



# Appeal Decision

Site visit made on 18 August 2023

**by Alison Scott (BA Hons) Dip TP MRTPI**

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

**Decision date: 26<sup>th</sup> March 2024**

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## **Appeal Ref: APP/N5660/W/22/3305266**

### **124-126 The Cut, London SE1 8LN**

- 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 MY City Centre Limited against the decision of London Borough of Lambeth.
- The application Ref 21/01864/FUL, dated 16 April 2021, was refused by notice dated 22 February 2022.
- The development proposed is mixed use development with commercial, business and service floorspace (Class E) at ground floor and basement levels and residential uses (Class C3) on the upper floors.

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## **Decision**

1. The appeal is dismissed.

## **Preliminary and Procedural Matters**

2. The appeal concerns proposed development at 124-126 The Cut within the setting of The Old Vic Theatre, a Grade II\* listed building (List Entry Number:1068710) listed on 19 October 1951. The Royal National Theatre Studios (RTNS) sits adjacent to the Old Vic and is also a Grade II statutorily listed building (List entry 1391540) and listed on the 22 June 1994. No works or development is proposed to the listed assets although the appeal site is within their settings.
3. As the proposal relates to the settings of listed buildings, I have had special regard to section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. A consented scheme<sup>1</sup> for a five-storey residential building with commercial uses has been granted by the Council on the site. There is no dispute between the parties that this consent is extant and I have no reason to disagree with these findings. In addition, there is also an approved s73 application to vary the original approval<sup>2</sup>.
5. The Council amended the original description of the development from this banner heading to describe it as 'erection of a nine storey building comprising a commercial unit (Class E) at ground floor and basement level and 9 no. self-contained residential flats (Class C3) on the upper levels'. This description is

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<sup>1</sup> 16/05063/FUL - Demolition of existing building and erection of 5 storey building including basement to provide a shop (Use Class A1) at ground and basement levels and 4 self-contained flats above. Approved 9 March 2017.

<sup>2</sup> 19/03654/VOC Variation of condition 2 (Approved Plans) of planning permission 16/05063/FUL (Demolition of existing building and erection of 5 storey building including basement to provide a shop (Use Class A1) at ground and basement levels and 4 self-contained flats above). Approved 11 September 2020

carried through to the appeal form. I am satisfied the description accurately describes the proposal before me.

6. A draft legal agreement by way of a unilateral undertaking has been submitted by the appellant detailing their planning obligations in order to mitigate the effects of the development. The Council have not contested its details and I have no reason to dispute its contents that forms part of my assessment.
7. The National Planning Policy Framework (the Framework) has been revised on 19 December 2023, and after the submission of the appeal. The historic environment policies have remained unchanged within the revised version of the Framework which is a material consideration.

## **Main Issues**

8. The main issues are the effect of the proposed development on the settings of the heritage assets of the Grade II\* listed building, the Old Vic Theatre, and the Grade II listed Royal National Theatre Studios, and its effect upon the character and appearance of the local area.

## **Reasons**

### *Special interest and significance*

9. The Old Vic Theatre (the Old Vic) is symbolic as one of the oldest theatres to survive in England. The statutory list description describes the Old Vic as built between 1816 and 1818, designed by Rudolph Cabanel with further remodelling in the 19<sup>th</sup> and 20<sup>th</sup> centuries. The historical significance of the Old Vic derives from its status as a leading centre of opera, ballet and serious theatre in the twentieth century. In addition, its high-grade II\* listing is in recognition of its architectural quality and rarity. Furthermore, the interior is described within the statutory listing as 'remarkable' with its bold and expressive interior adding significance to its special architectural interest. Its substantial architectural scale and massing has been built to a Palladian style although the front elevation has been remodelled in the recent past to resemble its original façade facing The Cut of three storeys and five bays with projecting five-bay colonnade, open pediment above the tympanum bearing the Royal coat of arms. The impressive side elevations date from 1818 and consist of eleven bays with giant order of brick pilasters incorporating rendered roundels under contrasting blind brick arcading, and with blocked first-floor windows. The theatre, as a whole, with its rendered, broken pediment show, and presence dominating the Cut and wider context is an impressive piece of architectural ability.
10. In terms of the significance of the heritage asset that is the RNTA, it was originally built as an ancillary building to functionally support the Old Vic during a period of post-war theatre growth in the 1950's, used as scenery workshops, stores and offices. Both buildings are not only related in their functional connection but also as an important part of societal history. Its significance is derived from the Brutalism characteristics of the 1950's, built using a reinforced expressed concrete frame structure of vertical concrete columns and horizontal beams and board marked china clay aggregate, together with a lightweight band of horizontal glazing. The RNTA encapsulates modernist post-war architecture and is a fine example. It juxtaposes with the refined classical

style and splendour of The Old Vic and contributes to making them a remarkable and striking pair.

