



Appeal Decision

Site visit made on 3 July 2024

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/N5660/W/23/3335269

1A/1B Curnick's Lane, Lambeth, London SE27 0UT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by HGS Property Group against the Council of the London Borough of Lambeth.
 - The application Ref is 22/02761/FUL.
 - The development proposed is the erection of a part 2 and part 3 storey building, comprising 9 residential flats (Use Class C3), including cycle parking, landscaping and refuse/recycling storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note the disagreements between the main parties regarding the description of development. For the avoidance of doubt, I have taken the description in the banner heading above from the planning application form as this is how the proposal was submitted.
3. An amended set of plans was submitted by the appellant during the appeal. The appeal process should not be used to evolve a scheme and it is important that I determine the appeal on the basis of the plans which were before the Council when it made its decision and on which interested parties were consulted.
4. The amended plans would involve a fundamental change to the scheme such that to accept and consider them as part of this appeal would cause procedural unfairness to those who should have been re-consulted. My determination of this appeal is therefore based on the set of plans which were before the Council during the planning application process.

Background and Main Issues

5. The Council did not determine the planning application within the appropriate period of time. However, it subsequently indicated that had it been in a position to decide the application permission would have been refused. An assessment of the proposal and putative reasons for refusal are included in the Council's appeal statement.
6. I have used this evidence to formulate the main issues of this appeal which are
 - a) whether the proposal would result in the loss of a site for industrial or office use, and
 - b) whether satisfactory living conditions would be provided for future

occupiers, with particular regard to outlook, noise and disturbance, privacy and external space.

Reasons

Loss of industrial and office site

7. The appeal site is located towards the end of the cul-de-sac on Curnick's Lane and is surrounded by residential properties. Behind the tall walls, gates and fences the site contains a number of buildings and structures which appear to be derelict. The site is also somewhat overgrown. Overall, the site is in a state of disrepair.
8. Whilst the evidence before me suggests there is some uncertainty as to the lawful use of the appeal site, the main parties agree that it falls within the definition of a non-designated industrial site for the purposes of the development plan.
9. Policy ED4 of the Lambeth Local Plan 2020-2035 (September 2021) (the LLP) states that development proposals for change of use, mixed-use or residential development on non-designated industrial sites will be assessed under London Plan policies E2 and E7 sections C and D. Where marketing is required by the policy, this should be for at least one year and the site should be vacant during this period.
10. Policy E2 of The London Plan: The Spatial Development Strategy for Greater London (March 2021) (the London Plan) states that development proposals that involve the loss of existing B Use Class business space (including creative and artists' workspace) in areas identified in a local Development Plan Document where there is a shortage of lower-cost space or workspace of particular types, uses or sizes, should demonstrate that there is no reasonable prospect of the site being used for business purposes.
11. Linked to this, the supporting text to Policy ED4 indicates there is a shortage of lower-cost workspace for small businesses in the borough, particularly those in the creative sectors, as set out in Topic Paper 3: Workspace (January 2020).
12. Policy E7 of the London Plan goes on to state that mixed-use or residential development proposals on non-designated industrial sites should only be supported where there is no reasonable prospect of the site being used for the industrial and related purposes set out in Part A of Policy E4.
13. The appellant suggests there is no reasonable prospect of the site being used for industrial and related purposes, as set out in London Plan Policy E4, as the site has been vacant for a number of years and is in an area characterised by predominantly residential properties. The evidence to support this claim is in the form of marketing opinions from two local property consultants/experts.
14. I appreciate that the constraints of the site may make it unattractive for certain businesses to operate from the site, particularly those which may generate significant noise/smells and/or require larger vehicles to access the site. However, the site may be appropriate for some small-scale or light industrial businesses. Indeed, the updated Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended) indicates that it may be possible for some industrial processes to be carried out in a residential area without detriment to its amenity.

15. There is no marketing evidence, as required by the development plan, before me which confirms there has been no demand from potential occupiers over the required period of time. I cannot therefore confidently conclude that there is no reasonable prospect of the appeal site being used for industrial/business and related purposes.
16. There is also a suggestion within the evidence that an office use may have taken place at the site. Policy ED1 of the LLP states that proposals involving a complete loss of office floorspace will not be permitted unless certain tests are met. These include demonstrating that there is no demand for the office floorspace through evidence that the floorspace has been vacant and continuously marketed for a period of at least two years; that it would not be feasible and/or viable to refurbish, renew, modernise or redevelop the offices in order to meet the requirements of existing or future occupiers as demonstrated through appropriate supporting evidence; and that it would not be feasible and/or viable to adapt the office floorspace as smaller office units to meet demand from small businesses.
17. Again, there is no evidence before me that the site has been marketed for office use as required by the development plan to demonstrate there is no demand or that it would not be feasible or viable to refurbish or redevelop the site for reconfigured office use.
18. The appeal site is close to shops, services and public transport. It is not in a remote area as suggested by the appellants marketing evidence. Furthermore, I am not persuaded that the site would have inherent delivery, access or parking issues such that an office use in any form would not be feasible, nor am I convinced that there is a surplus of office space in the locality. Regardless, the opinions provided are not sufficient on their own to meet the aforementioned requirements of LLP Policy ED1.
19. Taking all of the above into consideration, the proposed development would result in the loss of a non-designated industrial site or a site for office use. This would be contrary to Policies E2 and E7 of the London Plan and Policies ED1 and ED4 of the LLP which together aim to protect floorspace of such uses within the borough.

