



Appeal Decision

Site visit made on 20 February 2024

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2024

Appeal Ref: APP/N5660/W/23/3329470

300 Brixton Hill, Lambeth, London SW2 1HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Hamna Wakaf Limited against the decision of London Borough of Lambeth.
 - The application Ref is 22/00465/FUL.
 - The development proposed is described as provision of 7no. residential units at first, second and third floors with alterations to back addition and reversion to commercial space (Class E) at ground floor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal, the appellant has submitted a signed unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended), dated 13 March 2024. This seeks to mitigate the reasons for refusal relating to car free development and bicycle provision. The Council has concerns regarding the content of the UU stating that it is deficient in a number of respects, and would therefore not make appropriate provision in these respects. The merits of the obligation are considered later in this decision.
3. Since the submission of the appeal a revised National Planning Policy Framework (the Framework) was published in December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

4. The main issues are:
 - i) whether the loss of office floorspace is justified;
 - ii) whether the development would achieve the highest standards of fire safety;
 - iii) the effect on the living conditions of the future occupiers of the proposed development, with particular regard to internal and external space standards;

- iv) the effect of the proposed development on the living conditions of future occupiers, with particular regard to noise and air quality;
- v) the effect of the proposed development upon the living conditions of the existing occupiers of No 296 Brixton Hill and the future occupiers of the proposed development, with particular regard to levels of daylight and sunlight;
- vi) whether there is appropriate provision for bicycle parking;
- vii) whether the proposal would comprise car-free development to support the safe and efficient operation of the highway network in the vicinity of the appeal site with particular regard to provision for parking; and
- viii) whether the proposal would prejudice the future development of the adjacent site Nos 300A to 304 Brixton Hill, having particular regard to outlook.

Reasons

Office floorspace

5. From the evidence before me the property, the subject of the appeal, has not been recently used as office space. Nevertheless, the drawings and supporting documentation submitted in support of the current appeal shows office use. Accordingly, I have assessed the proposed development as a change of use of the first, second and third floors from office to residential use.
6. I note the Jenkins Law documentation submitted in support of the appeal development. However, limited evidence has been submitted to demonstrate that the appeal site has undergone robust marketing and that there is no demand for the office floorspace as required by the development plan policies, including Criterion C) of Policy ED1 of the Lambeth Local Plan 2020-2035 (LLP) and the Council's Marketing of Employment Premises and Sites Guidance Note 2015 (SPD).
7. I acknowledge that the appeal site is not allocated for a specific purpose and that the Framework does allow for a flexible approach to alternative uses of land. There is also no dispute that there are residential properties within the locality. However, I am not satisfied that the specific parameters by which the SPD expects the potential of market demand to be tested has been undertaken for the property the subject of this appeal.
8. For the reasons outlined above, I conclude that the loss of office space has not been justified. Conflict therefore arises with Policy ED1 of the LLP, Policy E1 of the London Plan 2021 (LP) and the SPD. Collectively, these policies seek to retain existing viable office space and releasing surplus office capacity where criteria are met, including evidence that there is no reasonable prospect of premises being used for such purposes.

Fire safety

9. Policy D12(A) of the LP requires all development proposals to achieve the highest standards of fire safety and sets out a number of criteria to be addressed. While it does not require the submission of a Fire Statement or

Reasonable Exception Statement, the supporting text to this policy states that the fire safety of developments should be considered from the outset.

10. The criteria within LP Policy D12(A) has not been addressed by the appellant in the submitted evidence and I cannot therefore be certain that these matters have been fully considered in the design and layout of the proposed development. Consequently, the potential for the scheme to present unacceptable fire risk to future residents cannot be ruled out and nor can I have confidence that they are matters that could be adequately addressed if they were to be controlled by way of a planning condition.
11. For these reasons, the proposed development would not achieve the highest standards of fire safety and is therefore contrary to LP Policy D12(A).

