



Appeal Decision

Site visit made on 15 May 2024

by A Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th June 2024

Appeal Ref: APP/N5660/W/23/3328575

90-96 Norwood High Street, London SE27 9NW

- 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 Daleview Ltd against the decision of the Council of London Borough of Lambeth.
 - The application Ref is 20/04374/FUL.
 - The development proposed is demolition of existing buildings at 90-96 Norwood High Street and erection of a part three storey, part four storey, and part five storey mixed use development comprising of 14 no. self-contained residential units (3no 1-bed 1-person, 1no 1-bed 2-person, and 10no 2-bed 3-person), and 615m² of Use Class E(g) with the provision of refuse and cycle storage at ground floor level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the application the scheme was amended to incorporate a different housing mix and amount of commercial floorspace and was subsequently publicised and determined by the Council on that basis. This amendment is also reflected on the appeal form and in the Council's decision. Consequently, I am satisfied that no party will be prejudiced by my use of it in the banner heading above and it is the basis upon which I determine this appeal.
3. The Mayor of London, London Plan Guidance, Housing Design Standards was adopted in June 2023 (HDS), after the Council made its decision on the application. The HDS replaces the Mayor of London's Housing Supplementary Planning Guidance 2016 (SPG) referred to in the Council's decision notice. The Council has specified which aspects of the HDS it considers to be relevant, and the appellant has had the opportunity to comment on these through the appeal process. Therefore, I am satisfied that no prejudice would occur to any party as a result of my consideration of the HDS and I have had regard to it in my decision.
4. The Council's statement sets out that, had the application been approved, a planning obligation under section 106 of the Town and Country Planning Act 1990 (planning obligation) to secure a viability review with regard to affordable housing provision as well as securing car-free development would have been required. Contributions would also have been sought towards the implementation of a Car Parking Zone (CPZ), blue badge and car club parking bays and membership, open space provision, highways works, promotion of employment and skills, carbon offset and a planning obligation monitoring fee.

5. The fact that this did not form a reason for refusal does not relieve the requirement to consider the proposal in the light of policies in the local development plan in relation to these matters and having regard to the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations), which are also set out in paragraph 57 of the National Planning Policy Framework (the Framework).

Main Issues

6. In view of the above, the main issues in this appeal are:
- whether the proposed development would provide acceptable living conditions for future occupiers of Units 3,7 and 10, with particular regard to the provision of dual aspect dwellings and outlook; and,
 - whether the proposal would make adequate provision for any additional demand on or need for infrastructure or services arising from the occupation of the proposed development together with local development plan policy requirements in relation to affordable housing.

Reasons

Living conditions

7. The appeal site relates to the redevelopment of an irregular shaped site at the corner of Norwood High Street and Rothschild Street to provide a part 3,4 and 5 storey building. The proposed building would accommodate largely commercial use on the ground floor with 14no. apartments above.
8. Policy H5(A)(i) of the Lambeth Local Plan 2020-2035, adopted September 2021 (LLP) requires that new residential development provides dual aspect accommodation, unless exceptional circumstances can be demonstrated. Policy D6(C) of the London Plan 2021 (London Plan) also sets out that 'housing development should maximise the provision of dual aspect dwellings and normally avoid the provision of single aspect dwellings'.
9. The Council asserts that Units 3, 7 and 11 (the studios) would not be dual aspect. However, within the definition of dual aspect in Appendix 3 of the recently adopted HDS, it is identified that 'A dual aspect dwelling is one with opening windows on two external wallsone aspect may be towards an external access deck or courtyard, although the layout of the dwelling needs to be carefully considered in these cases to maintain privacy'.
10. Even if the main door to all the proposed studios was not clear glazed, the plans indicate there would be a vertical fixed window alongside the door. Provided that this was clear glazed, it would allow an outlook for occupants of the studios towards the access terrace and beyond. I acknowledge the outlook from this aspect would be limited due to the narrow width of the fixed window, and the side elevation of Unit 2 would further restrict the outlook from the window adjacent to the front door of Units 3 and 7. Nevertheless, the fixed window would offer occupants of the studios an alternative and acceptable outlook on the quieter, opposite side of the studios to the main windows which front Norwood High Street. The requirement for clear glazing of this window could be dealt with by way of condition were I to allow the appeal.