*Appeal proposal and effects*

11. The proposal is to erect a nine-storey building on the corner plot of vacant land at the western end of The Cut, attached to the end dwelling of a three storey terrace in order to create Class E floorspace on the ground and basement floor, with residential flats above together with a roof top garden.
12. The Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced. The Framework explains that its extent is not fixed and may change as the asset and its surroundings evolve.
13. The Old Vic sits to the south of the appeal site and dominates the local townscape. Its setting is experienced through a series of strategic road junctions populated by buildings no greater than five storeys, all constituting a key gateway into the transport hub of Waterloo. The surrounding urban grain typifies comprehensive redevelopment following World War II clearance to both the northern and southern sides of The Cut. This has given way to a built environment of mixed scale of varied architectural styles including large-scale modern 21<sup>st</sup> century additions. Although buildings vary in architectural style and detailing, they do not compete with the theatre's architectural grandeur but rather remain subservient to it. The corner location of the Old Vic at the junction with The Cut and Waterloo Road, the established public realm and pockets of open space all create a sense of separation and spaciousness that frames the setting of the heritage asset, allowing its significance to be positively experienced. The appeal site is attached to the low-level row of the three storey post war houses of limited architectural value. Despite their modest architectural aspirations, this terrace frames perspectives of the Old Vic along The Cut contributing positively to ones' ability to appreciate the Theatre.
14. In terms of the modernist RNTS that sits adjacent to the Old Vic, it is also experienced within the same setting as it is physically and functionally related to the Old Vic as theatrical buildings. Although quite unique in scale and design when compared to that of the Old Vic, the context of the wider setting allows an appreciation of the interrelationship between the two heritage assets that carries group value to their significance and special interest.
15. From my assessment I can see how the proposal is designed to respond to other local vernacular incorporating strong geometry, arched windows to reflect the Old Vic arcades, and a palette of materials and other design cues that would broadly reflect the characteristics of surrounding buildings. However, erecting a nine-storey development on a small plot, and attached to a three storey terrace in a context of buildings of three to five storeys would be in clear conflict with the character, massing and urban grain of the area, despite the non-conformity of the local vernacular and where no other high-rise buildings are sufficiently close to mitigate its impact. As a tall, upright feature that would encompass its full perimeter, it would be considerably higher than the Old Vic and the RNTS. The appeal site is within their settings and would compete for attention and draw attention away from these highly graded and nationally important designated heritage assets, undermining the functional association that endures and group value of the assets. Therefore, as a visually intrusive architectural form, the proposed scheme would directly and negatively affect their settings and detract from the special interest of both assets.

16. I am pointed by the appellant to the potential for redevelopment of the local area, emerging development, local sites identified for 'tall buildings', consented re-development of a site behind the appeal building and other consented development including a large-scale mixed-use scheme in the neighbouring borough of Southwark. From the evidence before me, large scale developments of various heights will come forward within the wider context of the heritage assets. Be that as it may, the appeal site shares a much closer physical relationship with the assets than these other developments.
17. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the conservation of designated heritage asset's (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 206 goes on to say that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
18. With reference to Paragraphs 205 and 206 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the type and scale of the proposed development, and the degree to which it impacts on the settings of the designated heritage assets, I find the category of harm in this instance to be 'less than substantial'. Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use.

#### *Public benefits*

19. The Planning Practice Guidance entitled Historic Environment, advises that public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the Framework. Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit.
20. The public benefits arising from ecological and biodiversity net gain measures as presented can contribute towards green credentials with the use of planting to the podium area and within the roof garden using a green wall and bird boxes. Sustainability levels by reducing carbon emissions can be achieved on site by way of wall mounted pv's, air source heat pumps and water efficiency measures which the appellant comments would be in excess of building regulation standards. As public benefits I consider they are limited and would deliver only small advantages given the overall scale of the proposal. Therefore, as a public benefit I apply moderate weight to the sustainability credentials of the scheme as a whole. Sustainable transport facilities in the form of secure cycle storage to support both the proposed residents and the retail units would be incorporated into the scheme, above the number that is required by Council standard. This gain would be small as a public benefit.
21. The appellant has demonstrated their commitment to financially investing in public realm improvements to the adjacent Emma Cons Gardens at around £60,000 to be secured by way of a unilateral undertaking. Whilst it would be a valuable financial contribution towards funding public space improvements,

nevertheless, the Council has adopted the requirement of a financial contribution in order to make development acceptable in accordance with paragraph 56 of the Framework. Therefore, whilst the financial contribution is capable of being considered as a wider public benefit, it is nonetheless a necessary obligation imposed by the Council to make the development acceptable in planning terms. It however carries some weight as a public benefit.

