



## Appeal Decision

Hearing held on 27 September 2023

Site visit made on 27 September 2023

**by David Prentis BA BPI MRTPI**

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

**Decision date: 4<sup>th</sup> October 2023**

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### **Appeal Ref: APP/N5660/W/23/3324312**

### **3 Highland Road, London SE19 1DW**

- 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 Highland Residential Limited against the decision of the Council of the London Borough of Lambeth.
  - The application Ref 21/03147/FUL, dated 2 August 2021, was refused by notice dated 16 December 2022.
  - The development proposed is described as *erection of a part 3 and part 6 storey building (plus lower ground floor) comprising 20 residential units (Use Class C3); provision of associated car and cycle parking, refuse and recycling storage, new landscaping, amenity areas and children's play space (following demolition of existing buildings)*.
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### **Decision**

1. The appeal is dismissed.

### **Application for costs**

2. At the Hearing, an application for costs was made by Highland Residential Limited against the Council of the London Borough of Lambeth. This application is the subject of a separate decision.

### **Preliminary matters**

3. Two revised plans were put forward with the appeal documents:
  - Proposed Lower Ground Floor Plan (PA1006-MB-00-099 Rev C)
  - Proposed North Elevation (PA1006-MB-04-101 Rev A)

The changes would create a protected corridor from the stairwell to the exterior at lower ground floor level, in the interests of fire safety. This would result in a minor change to the north elevation at lower ground floor level. The changes were not opposed by the Council. I consider that these changes would not alter the substance of the proposal before me. Moreover, they would be mainly internal so no interested parties would be prejudiced. I have therefore determined the appeal on the basis of the amended plans.

4. Following further discussion with the appellant, the Council did not pursue its third reason for refusal, relating to the urban greening factor. The introduction of the protected corridor referred to above resolved the Council's fourth reason for refusal. The Council's fifth reason for refusal related to the absence of planning obligations. This was resolved by the submission of a unilateral undertaking (UU).

5. The final draft of the UU was discussed at the Hearing and a completed document was submitted on the following day. The UU would provide for:
- a controlled parking zone contribution (if required);
  - an employment and skills contribution;
  - an open space contribution;
  - a play space contribution;
  - monitoring contributions;
  - early and late-stage reviews of viability, which may result in an affordable housing contribution;
  - energy and sustainability measures, including a district energy network statement, carbon offset payment, and energy monitoring;
  - transport measures, including a travel plan, travel plan monitoring and review, car free provisions, car club membership and cycle club membership; and
  - employment and skills measures, including an employment and skills construction plan.
6. The Council produced a statement, including references to relevant development plan policies, explaining how each of the obligations would meet the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. At the Hearing, no party raised any concerns in relation to the obligations themselves or in relation to their compliance with the CIL Regulations. I see no reason to take a different view and have taken the obligations into account accordingly.

### **Main issues**

7. The main issues are:
- the effect of the proposal on the character and appearance of the area;
  - the effect of the proposal on the historic environment; and
  - the nature and extent of any economic, social and environmental benefits.

### **Reasons**

#### *The effect of the proposal on the character and appearance of the area*

8. The appeal site is 0.11ha in extent and is within Phase 2 of the Central Hill Estate, which was built by Lambeth Council in the 1970s. The existing building was previously a children's home and, at the time of the Hearing, was in use as a house in multiple occupation (HIMO). The Central Hill Estate is in an elevated location. Phase 1 comprises low rise, high density housing, arranged in terraced blocks, stepping down the slope to take advantage of extensive views north towards central London.

