCO, the change of use of the premises from its current use to a retail unit would all fall under the same UCO, that is Class E. The Planning Practice Guidance¹ is clear that movement from one primary use to another within the same use class is not development, and does not require planning permission.
34. I appreciate that the policy seeks to retain such units, however, the controls put in place by that policy have been superseded by the changes to the UCO which effectively allow a change of use within Class E.
35. The appeal premises offers limited space for delivery and servicing and no vehicle parking space. There is a rear access, however, this is narrow and also shared with nearby residential properties. In this regard, the existing arrangements associated with the Class E use are not ideal. However, whilst this may have been suitable for the glass workshop, there is nothing to prevent an alternative Class E use from utilising the existing premises which has greater servicing needs than the last commercial use. This would amount to a change of occupants but not development that requires planning permission.
36. Whilst I acknowledge this scenario, the scheme goes beyond a change of occupants and proposes the redevelopment of the site into a mixed use development. It is therefore appropriate to consider the scheme against the requirements of Policy DM4.3 of the CLP. This sets out that proposals for mixed use developments will be required to either a. demonstrate that a specific end user will be occupying the ground floor unit upon completion; or b. provide a free fitting out of all ground floor units for the eventual end occupier to ensure that the unit is capable of occupation and operation by the end user and ensure that the ground floor units are capable of conversion to the same use as the remainder of the building if after two years, subsequent to completion, no end user has been found for the ground floor unit.
37. Policy DM4.3 requires either criterion a. or criterion b. to be met. The appellant has stated that he will provide the fit out service for the eventual occupier and therefore that the scheme complies with criterion b. There is nothing that would secure this, such as a legal agreement binding the appellant to do so although this could be secured through an appropriately worded planning condition.

¹ Paragraph: 012 Reference ID: 13-012-20140306

38. In any event, I have found the existing servicing and delivery arrangements to be unsatisfactory as I have set out. It will be seen in my reasoning below that I have found that the proposed delivery and servicing arrangements would also be unsatisfactory. In the absence of information about the end occupier, I am therefore not satisfied that the proposed unit would be capable of occupation and operation by the end user. In the absence of an occupier, under criterion b. of Policy DM4.3 this ground floor unit could be converted to a residential use, the same as the remainder of the building. This would lead to a loss of employment floorspace.
39. I therefore conclude that the schemes would result in the loss of employment land. They would therefore be in conflict with Policies SP3 and DM4 of the CLP as referred to above.

Servicing and delivery

40. Policy T7 of the LP sets out that development proposals should facilitate safe, clean, and efficient deliveries and servicing. Provision of adequate space for servicing, storage and deliveries should be made off-street, with on-street loading bays only used where this is not possible.
41. The proposed commercial unit would be provided with a small service courtyard at the rear. Vehicles including delivery vehicles and other services, would have to access the property from Haynes Lane. This is a narrow lane with no parking spaces and waiting restrictions.
42. The commercial refuse and recycling would be stored within the rear service yard. This would be in excess of 20 metres from the highway from where the waste would be collected. In addition, the Council has advised that 10 square metres of bulky waste storage will be required. I have not been referred to any policy or guidance setting out these requirements. There appears to be adequate within the rear service yard. Nonetheless, I consider that the narrow access to the rear service yard would make it inconvenient to use. In terms of larger capacity waste bins if required, such as bulky waste storage, access may not be practical.
43. The existing commercial use of the unit operates on a similar basis as it would appear others do in the locality to which the appellant has referred me. However, given the proposal is for the redevelopment of the site, then it would be appropriate for it to make sufficient and satisfactory provision for servicing, deliveries and waste storage to be able to occur in a manner that would not give rise to inconvenience or potential highway safety concerns.
44. I appreciate that a future occupant of the commercial unit would be aware of the servicing and delivery arrangements for the site and would make their decision as to whether the site was suitable for their purposes on that basis. However, it is not clear who the end user of the unit would be.
45. I find that the delivery and servicing arrangements would be unsatisfactory. The proposals would therefore conflict with Policy T7 of the LP as referred to above and Policy DM13 of the CLP which requires the location and design of refuse and recycling facilities to be an integral part of the overall design, provide adequate space for the temporary storage of waste and provide layouts that ensure facilities are safe, conveniently located and easily accessible by operatives and their vehicles.