Space standards

12. Policy D6 of the LP seeks to ensure that developments provide high quality design housing and sets out the minimum internal space standards that all new developments are required to meet in line with the nationally described space standards (NDSS). Similarly, Policy H5 of the LLP states that new dwellings should meet the NDSS as set out in LP Policy D6 and provide external amenity space. The LLP allows for the provision of additional internal living space equivalent to the external amenity space requirement within a proportion of dwelling in exceptional circumstances where site constraints make it impossible to provide private open space for all dwellings in flatted developments. The proposed units in contention are Units 1.2, 2.2 and 3.1 which I discuss in turn.
13. Whilst proposed unit 1.2 would be provided with some external amenity space, in the form of a first-floor terrace, it would fall significantly short of the external amenity space standards. Furthermore, the internal accommodation would not be of a sufficient size to off-set this inadequacy.
14. Unit 2.2 would not be served by any external amenity space and the proposed internal space would fail to compensate for this shortfall. Accordingly, the proposed unit would be sub-standard in terms of living accommodation.
15. The appellant states that Unit 3.1 is a 2-bed/3-person occupancy as it has a double and a single bedroom whereas the Council has considered this as a 4-person unit. By reason of the proposed single bedroom having an internal floor area greater than 11.5sqm, in line with the NDSS and Policy D6 of the LP, the bedroom is to be treated as a double/twin sized bedroom. On this basis the room should be at least 2.55m wide. The internal layout of this room fails to meet this requirement for the majority of the room's internal floor area. Furthermore, the proposed unit would not be provided with external space and this shortfall would not be offset by an increase in internal living accommodation. Consequently, the proposed unit would fail to provide high quality living accommodation.
16. The appellant submits that the flats would be unlikely to be occupied by families and that owing to the appeal site's location close to bars, restaurants and good public transport links the properties would appeal to young professionals. Whilst accepting that the proposal would meet the requirements for the majority of the proposed residential units, nevertheless, the space standards are applicable to all unit types, regardless of who occupies the properties. Furthermore, having regard to the Planning Practice Guide (PPG) it

would be unreasonable to restrict occupancy of the proposed residential units. By virtue of the lack of external amenity space or alternative internal space, for Units 1.2, 2.2 and 3.1, the proposal as a whole would fail to provide quality accommodation, contrary to the policy objectives of the development plan.

17. I accept there are areas of public open space proximate to the appeal site. Nevertheless, having regard to Policy H5 of the LLP this would not overcome the shortfalls of the proposed accommodation.
18. Concluding on this main issue, I am not satisfied that the proposed development would provide acceptable living conditions for the future occupiers of Units 1.2, 2.2 and 3.1, with particular regard to internal and external space standards. Accordingly, it would conflict with Policy H5 of the LLP and Policy D6 of the LP. Collectively these policies seek to ensure, amongst other matters, the provision of appropriate space and amenity standards. I also find conflict with the Framework which aims to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Noise disturbance and air quality

19. The appeal site is located on Brixton Hill close to the junction of the A23 and A205. Although I appreciate it was only a snapshot of time, at the time of my visit I observed the roads in the vicinity of the appeal site to be busy with both domestic and commercial vehicles and road traffic noise to be significant.
20. The Framework states that to prevent unacceptable risk from pollution, planning decisions should ensure that new development is appropriate for its location. In the absence of an environmental noise assessment and air quality assessment, and details of any required mitigation, I cannot be satisfied that the future occupiers of the residential units would not be adversely affected from noise or pollution.
21. The appellant is agreeable to conditions requiring detailed assessments prior to any works commencing and attenuation such as double glazing, mechanical ventilation, in the event that the reports conclude they are required. However, I cannot be satisfied that the use of planning conditions to control these matters would be reasonable and enforceable and would thereby comply with the tests set out in the Framework and PPG.
22. My attention has been drawn to a number of developments in the locality that the appellant asserts include front facing balconies facing the A23. Due to the limited evidence before me I cannot be certain that their circumstances are directly comparable to the appeal scheme. In any event, I have determined the case on its own merits.
23. For the reasons stated above, I cannot be satisfied that the living conditions of future occupiers, with particular reference to noise and air quality would be acceptable. I therefore find conflict with Policy Q2 of the LLP. Amongst others, this policy requires the adverse impact of noise to be reduced to an acceptable level through the use of attenuation, distance, screening or layout and orientation. I also find conflict with the Framework where it seeks a high standard of amenity.

Sunlight/daylight

24. Policy Q2 of the LLP states that development will be supported if, amongst other things, it would not have an unacceptable impact on levels of daylight and sunlight on the host building and adjoining property. The supporting text to the policy states that the Council will use established industry standards when assessing schemes, including BRE Guidelines.
25. The appellant has provided a Daylight & Sunlight Assessment for the proposal. The assessment based upon the 2011 BRE guidelines rather than the updated BRE guidelines published in 2022. Whilst the report methodology is not in accordance with the most up-to date guidelines there is no substantive evidence from the Council on the required sunlight and daylight levels in accordance with the revised document.
26. Nevertheless, the appellant's technical assessment shows that the appeal proposal would have a perceptible impact on three existing windows at No 296. It is not known whether these windows serve a main living room, or whether these rooms have additional windows. Therefore, the significance in the reduction of direct sunlight is unknown.
27. I am mindful that the BRE guidelines are not mandatory, and that their interpretation may be treated flexibly, taking into account site specific factors. I have had regard to the location of the appeal site and its context within a high-density area, where close relationships between buildings are common. Nonetheless, based on the evidence before me I am not satisfied that the neighbouring property would receive acceptable levels of daylight and sunlight so as to provide a suitable quality of life for existing occupiers.
28. The assessment concludes that proposed residential units would see a minor reduction of light compared to the existing situation. However, the reduction would be in line with the BRE Guidelines as being acceptable and would retain reasonable levels of sunlight.
29. For these reasons, I am not satisfied that the proposed development would provide acceptable living conditions for existing occupiers of the neighbouring property, with particular regard to sunlight and daylight. Conflict therefore arises with Policies Q2, H5 and Q7 of LLP in so far as they relate to amenity. Conflict would arise with the Framework which seeks to safeguard and improve the environment and ensure safe and healthy living conditions, including securing a higher standard of amenity for existing users.

Bicycle parking

30. Development Plan Policies state that proposals should help remove barriers to cycling and create a healthy environment in which people choose to cycle. The plans show a satisfactory level of cycle parking to serve the future occupiers of the flats. However, the short-stay cycle parking for the commercial unit would be on the public footway, falling outside of the red-line application site boundary. Whilst criterion (D) of Policy T5 of the LP supports the provision of on-street cycle parking this is subject to securing this via a commuted sum to the local planning authority.
31. The appellant has submitted a UU, however, in the absence of a commuted sum for the bicycle parking that would be within the public highway, the UU is not sufficiently robust to meet the requirements of the local plan policy.

32. For the reasons stated above, the proposal would not provide for adequate bicycle parking provision. Accordingly, the proposal conflicts with Policies T5 and D4 of the LP which seek to secure the provision of appropriate levels of cycle parking which should be fit for purpose, secure and well-located. I also find conflict with Policies T3 and Q13 of the LLP which collectively, require development proposals to include active design for health and well-being and help remove barriers to cycling.
33. Whilst Policy T1 of the LLP is referenced in the Council's reason for refusal, it is not within their statement of case. As this policy does not cover cycling or active travel, I do not find it determinative to this main issue.

Car free development

34. The appeal site has no on-site parking facilities. The site is located within an area that has a Public Transport Accessibility Level (PTAL) rating of 6a, which indicates excellent access to public transport. Whilst the residents of the proposed development would not necessarily be dependent on private cars for their day-to-day transport requirements this would not prevent them from owning or operating cars.
35. A controlled parking zone is in operation and from my observations at my site visit, on-street parking spaces are limited. The proposal would therefore be likely to increase the competition for on-street parking spaces, in an already limited area. Increased demand would increase parking stress. In order to ensure the safe and efficient operation of the highway network, by managing access to parking in the vicinity of the site, it would be necessary to ensure the development be car-free. It would be necessary for a suitable mechanism to be secured, to deliver a development that would not result in a material increase in on-street parking pressure.
36. The appellant has submitted a UU to restrict future occupiers of the development from applying for residential parking permits, car club membership and cycle hire membership. However, this document does not adequately address the policy requirements.
37. Therefore, in the absence of a suitable planning obligation to secure these outcomes, the development would not be car-free development and would not support the safe and efficient operation of the highway network in the vicinity of the appeal site with particular regard to provision for parking. Accordingly, there would be conflict with Policy T6 of LLP, as well as with Policies T1, T6 and D4 of the LP. Collectively, these policies seek to promote sustainable patterns of development and reduced dependence on private cars, and which require, amongst other things, that proposals mitigate the impact of development. It would also conflict with the sustainable transport requirements of the Framework.