9. Phase 2 has a distinctly different character. Located between Phase 1 and the backs of Victorian villas fronting Gipsy Hill, it is mainly comprised of houses, with some low rise flats, arranged around two landscaped pedestrian courtyards. The southern courtyard contains a number of mature trees, whilst the northern courtyard (adjacent to the appeal site) contains a single mature tree. Many of the houses have three storeys, with garages at street level accessed from Highland Road or from garage courts. However, the design has taken advantage of the natural slope of the land, such that the courtyards are enclosed by two storey frontages. The houses are arranged in short terraces with stepped plan forms. Floor levels are also stepped, reflecting the underlying topography. The buildings have a distinctive design with sawtooth roofs and dark grey cladding. Phase 2 is not in a conservation area, nor is it designated in its own right. Nevertheless, to my mind this enclave has a coherent and consistent design, with a small scale, enclosed and intimate character.
10. The design of the proposed flats has sought to respond to this context. The southern wing would have a mainly two and three storey scale, with a stepped façade and front and rear building lines reflecting the adjoining terrace. Subject to a suitable choice of facing materials, which could be controlled by a condition, I consider that it would be in keeping with its surroundings.
11. The northern wing has sought to take advantage of the sloping ground by providing service access at a lower ground floor level. However, as seen from the courtyard, it would present six full levels of accommodation, with the stair enclosure leading to the roof terrace effectively adding a storey to the southern and eastern elevations. In my view this would result in a stark contrast between the scale of the proposal and the scale of the receiving environment. This would be particularly apparent in views from within the northern courtyard, where the proposed building would dominate the space, detracting significantly from the qualities that it currently possesses.
12. The contrast in scale would also be apparent in views from Highland Road, where the northern wing would rise above the modest scale of the existing housing, and in views from the garage court to the south of the courtyard. It would also be an incongruous feature in views from Gipsy Hill, which are discussed below.
13. The documents supporting the application seek to rely on the existence of tree screening to mitigate the visual impact of the proposal. However, at the Hearing, the appellant accepted that any screening effect would come from just two trees, a mature ash within the northern courtyard and a mature sycamore on the site boundary, between the proposed northern wing and Gipsy Hill. Whilst the presence of these trees is a material consideration, they are both deciduous and would offer limited screening in wintertime. Moreover, as individual trees, they could be lost or significantly reduced at any time as a result of disease or storm damage. The trees in question undoubtedly contribute positively to the character and appearance of the area. However, in assessing the appropriateness of the scale of the proposal in urban design terms, I attach little weight to their presence.
14. I note that London Plan (LP) Policy D3 encourages higher density development in accessible locations. Although there was some dispute over the appropriate PTAL level for the site at the Hearing<sup>1</sup>, in general terms I consider that this is a

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<sup>1</sup> Public Transport Accessibility Level

site that is accessible by public transport and where services and facilities in the Crystal Palace Triangle could be reached on foot. Even so, the emphasis of Policy D3 is a design-led approach, whereby development proposals should enhance local context by responding positively to local distinctiveness.

15. The proposal would achieve some objectives of good design, including by providing clearly defined public and private spaces, convenient pedestrian routes and efficient servicing. It would also achieve comfortable indoor and outdoor environments. However, my overall assessment is that these positive features would be outweighed by the excessive scale of the northern wing, which would fail to enhance the local context and would be significantly harmful to the character and appearance of the area. The proposal would therefore conflict with LP Policy D3. It would also conflict with Lambeth Local Plan (LLP) Policies Q5 and Q7 which together seek to promote good design and to protect local distinctiveness. For the same reasons, it would not achieve good design, in the terms of the National Planning Policy Framework (the Framework).

#### *The effect of the proposal on the historic environment*

##### Christ Church

16. At the time of listing<sup>2</sup>, the Grade II listed building comprised Christ Church, which was built in 1867, and the vestry, porch and north west tower which were added in 1889. The main part of the church was subsequently lost following a fire. There is some low level stonework at the eastern end of the former church, which has been incorporated into a public garden. A replacement church and church hall occupy much of the area where the original church once stood.
17. The elements of the listed building that survive are therefore much reduced from the structure that was originally listed. Nevertheless, all of the remaining elements are part of a listed building and I have therefore had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in reaching my decision. The modern church hall shares a boundary with the northern part of the appeal site but there would be no physical impact on the listed building. The issue for this appeal is therefore the effect on setting.
18. The church and tower were built in the French 13<sup>th</sup> century style by the architect John Giles. The tower appears to have survived more or less intact, although some works of alteration and making good have been necessary where it was once connected to the church. It has both historic and architectural interest, through the historic fabric that is retained and as an example of church architecture. The preserved remains of the apse also contribute to the significance of the building, through the historic fabric that is retained and because they allow the relationship of the tower to the former church to be readily understood.
19. Setting makes an important contribution to the significance of the listed building. The tower was built close to the corner of Gipsy Hill and Highland Road and was no doubt intended to be a prominent landmark in the locality. The siting, height and strong vertical emphasis of the design are such that the tower is still a striking feature, both in views up Gipsy Hill from the area near the station and in views down the hill, towards central London.