Cycle parking

46. Cycle parking for both the commercial and residential elements of the proposed development would be required. The Council has advised it should be designed in accordance with guidance in the Cambridge Cycle Parking Guide and London Cycling Design Standards.
47. The proposal would provide an enclosed, secure and weatherproof cycle and bin store for the two residential units with two cycle spaces for each unit. This would be accessed off a shared alleyway between the site and Number 1 Haynes Lane.
48. Policy T5B of the LP requires development proposals to demonstrate how cycle parking facilities will cater for larger cycles, including adapted cycles for disabled people. The Council states this would not be met as wider/adapted bikes require a 1.5m clear width on the side of the stand which would not be achievable given the current layout. According to the Council, the residential cycle store would need to be 2.5m wide to accommodate the cycles in the required layout as per the guidance it has referred to.
49. It has not been demonstrated that this requirement could be met and therefore that the cycle storage would be policy compliant in respect of the provision of space for larger cycles.
50. The cycle store is not shown separated from the adjacent bin store serving the residential units. However, it seems to me that this could easily be addressed since both the bin store and cycle store have separate access doors. This could be secured through an appropriately worded condition.
51. The submitted drawings indicate the cycle and bin storage areas having doors that would open out on to the shared alley. When open, the doors would block the alley, causing inconvenience to others who use the alley for access. However, it seems to me that these doors would only be open when someone is accessing their bicycles or bin storage. Therefore, the extent of any such inconvenience would be limited and unlikely to result in significant inconvenience for those using the shared alley.
52. Cycle storage for the commercial unit would be provided within a small servicing yard at the rear of the proposed building. The Council states that space for a normal cycle and wider cycles would be required as the users of the space could deliver locally via a bicycle. It also states that shower and locker space should be provided for the commercial element. In addition, the commercial cycle store must be able to be opened by fob or keypad and be power assisted and be 1.2m wide minimum. I have not been referred to specific policies or guidance setting out this requirement, with the relevant policy appearing to be Policy T5 of the LP. This sets out standards for the now superseded Class B of the UCO and indicates for the closest equivalent to the proposed Class E use as requiring 1 space for a unit of the size proposed.
53. There appears to be adequate space for the storage of bicycles and scope to make this covered storage as required by policy. It would also be relatively simple to make this secure by installing a lockable gate. However, access to this area would be along a narrow access at the rear of the proposed building. This would be narrower than the existing shared access. I have not been provided with dimensions however, it seems to me that this would be an

awkward space along which to bring a bicycle. This may either not be possible or would discourage employees of the commercial use from cycling.

54. In conclusion, whilst I accept that certain matters in respect of the cycle parking could be addressed by a suitably worded planning condition, including making it secure and being covered. The access to the cycle parking for the commercial unit would be unsatisfactory and it has not been demonstrated that space could be provided for larger bicycles for disabled people, particularly in respect of the residential units. As there appears to be insufficient space, it would be inappropriate to impose a condition requiring details of this to be submitted, if it would be unachievable.
55. I therefore conclude that the proposals would not provide satisfactory cycle parking. They would therefore conflict with Policies T4 and T5 of the LP and Policies SP8, DM10, DM20 and DM30 which together require development that promotes cycling, appropriate levels of cycle parking, located within safe, secure and conveniently located weather-proof shelters, designed and laid out in accordance with the guidance contained in the London Cycling Design Standards, demonstrating how cycle parking facilities will cater for larger cycles, including adapted cycles for disabled people.
56. I have found no specific conflict with Policy T6 of the LP quoted in the decision notices as this relates to car parking provision.