Living conditions

20. There would be a number of habitable rooms within the proposed scheme, particularly those on the ground floor, which would have a poor outlook due to the very close relationship with high boundary walls. Additionally, some rooms on the first floor are shown to be obscurely glazed in part. The affected rooms would have an undue sense of enclosure and would be gloomy and oppressive spaces.
21. It is suggested that some of the affected rooms would be secondary, single bedrooms and thus are unlikely to be used for long periods of time in the daytime. However, this would not be the case across the development, with the larger and/or sole bedroom(s) of some units having a severely restricted outlook. Other rooms in the proposed scheme which would not have a satisfactory outlook include kitchen/dining spaces and offices.

22. Given the small size of the private amenity spaces to units in the south of the site, I am not convinced that landscaping would soften the outlook and overcome the undue sense of enclosure.
23. I note that the windows of Unit 7 which face directly onto Curnick's Lane are secondary windows to habitable rooms. It may therefore be possible that appropriate window treatment could be secured so as to safeguard the privacy of occupiers within those rooms and ensure noise and disturbance from the street are reduced. However, a lack of outlook to the side combined with the poor outlook to the rear of this unit at ground floor level would further reduce the quality of the internal space of this unit.
24. The outdoor space of seven out of the nine proposed units would fall below the private amenity space required of the development plan, and by a considerable amount in the case of some units. However, the central courtyard is of a generous size and could accommodate some dedicated communal space to address the shortfall, even taking into consideration the space required for circulation and vehicle access.
25. Nevertheless, the proposal would fail to provide satisfactory living conditions for future occupiers with regard to outlook. It therefore conflicts with Policies D3 and D6 of the London Plan and Policies Q2 and H5 of the LLP. Together they aim for developments that are of a high quality that delivers adequate outlook and avoids an undue sense of enclosure.

Other Matter

26. The appellant does not appear to contest the Council's requirement for the development to be secured as car parking permit free in the event of a controlled parking zone being introduced in the future. They have suggested that this could be secure via an appropriately worded condition, an approach which has been followed in another approval in the borough.
27. I do not have the full details of that permission and the condition which the Council attached thus cannot ascertain whether the circumstances are similar to the appeal development and that a condition rather than an obligation is the appropriate mechanism to secure the necessary changes in this instance.
28. Similarly, the appellant notes they would welcome a planning obligation to secure car-club membership as sought by the Council however I have not been provided with an obligation with this appeal.
29. Regardless of the above however, as I am dismissing the appeal for other reasons, even if I had been provided with an acceptable planning obligation and/or found that a condition was an appropriate method to secure the development as car free, this would not have changed my overall conclusion.

Planning Balance and Conclusion

30. Decisions are to be made in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal would result in the loss of a site for industrial/office use and it would fail to provide satisfactory living conditions for future occupiers, which leads to conflict with the relevant aforementioned development plan policies. Along with seeking to ensure developments provide a high standard of amenity, the National Planning Policy Framework (the Framework) also states that

significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for developments. I afford this harm very substantial weight.

31. The proposal would deliver a mix of housing in an accessible location. The Framework provides clear support for boosting the supply of housing and delivering an appropriate mix, and identifies that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. Given the modest number of dwellings the proposal would provide, along with the poor-quality living conditions which would be provided in some units, I can afford this benefit no more than moderate weight.
32. The proposal would involve the development of previously developed land. The Framework states that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other identified needs. Given the lack of evidence to confirm there is no longer demand for the site for industrial/office use, this tempers the weight I can afford to this matter to no more than moderate.
33. Whilst the proposal would see the development of a derelict site, much of the site is well concealed from public vantage points. Moreover, I am not persuaded that the appeal proposal is the only way in which the condition of the site could be improved. I afford this matter limited weight.
34. It has been suggested that a residential use of the site would deliver betterment to the living conditions of nearby residents through the loss of a site which has potential for a noisy and polluting industrial use to operate from. Whilst there is no evidence before me to indicate that a harmful use will operate from this site, or that a light industrial or office use could not exist in equilibrium with the residential area, I acknowledge there may nevertheless be potential for harm. I afford this matter limited weight in favour of the proposal.
35. The proposal would result in temporary economic benefits during construction and more long-term benefits on subsequent occupation. Given the scale of the proposal I afford these benefits limited weight.
36. The evidence suggests that the proposal would result in a considerable biodiversity net gain. Whilst this weighs in favour of the proposal, as I do not have the full details before me I can only afford this matter limited weight.
37. A lack of harm to the highway network; use of modern, quality materials and sustainable building techniques; provision of sustainable transport options; and high-quality landscaping are expected of the Framework and development plan and thus weigh neutrally in the balance. Support in the locality for development of the site does not equate to a lack of harm and is also a neutral matter.
38. Whilst there are considerations that weigh in favour of the proposal, together they are not sufficient to outweigh the very substantial harm I have found. The proposal would conflict with the development plan when taken as a whole and therefore no other material considerations, including the Framework, indicate a decision should be taken other than in accordance with it. Therefore, the appeal should be dismissed.

H Ellison INSPECTOR