11. The proposed position and slim design of the fixed window, together with the internal position of the store, would ensure that an acceptable level of privacy for occupants of the studios would be maintained. In any event, it would be unlikely that a significant number of people would pass the studio entrances given there would only be two residential units beyond each studio. Furthermore, there are kitchen/dining room windows at Units 2,6 and 10 that would similarly face the access terrace. I am therefore satisfied the proposed front door and window arrangement to the studios would not give rise to an unacceptable loss of privacy for occupants of the proposed studios.
12. Given that there would be an opening clerestory window above the front door of each studio, it would allow natural cross ventilation through the dwelling. The Council's claim that the internal layout of the studios would limit the amount of air and ventilation within the studios has not been substantiated. From the evidence, it is apparent that the room layout of the studios is of a single room separated by a 'store'. Even if the 'store' was full height or included a form of partition wall between it and the bed, a gap would be retained between the lobby and the living area to allow through ventilation and thus the capacity to address overheating. Moreover, mechanical ventilation heat recovery units would also be provided in the studios which would provide a choice in terms of ventilation to occupants of the units.
13. The clerestory window proposed above the entrance of the studios would be high level and a view would not be available from it. However, in combination with the fixed window adjacent to the door from which a view would be obtained, in this instance I consider the studios would be dual aspect since an outlook and ventilation would be provided.
14. Moreover, the studios would be single occupancy, would not face north, and would not be oppressive or gloomy as a result of the good amount of daylight and sunlight that would be obtained from large windows on the west elevation facing Norwood High Street. Whilst this street is reasonably busy, evidence suggests that air quality is within legal limits. As such, even if the studios were considered to be single aspect, they would still comply with the standards advocated in Policy C4 of the HDS.
15. Consequently, taking a holistic view of whether good living conditions would be provided for occupants of the studios, whilst also having regard to the design considerations of the site to provide commercial floorspace, I am satisfied that the overall quality of the proposed accommodation for Units 3,7 and 11 would be acceptable.
16. I therefore conclude on this main issue that the proposed development would provide acceptable living conditions for future occupiers of Units 3,7 and 10, with particular regard to the provision of dual aspect dwellings and outlook. The proposal would therefore not conflict with Policies Q2 or H5 of the LLP or Policy D6 of the London Plan which, together, amongst other things, seek development that is of good design and provides dual aspect accommodation with acceptable levels of privacy and outlook.
17. There would also be no conflict with HDS guidance in this regard or the objectives of Section 12 of the Framework to achieve well-designed places.

Infrastructure and affordable housing

18. The Council has identified, through the London Plan and Policy H2 of the LLP and the Lambeth Supplementary Planning Document, Development Viability, 2017 (SPD), that there would be a requirement for a late-stage review of the development, due to the current lack of affordable housing provision. In addition, several other requirements identified in Policy D4 of the LLP have been set out in the Council's report to Committee. Both Policy H2 and Policy D4 of the LLP are consistent with paragraph 34 of the Framework with regards to development contributions. A planning obligation would offer a mechanism to secure such requirements.
19. A late-stage review mechanism would secure the maximum public benefit, being the delivery of affordable housing, over the period of a development. Evidence indicates that the outcome of the Council's viability review at application stage was to agree with the appellant's financial viability appraisal that the scheme could not currently make an affordable housing contribution. I consider it would not be unreasonable to require a reappraisal of the viability of the scheme as the scheme progresses and in the more certain knowledge of the costs and sales value of units tested by the market, appraised against known costs.
20. The appeal site has a Public Transport Accessibility Level (PTAL) rating of 5, which suggests that the site is very well connected to public transport. I saw for myself the relatively convenient proximity of bus stops in the area and West Norwood train station. Nonetheless, the Council argue that due to high levels of parking demand identified in 2020, existing parking stress in the area is very high. I observed at the time of my site visit on a mid-week lunchtime, albeit a snapshot in time, that many streets around Norwood High Street were at on-street parking capacity.
21. From the evidence, a programme for the introduction of a CPZ in the area has been agreed by the Council, subject to consultation and with a view to implementation late 2024 and 2025. Given occupants of the scheme would be ineligible to obtain a parking permit, and in the absence of a detailed timetable for consultation on the CPZ, it is likely that this has now been undertaken. As a result, I consider the requirement for a financial sum towards consultation and implementation of the CPZ to be unreasonable at the current time.
22. Due the amount of demolition required and the scale of the proposal, it is likely that the area would be covered by a CPZ by the time of occupation. In any event, the proposal would be car-free in accordance with London Plan Policy T6. Given the high PTAL rating of the site, I consider this requirement would be reasonable and necessary in relation to the appeal before me. To deliver a car-free development a mechanism would be required to ensure that occupiers of the development would not be eligible to apply for a parking permit within the CPZ operating within the area, unless they were a Blue Badge holder.
23. The appellant has offered to provide blue badge parking spaces along Rothschild Street. In this respect, the Council recommend that a financial contribution is made to the conversion of two existing on-street spaces (one for the residential element and one for the commercial element) to blue badge parking with electric vehicle charging point, if required, within a time limited period of five years following the grant of any permission. While the specific background to the calculation has not been provided, I consider proportionate

provision would be required to mitigate the effects of the development and would accord with Policy T6 of the London Plan.

24. To further discourage the use of a future resident owning or driving a private car, Policy T6 of the London Plan requires new development that includes housing to promote and provide car club membership. As such, in accordance with this policy the appellant would be willing to secure car club membership for the occupants of the residential units for a three year period, which I consider necessary and reasonable.
25. From the information before me, the nearest car club bay to the appeal site is at Auckland Hill, located approximately 500m to the north. The Council require that funding is secured from the appellant to provide an additional car club bay with supporting electric vehicle charging point closer to the site. While Policies T3 and T6 of the LLP have not been provided to me for this appeal, I am aware from my assessment of other appeals in the Borough that Policy T6 indicates that the Council 'aims' for car club bays to be provided within 400m of each other to ensure convenient provision for all Lambeth residents. In the absence of a substantiated reason by the appellant as to why this would be unwarranted, I consider this requirement would be required to mitigate the effects of the development and would be reasonable and necessary.
26. In addition to car club membership, Policy T3 of the LLP states that a minimum of three years free membership of a cycle hire scheme for all residents, regardless of tenure, should be made available in new residential developments. I note that the proposal would provide cycle parking in excess of the LLP standards in a secure and weatherproof ground floor store. However, cycle hire caters for a different market/model of cycle usage to personal ownership and in this regard, I consider there would be a need for such a contribution in order to promote sustainable means of travel and therefore make the development acceptable in planning terms.
27. The existing vehicle crossover to the garage would be removed. A new dropped kerb would be implemented in front of the covered entrance to provide a step-free route from Rothschild Street to the residential lobby, commercial unit, cycle and refuse stores. A planning obligation would secure the implementation of these works to the highway via an s278 Highways Agreement.
28. The ground floor and part of the first and second floor of the appeal building would be used for light industrial or research and development purposes. Policy D4 of the LLP seeks financial contributions through a planning obligation that support access to employment opportunities created by a proposed development by securing learning and skills initiatives as well as access for local businesses to supply chain opportunities created by a development. Furthermore, from the evidence before me, the proposal would result in a carbon shortfall. Consequently, a carbon off-set payment in accordance with the London Plan requirements set out in Policy S12 would be required. Whilst the background to the financial contributions sought for employment and skills and carbon off-set are not before me, the requirements are consistent with paragraph 34 of the Framework in relation to development contributions and as a matter of principle would be reasonable and necessary.
29. In terms of open space, it is a reasonable assumption that a development of this scale and nature would result in additional demand in terms of open space provision within an area identified with a deficiency of open space. Whilst some

communal amenity space would be provided on-site, the Council assert that the expectation of Policy EN1 of the LLP is that a financial contribution should be made for sites where the relevant amount of open space is not feasible on-site, in addition to the external amenity space requirements of Policy H5. It is not clear from the information available where, or what level of deficiency in open space provision currently exists, or how the level of contribution has been calculated. Nevertheless, I consider a proportionate element of open space provision should be provided in principle to mitigate the effects of the development and in order to comply with Policy EN1 of the LLP.

30. I have considered the Council's requirements set out above in the light of the statutory tests contained in the Regulations and reiterated at paragraph 57 of the Framework. On the basis of the information that I have before me, and the position of the parties, I consider that, with the exception of the CPZ contribution, these requirements would be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind to the development. They would therefore meet the statutory tests set out in the Regulations.
31. The appellant has confirmed that a car permit-free agreement would be in place for any future CPZ and also indicated their agreement to provide a planning obligation to secure a viability review and to make the necessary contributions in relation to the other matters referred to above.
32. However, there is no such planning obligation or any other appropriate legal mechanism before me that would secure the necessary provision of a viability review in relation to the potential for future provision of affordable housing, a permit-free development, or secure the contributions required above to appropriately mitigate the effect of the proposal on local infrastructure.
33. In the absence of a planning obligation or other legal mechanism, I have given consideration as to whether the necessary obligations could instead be secured by way of a planning condition. But in that regard, the Planning Practice Guidance¹ states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
34. No evidence has been provided to demonstrate that the delivery of the development would be at serious risk if a planning condition were not to be used. It is also not suggested by either of the main parties that a planning condition could or should be used. Therefore, there are no exceptional circumstances and the use of a planning condition to secure the obligations would not be appropriate in this instance.
35. Consequently, as the impact of the proposed development cannot be mitigated, the proposed development would conflict with Policy D4 of the LLP and paragraph 34 of the Framework in relation to development contributions. The proposal would also conflict with Policy H2 of the LLP and with guidance in the SPD which seeks to maximise delivery of affordable housing, including, amongst other things, a requirement for a review mechanism as set out in the SPD.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

Other Matters

36. My attention has been drawn by the appellant, to several examples of recent developments in Lambeth that do not provide dual aspect dwellings. However, I have found the proposed development to be acceptable in this regard.
37. I note there was support for the proposal from interested parties. However, my assessment of the effect of the development would be unchanged and is not a reason in itself to allow development that is unacceptable. Aswell as support for the development, several concerns were also raised by interested people. Nevertheless, as I have found the development to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.
38. I appreciate that the appellant sought pre-application advice, engaged with the Council while the application was under consideration, amended the proposal in response to officer advice, and that the application was recommended for approval by officers. Nevertheless, Members ultimately came to a different conclusion. I have dealt with the appeal on its planning merits based on the evidence before me.

Conclusion

39. Whilst I find the proposed development to be acceptable with respect to the first main issue, in the absence of a planning obligation or other legal mechanism to secure the obligations that are necessary to make the development acceptable in planning terms, the appeal must be dismissed.
40. For the reasons given, I conclude that the appeal should be dismissed.

A Veevers

INSPECTOR