Living conditions

57. The existing building adjoins the flank wall of the single-storey rear projection of Numbers 42 and 44 Westow Street. Above this there is a roof terrace, serving the residential unit at first floor level at No 44A Westow Street. The existing building is single-storey and the roof terrace, accessed via glazed doors from the flat, enjoys an open aspect.
58. The proposed building would be three-storeys with its east facing flank wall enclosing No 44A's roof terrace along its western edge. Due to the slope in the road, the visible part of the proposed building would be approximately a storey in height when viewed from the terrace. However, due to its height and proximity to both the terrace and windows in this property it would appear overbearing and result in a considerable sense of enclosure for users of the terrace. In addition, it would lead to a significant loss of outlook from the west facing windows within the property and from the terrace itself.
59. The upper floors of the proposed building would be served by balconies. The second floor balcony would be open towards the roof terrace and would enable direct overlooking of the terrace and into the windows of No 44A. This would cause a significant loss of privacy for this occupant. I appreciate that in some circumstances the use of screening can be provided to prevent this. However, in this case, as I have set out above, the additional screening would be harmful to character and appearance. It would not therefore be reasonable to impose such a condition.
60. Since the proposed balcony would directly adjoin the roof terrace, it is possible that some noise and general disturbance may arise from this. If appropriately screened, the relationship between these outdoor spaces would not be significantly different from that which is commonly experienced between

adjoining gardens or balconies. However, as I have found screening to be inappropriate this mitigation could not be achieved.

61. The windows in the rear elevation of the proposed building would provide views over the rear spaces of Numbers 30-40 Westow Street. This would cause some loss of privacy to these occupants. The appellant has suggested that a condition could be imposed requiring these windows to be obscurely glazed and fixed shut. Whilst this would address any potential overlooking, it would give rise to harms in terms of the living conditions for future occupants, as I discuss later in my decision. Such mitigation would not be appropriate.
62. I therefore conclude that the proposed developments would harm the living conditions of occupants of this neighbouring property through their overbearing impact, an increased sense of enclosure, loss of outlook and privacy and general noise and disturbance. They would therefore conflict with Policy D3 of the LP and Policy DM10 of the CLP which require development that protects the amenity of the occupiers of adjoining buildings, do not result in overlooking of private outdoor amenity space and prevent impacts of noise.

Ecology and biodiversity

63. A preliminary ecological appraisal or bat roost assessment was not provided in support of either applications. The appellant considers the site is not within an area where protected species would be found due to it being highly urbanised with a busy night-time economy and highly lit with limited opportunities for foraging. However, no substantive evidence has been submitted to support this view. The existing building is a well-established building. Whilst a large part of the building has a flat roof, there is a smaller pitched and tiled roof over a first floor building which could potentially provide bat roosts.
64. Paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System advises that it is essential that the presence or otherwise of protected species and the extent to which they might be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations will not have been addressed on making the decision. Circular 06/2005 advises that the need to ensure that ecological surveys are carried out should only be left to conditions in exceptional circumstances.
65. In the absence of any survey, I cannot be certain that protected species would not be harmed by the proposal. There are no exceptional circumstances to justify an alternative approach in this instance.
66. The appellant has argued that the Council did not request such an appraisal. However, this is a procedural matter and does not address the merits of the case on which I must make my assessment. In any event, the appellant would have known this was a matter of concern given the Council's reasons for refusal in respect of Appeal A.
67. In addition, neither appeal proposals demonstrate that there would be any enhancement of biodiversity or a biodiversity net gain.
68. In the absence of sufficient information, I cannot be certain that the scheme would not adversely affect protected species or that it would deliver a biodiversity net gain. The proposals would therefore conflict with Policy G6 of the LP and Policy DM27 of the CLP which together require developments to

incorporate biodiversity on development sites, manage impact on biodiversity and to secure net biodiversity gain, informed by the best available ecological information and addressed from the start of the development process.