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<sup>2</sup> The building was first listed in March 1981

20. The loss of the original church has formed a gap between the tower and the flank wall of No 21 Gipsy Hill. This has opened up new views of the tower and of greenery to the rear of the Gipsy Hill frontage, including trees within the appeal site. These views evidently formed no part of the original design intentions. Nevertheless, the replacement church has a modest scale and restrained design. It is set back from the Gipsy Hill frontage behind the public garden that has been created where the apse once stood. It appears to me that the design response to the loss of the listed church has sought to avoid competition with the historic tower. This has allowed the tower to assume even greater prominence in the street scene than it previously had. These features are an important aspect of the setting of the tower today because they enable it to be appreciated as a historic structure in its own right. Moreover, as noted above, the garden and preserved remains of the apse enable the historic relationship between the tower and the former church to be understood.
21. The existing buildings on the appeal site can be glimpsed from Gipsy Hill through the gap described above. However, the height and mass of the eastern elevation of the taller northern wing of the proposed flats would have a much greater impact on such views. Even allowing for the effects of perspective and distance, the proposed building would be seen as having a significantly greater scale than the Victorian villas fronting Gipsy Hill. There would be some screening from a sycamore tree but, for the reasons given above, I attach limited weight to this factor. The mainly green gap between the tower and No 21 would be dominated by the proposed structure.
22. I do not think that the proposed building would dominate the tower itself because the tower is such an imposing feature in its own right. Nevertheless, the proposal would compete with and distract from the listed building. It would fail to preserve the setting of the listed building and would be harmful to its significance.
23. These effects would only be experienced from points in Gipsy Hill that are relatively close to the tower. Longer views up and down Gipsy Hill would be unaffected. Drawing all this together, I consider that the degree of harm to the significance of the listed building would be less than substantial, in the terms of the Framework. I would characterise the level of harm as low, within the spectrum of less than substantial harm. However, this does not mean that the harm would be minor or unimportant. The Framework makes clear that great weight is to be given to conserving the significance of designated heritage assets.

#### Gipsy Hill Conservation Area

24. The Victorian villas fronting Gipsy Hill immediately to the east of the appeal site, and the listed buildings described above, are within the conservation area. The site itself is not within the conservation area. However, the Framework requires that any harm to the significance of a designated heritage asset, including through development in its setting, should require clear and convincing justification.
25. The conservation area is a good example of mid-19<sup>th</sup> century suburban development. It contains examples of Victorian domestic architecture, including elegant three storey terraced housing and detached villas. Setting is important to the significance of the conservation area, with dramatic views along Gipsy Hill towards central London being a distinctive feature of the designated area.

The tower of Christ Church is a key building within the conservation area, prominent in views both up and down Gipsy Hill. As noted above, those views would be unaffected by the appeal scheme.

26. At the Hearing, the Council confirmed that its concerns in relation to effects on the conservation area related to the views through the gap between the tower and No 21 Gipsy Hill. I agree that these are the most relevant views to consider because views of the site from the public realm elsewhere within the conservation area are limited by development fronting Gipsy Hill and Highland Road.
27. With the exception of the tower, the street frontages to Gipsy Hill have a predominantly three storey scale. The green gap adjoining No 21 emphasises the dramatically contrasting scale of the tower. By harming the setting of the tower, which is a key building in the conservation area, the proposal would harm the setting and the significance of the conservation area as a whole. Moreover, the scale and massing of the proposal would result in an unduly prominent feature, out of keeping with the consistent scale of the Victorian suburb. This would be harmful to the setting and the significance of the conservation area. Having regard to the localised nature of these effects, I would characterise the level of harm as low, within the spectrum of less than substantial harm.

#### Conclusions on historic environment

28. The proposal would fail to preserve the setting of the tower of Christ Church and would be harmful to its significance. It would also cause harm to the significance of the Gipsy Hill Conservation Area, through development in its setting. It would conflict with LP Policies D3 and HC1, insofar as those policies require development to conserve the significance of heritage assets and to respect and enhance local character. It would also conflict with LLP Policies Q20 and Q22, which seek to protect the settings of listed buildings and conservation areas. Paragraph 202 of the Framework requires that less than substantial harm to a designated heritage asset should be balanced against the public benefits of the proposal. I shall return to that balance below.

#### *The nature and extent of any economic, social and environmental benefits*

#### Social and economic benefits arising from housing delivery

29. The Council and the appellant disagree as to whether the Council is able to demonstrate a five year supply (plus a 5% buffer) of deliverable housing sites, as required by the Framework. The Council considers that it has a supply equivalent to 5.09 years, whereas the appellant's figure is 4.09 years. However, for the reasons set out below, even if the supply were as low as the appellant submits, it would not alter my overall conclusion on the appeal. Consequently, it is not necessary for me to comment further on this matter.
30. The proposal would deliver 20 residential flats for open market sale. Given the Framework's general imperative to boost the supply of housing, this is an important factor weighing in favour of the appeal, particularly if, as the appellant suggests, there is not a five year supply of deliverable housing sites. However, it is necessary to take account of the fact that the appeal site is already in residential use.

31. The existing building on the appeal site was built as a children's home (Class C2) and operated as such at least until 1993. The Council and the appellant agree that this is still the lawful use of the building. The Council and the appellant also agree that the current use of the building is a HIMO. The officer's report notes that this form of specialist housing often provides essential accommodation for some of the most disadvantaged and vulnerable residents of the borough. The existing use of the building was described in the financial viability appraisal of January 2022 as providing temporary accommodation for homeless families. At the Hearing, the Central Hill Estate Residents Association gave evidence that the building is currently in use for temporary accommodation and that the occupiers include a significant number of families with young children. This evidence was not disputed.
32. LLP Policy H9 seeks to resist the loss of HIMOs unless it can be shown that the accommodation is no longer needed, the property is no longer capable of meeting modern standards or the existing accommodation would be re-provided elsewhere. The officer's report stated that there is a high demand for the existing use and that, with refurbishment, the building would be capable of meeting modern standards. No contrary evidence was put forward at the Hearing, nor was there any proposal to re-provide the accommodation. The Council did not object to the proposal on the basis of Policy H9 because the use as a HIMO is unauthorised. I agree with that approach to the policy. Nevertheless, the actual impact of the proposal, in terms of meeting housing needs, is still an important material consideration that needs to be taken into account.
33. The Framework states that it is important that the needs of groups with specific housing requirements are addressed. Whilst I note that the current use is unauthorised, it appears to have continued for a period of years with the full knowledge of the Council. The assessment of benchmark land value, which formed part of the financial viability appraisal, assumes a continuing income stream from this use. There is nothing before me to suggest that, in the absence of redevelopment, the site would not continue to provide temporary housing. I consider that the loss of the existing use, for which there is a clear social and economic need, should be weighed against the delivery of new housing. Moreover, the impact of the loss of the existing use on those in need of temporary accommodation (including families with children) should not be downgraded purely on the basis that the use is not authorised.
34. The proposal would not provide any affordable housing in the first instance. Although the UU includes review mechanisms, there is no certainty that viability would improve from the baseline situation. Even if it did, the UU makes no provision for any affordable housing on site. An affordable housing contribution could be applied anywhere in the borough. I therefore attach limited weight to the possibility that the review mechanisms may generate an affordable housing contribution in the future.
35. The proposal would bring economic benefits during the construction period and through spending by new residents in the local economy. However, the construction benefits would be temporary. Existing residents will already be contributing to the local economy through their household spending. It may be that there would be increased spending from the new residents. On the other hand, there may well be economic and social costs and disruption resulting from the need to rehousing the existing occupiers.

36. I note that the Inspector who considered a recent appeal at Brixton Hill Place<sup>3</sup> attached substantial positive weight to the delivery of a similar amount of new housing and moderate positive weight to the economic benefits of that scheme. However, the circumstances of that appeal were quite different in that no existing residential accommodation was being displaced. That decision therefore has very little relevance to this appeal.
37. I take account of the fact that the proposed residential units would be of good quality in terms of space standards and access to natural light and outlook. Nevertheless, I consider that there are significant social and economic disadvantages to weigh against the delivery of 20 new housing units. Even if there was a shortfall in housing land supply, to the extent that the appellant suggests, my overall assessment would be that limited weight should be attached to the economic and social benefits of housing delivery in all the circumstances of this case.

### Environmental benefits

38. As noted above, this is a site that is accessible by public transport and where services and facilities in the Crystal Palace Triangle could be reached on foot. This would be a benefit to new residents, in that it would enable them to make more journeys by sustainable modes of transport. However, the same locational advantages already benefit the existing residents. The transport provisions in the UU are designed to mitigate the transport impacts of the proposal. They are therefore a neutral factor in the planning balance.
39. The proposal would achieve a biodiversity net gain and an urban greening factor greater than the minimum requirements of the relevant policies. The proposed design and the energy strategy would achieve savings in carbon production greater than the reduction sought by the LP. On the other hand, it is necessary to take account of the embodied energy contained in the existing building, which would be demolished. A sustainable drainage system would help to manage risks of surface water flooding. However, this is a policy requirement.
40. My overall assessment is that limited weight should be attached to the environmental benefits of the proposal.

### **Other matters**

41. Local residents have raised concerns in relation to effects on sunlight and daylight and overlooking. A sunlight and daylight study, which was submitted with the application, concluded that the scheme would comply with the relevant guidelines. This conclusion was accepted by the Council and I see no reason to disagree. I consider that there would be sufficient separation to avoid harmful overlooking of nearby residential properties in Gipsy Hill or of the Vicarage in Highland Road. There may be some overlooking of high-level windows at the church and church hall. However, these are not residential properties. I do not think that the degree of overlooking here would be sufficient to amount to an objection in planning terms.
42. The proposal includes two parking spaces for the use of occupiers who may be disabled. It is intended primarily as a car-free scheme. This approach is supported by planning policy and is appropriate in this location. Although there

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<sup>3</sup> Appeal Ref: APP/N5660/W/23/3317382

is not currently a controlled parking zone, the UU makes provision for a contribution to establishing such a zone, should that be thought necessary in the future. Overall, I consider that the transport measures contained in the UU would provide satisfactory mitigation for the transport impacts of the proposal.

43. I conclude that the other matters considered in this section do not add materially to the cases for or against the appeal.

### **Conclusions**

44. The proposal would fail to preserve the setting of the tower of Christ Church and would be harmful to its significance. I have characterised the degree of harm as a low level of harm, within the spectrum of less than substantial harm. Paragraph 202 of the Framework requires that harm to be balanced against the public benefits of the proposal. The Framework states that great weight is to be attached to the conservation of designated heritage assets. No heritage benefits have been identified. The scheme would bring some economic, social and environmental benefits. These are public benefits in the terms of the Framework. However, they attract only limited weight, for the reasons given above. In my view they do not outweigh the harm to the significance of the listed building. The proposal would therefore be contrary to the policies of the Framework relating to designated heritage assets.
45. The proposal would also cause harm to the significance of the Gipsy Hill Conservation Area, through development in its setting. For the same reasons, the public benefits would not outweigh the harm to the significance of the conservation area.
46. As the proposal is contrary to the policies of the Framework relating to designated heritage assets, the approach to decision making set out in paragraph 11(d) of the Framework would not be engaged, even if there was a shortfall in housing land supply as the appellant submits<sup>4</sup>.
47. For the reasons given above, the proposal would be contrary to the development plan. I have not identified any considerations that indicate a decision other than in accordance with the plan. The appeal should therefore be dismissed.

*David Prentis*

Inspector

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<sup>4</sup> See footnotes 7 and 8 to paragraph 11 of the Framework

## APPERANCES

FOR THE APPELLANT	
Charles Streeten	Counsel
Luke Raistrick MPlan MRTPI	Centro Planning Consultancy
Milan Babic MA DipArch RIBA	Milan Babic Architects
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FOR THE COUNCIL	
Jeffrey Holt	Deputy Head of Strategic Applications
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INTERESTED PARTIES	
Sabine Mairey	Central Hill Estate Residents Association
Rev Jonathan Croucher	Vicar of Christ Church
George Johnson	Local resident
James Haddock	Local resident
Diane Skidmore	Local resident
Robert Tydeman	Local resident
S Weeraman	Architects for Climate Action Network