Future development

38. The Council has concerns regarding the future development on the surrounding plot, at Nos 300A to 304 Brixton Hill, being prejudiced due to the insertion of window openings to the southern elevation of the rear return of the proposed development, which would face onto this site.
39. At the time of my visit, Nos 300A to 304 Brixton Hill comprised a vacant site. There is no evidence before me of an extant planning approval. I observed the

neighbouring site to be a relatively large site. I acknowledge that any constraints on the future development of the adjacent site at Nos 300A to 304 resulting from the proposal would be a matter for the developers of that site to consider when developing proposals. Nevertheless, whilst some windows serving bathrooms could be fitted with obscure glazing a number of the openings would serve bedrooms and living/kitchen areas and be the only opening for that room. Any mitigation to obscure glaze the windows would not provide for acceptable living conditions for the future occupiers of the appeal property. Consequently, given the proximity of habitable room windows to the shared boundary these rooms would need to be afforded outlook, daylight and sunlight which could prejudice the optimum future development of the site.

40. It is accepted that there are a number of windows to the existing southern elevation. However, these serve an office use. It is reasonable that as these windows serve a commercial use they would be afforded less protection in terms of daylight and sunlight than a residential use.
41. Taking the above matters into consideration, I conclude that the proposed development would prejudice the optimum future development of the adjacent plot at Nos 300A to 304 Brixton Hill. Accordingly, I find conflict with Policy Q7 (x) of the LLP which states that development should not prejudice the optimum future development of, or access to, adjoining plots by omitting openings on party walls and avoid direct overlooking, unacceptable overshadowing or undue sense of enclosure.

Other Matters

42. The proposal would make efficient use of the land. The proposed development would make a positive contribution to housing supply and mix of property types. I also acknowledge that the Framework is supportive of small and medium sized sites, such as this, which can make an important contribution to meeting the housing requirement of an area, and are often built out relatively quickly. In addition, the proposal would contribute to local economic growth during the construction process and through future occupiers' use of local services and facilities.
43. Immediately adjacent to the appeal site is No 296 Brixton Hill a Grade II listed building (List Entry No 1359569). The significance of the listed building is derived in part from its significant age, surviving historic fabric and its relationship to the evolution of the area, as a purpose-built butcher's premises with living accommodation over, built in 1891 as part of a shopping parade. It is three-storey in height and of ornate external appearance. The significance and special interest also come from its internal design and features. The setting of the property has clearly changed over time with development to its rear. However, the frontage of the listed building sits directly at the back edge of the pavement with its flank wall tight up to the appeal site. The appeal site is therefore part of the setting of the listed building.
44. From the evidence before me the existing shop front is not the original frontage. The proposed shop front would be sympathetic to the existing parade of shops, and if I were minded to allow the appeal a condition could be imposed for the detail and finish of the replacement shopfront. Nonetheless, the evidence before me demonstrates that in terms of setting, and how the building would be viewed and appreciated, this would remain largely unaltered.

Accordingly, the proposal would preserve the setting of the listed building. I note this is a view shared by the Council.

45. The appeal site lies within the boundaries of the Rush Common and Brixton Hill Conservation Area (CA). The significance of the CA is partly informed by the quality and range of its buildings that, together with traditional materials, plot layout and land use and associations reveal the social and economic evolution of the neighbourhood over many centuries. The appeal site forms part of a wider shopping parade, with No 300 being the end of terrace. No 298 and the rest of the parade were built in 1891, with No 300 built later, to match. The buildings are attractive comprising three-storeys and to the rear both buildings have two-storey outrigger, with No 298 entirely infilled at ground floor level. The architectural quality, layout and social origins of the appeal site and wider parade are of value to the character and appearance of the CA as a whole and contribute to its special interest.
46. The proposed extensions, changes to fenestration and replacement shop front would not adversely detract from the appeal property. The precise details of the design and finish of the shop front could be subject to planning condition if I were minded to allow the appeal. Nonetheless, I am satisfied that the appeal proposal would not harm the heritage significance of the CA. This is a view shared by the Council.
47. The lack of harm in relation to these Other Matters weigh neither for or against the proposal.
48. I have considered the UU in light of the advice contained within Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) as well as policy and guidance in relation to the use of planning obligations. Several of the measures contained within the UU are not necessary to make the development acceptable in terms of car free development and bicycle provision. Consequently, the UU would not meet the statutory and policy tests relating to planning obligations set out in the CIL Regulations and the Framework. Even if the UU were amended this would not overcome the other harms I have identified in the main issues.

Conclusion

49. For the above reasons, I conclude the proposal conflicts with the development plan as a whole. There are no other material considerations, including the Framework, to outweigh that conflict. For these reasons, I conclude the appeal should be dismissed.

R. Gee

INSPECTOR