

Appeal Decision

Site visit made on 13 February 2024

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2024

Appeal Ref: APP/N5660/W/23/3328870

1 Cawnpore Street, London SE19 1PF

- 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 Alistair Court against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 23/01190/FUL, dated 29 March 2023, was refused by notice dated 28 July 2023.
 - The development proposed is erection of two storey rear extension, and change of use of ground floor, to form a new four bedroom dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published in December 2023. I do not consider in this case that this raises any matters that require me to seek any further representations from the parties and I am satisfied that no interests have been prejudiced in this regard.
3. During the course of the appeal, the appellant submitted a signed unilateral undertaking which seeks to address the Council's third reason for refusal relating to sustainable modes of travel and car and cycle hire memberships. I shall return to this matter later in my decision.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the supply of employment land and premises in the borough;
 - whether the proposed development would provide for satisfactory living conditions for future occupiers, with particular regard to privacy; and,
 - whether the proposed development would preserve or enhance the character or appearance of the Gipsy Hill Conservation Area.

Reasons

Employment land and premises

5. The appeal site relates to a building on the corner of Cawnpore Street and Gipsy Hill which includes the lower ground floor level of 72-74 Gipsy Hill and the

buildings to the rear at 1 Cawnpore Street. The ground floor of No 72-74 is in use as offices and the upper floors are used as flats.

6. There is some ambiguity as to the lawful use of the lower ground floor level. However, the previous applications and an appeal relating to this site¹, indicate that the northern part of the site has been used as a carpenter's workshop within B2 use class and the southern part of the site at 1 Cawnpore Street has been used for storage purposes within B8 use class.
7. I note the appellant's comments regarding the current use of the appeal site being a *sui generis* use, involving a mixture of a builder's yard and storage ancillary to the offices occupying the upper ground floor. This view is supported by my observations during the site visit, when I saw that various items were stored at lower ground floor level, including building supplies and equipment, and there also appeared to be workshop areas. The officer report for the recent certificate of lawfulness application² also contains reference to the use of part of the lower ground floor area as a builder's yard. Notwithstanding this, there is no substantive evidence before me that this is a lawful use. No compelling evidence has been provided to demonstrate that the lawful use of the appeal site is not still B2 and B8, and I have considered it to be so.
8. On that basis, it is reasonable to conclude that the site constitutes a non-designated industrial site which is afforded protection by Policies E2 and E7 of the London Plan (2021) and Policy ED2 of the Lambeth Local Plan (2021) (Local Plan). These policies broadly seek to resist residential proposals on non-designated industrial sites and B use class premises unless there is no reasonable prospect of the site being used for industrial and related purposes.
9. The appeal proposal is for the change the use of the whole of the lower ground floor to a self-contained flat. Therefore, it would lead to a reduction in the area used for employment purposes and would consequently diminish the contribution the site makes to the current availability of employment land and flexibility in its ability to accommodate future uses. With reference to Policy ED4 (non-designated industrial sites) of the Local Plan, no marketing exercise has been carried out. As such, I cannot be satisfied that there is no reasonable prospect of the site being used for industrial and related purposes.
10. Therefore, on the basis of the evidence before me, I conclude that the proposal would result in a loss of employment floorspace. It would reduce the supply of employment land and premises within the borough. Accordingly, the proposal would conflict with Policies ED2 and ED4 of the Local Plan and Policies E2, E4 and E7 of the London Plan which seek to protect and maintain the supply of employment land and premises in the borough.

Living conditions

11. The ground floor windows to the rear of the appeal building serve office and storage areas used in connection with the commercial premises. These windows would have close range views towards the side facing windows of the master bedroom of the proposed dwelling and the living/dining room windows below. They would also overlook the proposed courtyard garden. That would be potentially harmful to the living conditions of future occupiers of the dwelling in terms of actual and perceived overlooking.