Living conditions – future occupants

69. In both schemes, the proposed flats would be served by windows in the front and rear elevations. The open plan living areas to both flats would benefit from a dual aspect. Windows in the front elevation would serve the bedroom and the living area. These would be large and would have views over Haynes Lane. A single window in the rear elevation would serve the kitchen and dining area within the open plan area. This is indicated to be around 0.6m wide.
70. Outlook from this window would be limited by the size of this window. However, it would not be so narrow so as to provide no meaningful outlook at all. Furthermore, this room benefits from the additional windows in the front elevation. As such, the flats would have satisfactory outlook.
71. Policy DM10 of the CLP requires all flatted development to provide a minimum of 10 square metres per child or new play space and incorporate high quality communal outdoor amenity space that is designed to be flexible, multifunctional, accessible and inclusive.
72. Neither appeal scheme would provide communal space or play space. The appeal site occupies a small area, most of which would be occupied by the proposed building. This would leave little space for high quality communal outdoor space to be provided.
73. Both flats would benefit from a modestly sized south-facing balconies, providing 5 square metres of outdoor space. Whilst this would not meet the requirement for communal space, future occupants would have access to some outdoor space where they could sit out or dry clothes. Furthermore, due to the small size of the proposed flats, it is unlikely that children would reside within the development. As such, they would not be disadvantaged by the absence of play space. Taking all these factors into account, it would be acceptable for these small flats to be served by their private balcony space only and for no communal space to be provided in this instance.
74. In conclusion, I find that both appeals would provide satisfactory living conditions in respect of outlook and the provision of amenity space. The proposals would therefore accord with Policies D3 and D6 of the LP, Policies SP2.8, SP4.1 and DM10 of the CLP and the Mayor's Housing Supplementary Planning Guidance 2016 (the SPG). Together these seek the provision of appropriate outlook and amenity, environments inviting for people to use and the provision of suitable outdoor amenity space.

Family housing

75. The Council has identified a need for a choice of homes of different sizes. In particular, it has identified a need for larger family sized homes. To achieve this, Policy SP2.7 of the CLP sets a strategic target for 30% of all new homes up to 2036 to have three or more bedrooms.
76. The proposal is to provide two one-bedroom units. For a scheme this size, it would not be possible to provide 30% of all new homes as larger family sized dwellings. Moreover, the site itself is constrained with very limited outdoor

space as well as being above a commercial premises. It would not comfortably lend itself to the provision of a larger dwelling aimed at families.

77. For this reason, I conclude the provision of smaller units is justified. Neither appeal proposal would conflict with Policy SP2.7 as referred to above. Policy DM1.1 of the CLP is cited in both decision notices, however, this policy applies to schemes of ten or more dwelling. It is not therefore applicable in these cases.

Accessible and adaptable dwellings

78. Policy D7 of the London Plan 2021 seeks to provide suitable housing and a genuine choice of housing for London's diverse population, including disabled people, older people and families with young children. To this end, it requires 10% of dwellings to meet the Building Regulations requirement M4(3) for wheelchair user dwellings and all other dwellings to meet requirement M4(2) of the Building Regulations 'accessible and adaptable dwellings'.
79. The proposed dwellings would be at first and second floor. The pavement linking the site to the public highway is narrow and sloping. The main access would be onto this. Furthermore, no lift is proposed. The dwellings would not have step free access either from the footpath or internally.
80. Policy D7 does allow for some flexibility on small scale infill sites stating that in exceptional circumstances the provision of a lift to dwelling entrances may not be achievable. It explains that if it is agreed at the planning stage that a specific development warrants flexibility in the application of the accessible housing standards, affected dwellings above or below ground floor level would be required to satisfy the mandatory building requirements of M4(1).
81. There is no evidence that the Council agreed with the appellant at the application stage that the proposal is for a small site infill development. Nevertheless, the appeal site lies between a terrace of housing and a two-storey mixed commercial and residential building. It is small in size and would amount to an infill between existing development.
82. The appellant has stated that a lift would be unviable but has provided few details to support this.
83. The proposal is for a new build development and in such circumstances the provision of a lift could be made. However, the floorplans indicate that there would be limited space to accommodate a lift without causing a reduction in floorspace for the commercial and residential units. Given the small size of the development and the limited space to accommodate a lift, it would be appropriate to apply the policy flexibly in this case.
84. I conclude that the proposals would not provide accessible and adaptable homes but a flexible approach to the policy would be acceptable in the specific circumstances of these appeals. They would therefore not be in conflict with Policy D7 of the LP as referred to above.

Contaminated land

85. The appeal premises was until recently in use as a commercial workshop. It therefore has the potential to be on contaminated land.

86. Policy DM24 of the CLP deals with land contamination. It sets out that the Council will permit development proposals located on or near potentially contaminated sites, provided that detailed site investigation is undertaken prior to the start of construction in order to assess the nature and extent of contamination; and the production of landfill gases and the potential risk to human health, adjacent land uses and the local environment.
87. The appellant has not undertaken a site investigation for either of the appeal schemes. However, the policy only requires this to be undertaken prior to construction. It would therefore be possible to secure this through the imposition of an appropriately worded pre-commencement condition. I note that the Council has taken this approach in other cases, my attention having been drawn to the permission² at S T P House, 14 St Andrew's Road for a similar scheme subject to a condition requiring a site investigation. This indicates that such an approach has been found acceptable by the Council. However, in that case, the existing building was an office rather than workshop and the risk of contamination was therefore likely to be considerably lower than in the appeal scheme.
88. The Council considers that given the first refusal for redevelopment of the site raised this concern, it would have been possible for the appellant to have undertaken the relevant site investigation in respect of the second application. No such investigation was undertaken. Whilst I recognise this concern, the policy is clear that the requirement is prior to construction, the appellant was not therefore obliged to do so.
89. I therefore conclude that both proposals would be acceptable, having regard to its location on potentially contaminated land. It would therefore accord with Policy DM24 as referred to above.

Car free housing

90. The appeal site is located within an area where there is no on-street parking capacity and the site constraints mean that no off-street parking could be provided. The site has a PTAL 5 rating and therefore good access to public transport. In such circumstances, the Council accepts that a restriction on parking permits would be required to prevent additional parking stress arising as a result of the increase in residential units.
91. A car free development would be acceptable and should be secured through a planning obligation. The submitted UUs appear to secure this in respect of both appeals. Consequently, I find that there would be no conflict with Policy T6.1 of the LP and Policies SP8 and DM30 of the CLP which seek to limit parking spaces in the borough and support car free housing.

Other Matters

92. The proposal would utilise previously-developed land which is a positive aspect of the scheme. However, the proposal in both schemes would not deliver a satisfactory form of development. It has been suggested that the proposal would bring an active use to a tired old building. However, it is understood that the building was until quite recently occupied and in use in association with the glassworks. There is no evidence that the existing building could not continue to be used.

² Council Ref: 18/00794/FUL

93. The scheme would contribute two additional residential units which would be a positive aspect of the scheme.
94. Matters in respect of value to the local area are not planning considerations. I have no evidence of anti-social behaviour associated with the existing building on the site and nothing to suggest that the appeal scheme would address this.

Planning Balance and Conclusion

95. I have found that the proposal would provide satisfactory living conditions for future occupants. It would not need to deliver family housing. In addition, I have found that the provision of accessible and adaptable housing can be applied flexibly. Investigations into contaminated land could be controlled by a condition. The scheme would deliver car-free housing. These are all neutral factors in the balance.
96. The proposal would deliver 2 one-bedroom market dwellings in an accessible location. This would contribute to the supply of housing. Due to the small scale of the development, these limited benefits carry moderate weight.
97. However, my finding is that the scheme would cause significant harm to the character and appearance of the area, including the UNTCA. It would lead to the loss of employment land, with replacement employment floorspace provided as part of a mixed use development which would not be satisfactorily serviced. In addition, it has not been demonstrated that the schemes would provide satisfactory cycle parking. The scheme would also cause significant harm to the living conditions of neighbouring occupants. It has also not been demonstrated that it would not harm protected species. These are factors that carry significant weight against the proposal.
98. The harmful effects of the proposal would be in conflict with both development plan policies and the Framework policies. This would not be outweighed by the limited benefits of the scheme. My conclusion is therefore that the scheme conflicts with the development plan as a whole.
99. The proposed development in both Appeal A and Appeal B would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeals should be dismissed.

Rachael Pipkin

INSPECTOR