22. The appellant would also contribute financially towards local highways infrastructure to secure an on-street loading bay with vehicle charging facility. However, there is nothing before me to confirm its use can be advanced beyond that of the proposed development. Even if it were to be, it would only amount to a very small public benefit.
23. There is insufficient evidence before me to suggest that the Class E unit in the proposed scheme, or its layout, would be desirable to future proprietors or that it would achieve a high level of footfall and revenue generation due to the position of openings. Without further evidence from the appellant to substantiate their claim, I apply no level of weight to their statement as a public benefit.
24. The proposal would yield nine residential units and increase housing levels within the Borough. In the current national housing shortage climate, as a public benefit it carries weight in favour of the proposal.
25. I appreciate the site is vacant and surrounded by timber hoardings and therefore in its present condition has some impact upon the settings of the heritage assets. From my observations, it is a well contained and a tidy site and therefore has only a very limited effect on their settings. I therefore apportion only little weight to this as a heritage benefit.

#### *Heritage balance*

26. I have balanced the public benefits that would accrue from the proposal. This proposal would remove a vacant piece of land that I conclude is a tidy site. Ecological and biodiversity enhancements can be achieved at the site as well as sustainability measures. However, this contribution would be small in the overall scheme of things. Housing numbers within the Borough would increase and this carries weight in my assessment of the proposal. The Emma Cons Gardens is identified by the Council as a priority area for public enhancement. The developer contributions would be welcome in this instance as a wider public benefit. However, the outcome would assist in the delivery of improvements that is a requirement by the council to make development such as this acceptable in planning terms, as too would be the highways infrastructure to the site. Therefore, as a totality of public benefits it leads me to conclude that I am not persuaded there is clear and convincing justification for the identified harm to the settings of the heritage assets of the Old Vic and RNTA. Bearing in mind the overarching statutory duties that apply to listed buildings, these must be given considerable importance and weight. Therefore, on balance, the sum of public benefits I am satisfied does not outweigh the material harm to the settings of the heritage assets.

### *Other considerations*

27. As an other consideration of the proposal, I must consider the extant development at the site for a mixed-use scheme as this is the appellant's fall-back position that can continue to be implemented. The extant scheme is smaller in scale than the one before me with the resultant fewer housing units, sustainability credentials and financial contributions and retail floor space it would bring. All things considered, I have found that despite the proposed development of greater scale with the resultant public benefits it would incur, would not outweigh the harms that would arise to how the significance and special interest of these heritage assets would be appreciated.
28. Matters pertaining to the scheme's proposed design to provide street animation, acceptable light levels into habitable rooms are not disputed by the parties. It has been concluded to have an acceptable impact from the Council's internal consultees including the Council's transport team and flood authority. However, these things are all neutral in the overall consideration of the proposal and neither weighs for or against it. In addition, I am aware of the support to it from the Council's Conservation and Urban Design consultee as well as third party support. Nevertheless, as is my duty, I have come to a decision based on my own consideration of the findings of the evidence before me.

### *Character and appearance*

29. This proposal as a visually strident building would poorly integrate into the street scene. Although the area is subject to change, irrespective of this, the proposal would not successfully blend with its surroundings but instead appear severely out of character as a feature that would look alien and visually intrusive within this townscape.

### *Final balance*

30. Bringing all matters together, I have attached considerable importance and weight to the desirability of avoiding any such harmful effects on the settings of the listed buildings in accordance with the Act. This proposal would result in a deleterious effect upon how the settings of these heritage assets contributes to their significance. Whilst I have identified clear public benefits the scheme would bring, the weight these would garner in the overall scheme of things is modest and not sufficient to outweigh that apportioned to the harm identified above. In addition, the proposal would not safeguard the character and appearance of the local area. All things considered it would fail to meet the objectives of Policy Q20 of the Lambeth Local Plan 2021 and Policy HC1 of the London Plan 2021 in their combined aims to safeguard the historic environment, as well as Policies Q5 and Q7 of the Lambeth Local Plan that seeks to achieve good design and local distinctiveness.

### **Other Matters**

31. The other heritage assets brought to my attention by the parties I could see from my visit to the site are not sufficiently close to the appeal site to have their special interest adversely affected.
32. There is insufficient detail provided by the appellant to adequately compare this site to the examples of other developments within the borough of Lambeth and other areas of London that they have brought to my attention. In any case, I

have considered the specifics of this particular scheme and come to my own conclusion.

**Conclusion**

33. Therefore, for the above reasons and having regard to all other matters raised, I conclude that the appeal is dismissed.

*Alison Scott*

INSPECTOR