¹ Appeal Ref: APP/N5660/W/20/3254825

² Council Ref: 22/02888/LDCE

12. However, as the rear office windows fall within the ownership of the appellant these could be fitted with obscure glazing. The appellant would be willing to accept a condition to that effect. There is no substantive evidence before me to indicate that having the office windows obscure glazed would make the office space less attractive to the extent that would harm the employment capacity of the site, as suggested by the Council. Therefore, had I been minded to allow the appeal, an appropriately worded condition requiring the use of obscure glazing to the rear office windows could have been imposed to protect the privacy of future occupiers of the proposed dwelling.
13. The rear windows above the office serve the flats at first floor level. These are situated at a much higher level than the windows of the proposed dwelling and rear courtyard and any views down to the dwelling windows and courtyard would be from an oblique angle. Therefore, any overlooking in this regard would not be significantly intrusive.
14. Bedroom 3 would be served by small windows in the side of the building which would look onto the pavement at low level. These windows would be secondary to the window and French doors on the rear elevation. As secondary windows, it would not be unreasonable for these to be obscure glazed which would provide sufficient privacy. The windows to bedroom 4 would be overlooked from the bin storage area and cycle store. However, these areas would only be used by the occupiers of the development. On that basis, bedroom 4 would not lack privacy.
15. For the above reasons, I conclude that the proposed development would provide satisfactory living conditions for future occupiers, having particular regard to privacy. It would comply with Policies H5 and Q2 of the Local Plan and Policy D6 of the London Plan, which seek to ensure, amongst other things, that development accords with the principles of good design and provides acceptable standards of privacy.

Character or appearance of the Conservation Area

16. 72-74 Gipsy Hill is an attractive former dairy building located on a prominent corner. It is located within the Gipsy Hill Conservation Area. The Conservation Area is a linear north-south area whose significance is derived partly from the Victorian domestic architecture, including elegant three storey terraced housing and detached villas. Views down Gipsy Hill towards central London and the prominence of Christ Church in both directions are important aspects of the setting of the Conservation Area.
17. I have considered the effect of the scheme in the context of the obligations under the Act³, which requires special regard to be given to the desirability of preserving the character or appearance of the Conservation Area. This is reflected in paragraph 205 of the Framework which requires that great weight should be given to the asset's conservation when considering the impact of a proposal on its significance.
18. The Council has raised no concerns regarding the siting and scale of the proposed development including the rear extension, however the delegated report includes reference to concerns around the treatment of the proposed window openings and the materials to the mansard roof of the extension. It is proposed to re-glaze the two basement windows on Cawnpore Street and fit

³ Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

them with timber frames. I consider that this alteration would not be harmful to the character or appearance of the building subject to further details of the window joinery. New brick voussoirs would also need to be incorporated into the new openings to ensure these are sympathetic to the existing window designs of the building. The use of slates to the mansard roof would not match the clay tiles which characterise the existing building. However, this matter could have been resolved by a suitably worded condition requiring the use of matching roof materials had I been minded to allow the appeal.

19. Therefore, subject to the above, I consider that the development would preserve the character and appearance of the Gipsy Hill Conservation Area. There would be no conflict with Policies Q5, Q11 and Q22 of the Local Plan and guidance within the Building Alterations and Extensions Supplementary Planning Document which require, amongst other things, that the design of proposals responds to positive aspects of local context and historic character.

Other Matters

20. As set out above in paragraph 3, the appellant has submitted a signed unilateral undertaking which relates to car club membership. The Council advises that, subject to amendment, the legal agreement would resolve the third reason for refusal. However, as I am dismissing the appeal for the reasons I have set out previously, it has not been necessary for me to consider the submitted undertaking in any further detail.
21. An interested party has raised other concerns with the proposal, including its effect on the living conditions of neighbouring occupiers and parking provision. Whilst I have had regard to all matters raised, these do not alter my decision.

Planning Balance and Conclusion

22. I have found that the proposal would provide satisfactory living conditions for future occupiers with particular regard to privacy and it would preserve the character and appearance of the Gipsy Hill Conservation Area. The absence of unacceptable effects in these respects is effectively neutral in my assessment of the case, rather than weighing positively in favour of allowing the appeal. However, the development would be harmful to the supply of employment land and premises in the borough. This harm is worthy of significant weight.
23. The development would offer benefits in terms of providing a new dwelling in an accessible location close to services and other facilities. It would also have economic benefits through employment opportunities created during the construction phase and on-going support for local services by future occupiers. However, given the modest scale of the development, the weight attributable to these matters is limited. I consider that these limited benefits would be outweighed by the adverse impacts.
24. The proposal does not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. For the reasons given, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR