

Appeal Decisions

Site visit made on 31 July 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2024

Appeal A Ref: APP/N5660/W/23/3333423

Rear Of 260 Knight's Hill, London SE27 0QP

- 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 Mr James Bird of JBK2H Ltd against the decision of the Council of the London Borough of Lambeth.
- The application Ref is 23/00580/FUL.
- The development proposed is construction of a two-storey building containing 2 residential dwellings (1 x 1-bedroom; and 1 x 2-bedroom units), together with associated works.

Appeal B Ref: APP/N5660/W/23/3328839

Rear of 260 Knight's Hill, London SE27 0QP

- 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 under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr James Bird of JBK2H Ltd against the Council of the London Borough of Lambeth.
- The application Ref is 23/02094/VOC.
- The application sought planning permission for erection of 2 x 3-storey terraces with roof top amenity space to provide 8 dwellinghouses and erection of a detached 2-storey building with basement to provide 130sqm of office (Use Class B1(a)) and a self-contained flat at first floor (Use Class C3), together with the provision of car parking spaces, cycle parking, refuse storage and landscaping, without complying with a condition attached to planning permission Ref 20/02581/FUL, dated 26 August 2021.
- The condition in dispute is No 2, which states that:
The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to the conditions of this planning permission.
- The reason given for the condition is:
For the avoidance of doubt and in the interests of proper planning.

Decision

1. Appeal A and Appeal B are both dismissed.

Applications for Costs

2. An application for an award of costs in relation to Appeal B has been made by Mr James Bird of JBK2H Ltd and is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted in 2021 under application Ref 20/02581/FUL (the 'original permission') for development as described in the banner heading for Appeal B. The proposal for consideration under Appeal B seeks to substitute several of the approved plans, with the principal change being the repositioning of a first-floor wall on the northern elevation of the building known as Building M1. At the time of my visit, the wall had been constructed in accordance with the details for which permission is sought but the building had not been completed.
4. Although the Council did not issue a formal decision on the application subject to the appeal, a putative officer report has been provided, setting out the Council's likely decision had it determined the application. I have used this as the basis for the main issues.
5. The original planning permission was granted subject to a S106 agreement. A Unilateral Undertaking (UU), which seeks to vary the previous S106 agreement, accompanies Appeal B. In the event that Appeal B was allowed, this would create a new standalone planning permission. Therefore, I must consider as a main issue whether the UU would be an appropriate mechanism to secure the provisions of the original S106 agreement.
6. The proposal under Appeal A seeks a standalone planning permission to develop Building M1 for wholly residential use. This includes various changes to the plans approved under the original permission, including the northern elevation as described above. Planning permission was refused for the application subject to Appeal A, and the Council's reasons for refusal form the basis of the main issues.
7. While I have determined each appeal against its specific considerations, I have dealt with issues common to both appeals together in the interests of conciseness and to avoid duplication.

Main Issues

8. The following main issues apply to Appeal A only:
 - Whether the proposed development would have an acceptable effect on the provision of employment generating floorspace;
 - Whether the proposed development would provide suitable living conditions for future occupiers; and
 - Whether the proposed development would make suitable provision for cycle storage.
9. The following main issue applies to both Appeals A and B:
 - Whether the proposed development would provide acceptable living conditions for the occupiers of neighbouring properties.

10. The following main issue applies to Appeal B only:

- Whether the submitted Unilateral Undertaking would be an appropriate mechanism to secure the provisions of the original S106 agreement.

Reasons

Appeal A – Employment floorspace

11. Building M1, as granted under the original permission, included office space on the ground and basement levels, with a self-contained flat at first floor. The proposal subject to this appeal seeks to reconfigure the ground and basement levels to provide a duplex flat, replacing the office accommodation.
12. The site was previously used for industrial purposes. Although the approved office use has not yet been implemented, substantial construction has already occurred, effectively removing all traces of the site's former industrial use. Therefore, for the purposes of this appeal, I will consider the ground and basement floors of Building M1 as existing office space.
13. I have determined the appeal based on the current status of the site and the development plan. As a result, the considerations that were relevant when the original permission was granted, or the site's past industrial use, hold little weight, as both the site and the policy context have since changed. Additionally, policies relating to new office development are not central to my decision, as this appeal does not concern the creation of new office space.
14. Policy ED1 of the Lambeth Local Plan 2020–2035, Adopted September 2021 (the LLP) states that proposals involving a complete loss of office floorspace will not be permitted unless certain tests are met. These include at least 2 years of marketing evidence demonstrating no demand for the office floorspace; evidence 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; and evidence that it would not be feasible and/or viable to adapt the office floorspace as smaller office units to meet demand from small businesses. Alternatively, the office floorspace to be lost must be replaced in the vicinity and within Lambeth.
15. Policy ED1 applies to all existing office space, regardless of whether it is subject to other protections or designations in the development plan. The supporting text to the policy emphasises that Lambeth needs to protect and increase its stock of office floorspace to support investment and economic growth. The policy presumes against the loss of existing office floorspace and supports new office space in appropriate locations.
16. The supporting text to Policy ED1 outlines the detailed marketing and evidence requirements, which the Council has elaborated on in its officer report. The appellant has submitted an updated marketing report, indicating that marketing commenced in January 2022. It is understood that the property remains on the market, suggesting that the 2-year marketing period required by Policy ED1 has passed. However, the marketing report provides limited information on the current condition of the property or when it might be ready for occupancy. Additionally, although the appellant suggests the

property is no longer viable for office use due to shifts in the market and work patterns since the pandemic, these assertions are mostly anecdotal and lack substantive supporting evidence. Consequently, I am not persuaded that the tests set out in Policy ED1 regarding the loss of office floorspace have been met.

17. The appellant argues that the Council's position – that construction must be completed before marketability can be fully assessed – is impractical and problematic, especially if a developer and its funders conclude that there is no market demand. The appellant claims that this approach could result in wasted time and resources, and that Policy ED1 should only apply to existing offices, not those with planning permission that have yet to be built.
18. While I do not intend to revisit the original planning decision, I understand that the inclusion of office space in the proposed development was partly driven by policy requirements tied to the site's former industrial use. With the original permission granted and significant development completed, the industrial nature of the site has been erased. Therefore, despite the office space being incomplete and unoccupied, it remains a key component of the approved development.
19. Policy ED1 of the LLP permits the loss of office space in certain circumstances, but the policy sets out clear tests that must be met. Moreover, the policy is clear that a key objective of the development plan is to protect and increase Lambeth's stock of office floorspace. Given the above considerations, I do not find grounds for a more flexible interpretation of the policy should apply in this case.
20. For the reasons given above, the proposed development fails to demonstrate a lack of demand for office floorspace which would be lost without replacement, which would harm the Council's objective of protecting and increasing its stock of office floorspace to support investment and economic growth. It would therefore conflict with Policy ED1 of the LLP, the aims of which have previously been set out. In respect of this issue, it would also conflict with Policies E1 and E2 of The London Plan March 2021 (the LP), which seek, in respect of this issue, to retain existing viable office floorspace except in specific circumstances.

Appeal A – Living conditions for future occupiers

21. At the time of my visit the ground and basement floors were incomplete. While the basement had been excavated, it had not yet been configured as proposed. As such, my assessment of this issue is based primarily on the submitted plans.
22. The proposed duplex flat would have 2 bedrooms – one on the ground floor and one at basement level. The basement level would be illuminated by a lightwell, while the ground floor bedroom would have conventional windows overlooking the top of the basement lightwell. Elsewhere, the ground floor lounge would be served by a window and glazed doors opening out over a terrace area, the floor of which would feature walk-on rooflights serving the basement kitchen/living/work space.

23. An Internal Daylight Assessment (IDA) has been provided, which claims to follow the BRE Report 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' (3rd edition, 2022) (the BRE Guide). Although not specifically stated, the Council's concerns in respect of light appear to focus on daylight rather than sunlight. Therefore, I shall focus on daylight in my assessment.
24. The IDA uses the target daylight factor method from the BRE Guide to demonstrate that the kitchen/living/work space, lounge and both bedrooms would receive acceptable levels of daylight. Although I was not provided with detailed calculations or methodologies for the results provided, the data suggests that daylight levels would meet the BRE Guide's recommendations. While the Council questions the reliability of this data, there is limited substantive evidence to challenge its validity. Based on the available evidence, I therefore find that the proposal would provide adequate daylight for future occupiers.
25. Regarding ventilation, the appellant suggests that areas with non-openable windows, such as the basement, could use passive ventilation via trickle vents. Although details are limited, the unfinished nature of the development and the layout, which allows potential ducting to external walls, suggests this solution would be feasible. I have not been presented with substantive evidence to suggest that adequate ventilation could not be provided, and I am therefore satisfied that a workable solution would be achievable within the parameters of the proposed development.
26. Outlook from the basement rooms would rely on lightwells. The kitchen/living/work area would be served by a glazed rooflight, which would also form part of the floor of the terrace providing the property's only external amenity space. While this design is innovative, it presents potential conflicts if both areas were used concurrently, or outdoor furniture was placed on the terrace.
27. The basement bedroom's lightwell would be enclosed by the property's northern boundary fence and the walls and windows of the ground floor of the building. Although it would offer a view of the sky above, this would only be available from directly beneath or close by, and the quality of outlook for future occupiers would be limited.
28. The ground floor bedroom would have conventional windows overlooking the basement lightwell. However, the proximity of the northern boundary fence would dominate views from this window, negatively affecting the outlook for future occupiers.
29. The appellant argues that the proposal would be a characterful and individual contemporary home, highlighting the generous internal space and high ceilings. They acknowledge that the layout is unconventional, but note the adequate provision of daylight throughout and the popularity of skylights in settings such as factories, artists' studios and galleries. In this respect, it is suggested by the appellant that the unit would be attractive for use as a home with flexible workspace.
30. While I acknowledge these points, I must assess the proposal within the context of residential development, given that is what was proposed through

the application. Although the ground floor lounge would offer a conventional standard of outlook, all other rooms would be significantly constrained. While this limited outlook might be acceptable for some occupiers, it assumes a narrow scope of how the other rooms might be used. In reality, bedrooms and the basement level kitchen/living/work areas are likely to serve multiple purposes such as working, studying, relaxing and recuperating, rather than simply their named purposes. In such cases, an adequate level of outlook would be a crucial factor for delivering acceptable living conditions. For these reasons, I am not convinced that the proposed development would provide an appropriate standard of outlook for future occupiers.

31. The Council provides limited substantive detail of its concerns regarding external amenity space. However, despite the potential conflict with the glazed floor of the terrace, the proposed external space would meet the requirements of the development plan. Accordingly, I find the provision of external amenity space to be acceptable.
32. For the reasons given above, although I find no harm in respect of daylight, ventilation or external amenity space, I conclude that the proposed development would fail to provide suitable living conditions for future occupiers due to inadequate outlook. It would therefore conflict with Policies Q2 and H5 of the LLP, and Policies D3 and D6 of the LP which together seek, in respect of this issue, for dwellings to deliver good design and provide dual-aspect accommodation, to deliver appropriate outlook, and avoid undue sense of enclosure.

Appeal A – Cycle storage

33. Although no specific details of cycle storage have been provided, the appellant suggests that this could be accommodated in the store at the eastern end of the building, accessible from the southern elevation.
34. In respect of this issue, the Council's decision notice cites Policy S3 of the LLP. However, I have not been given a copy of Policy S3, but I have been provided with LLP Policy T3, which pertains to cycling. It seems likely that the reference to Policy S3 in the decision notice was a typographical error, so I have assessed the proposal against Policy T3 instead.
35. Policy T3 refers to the cycle parking standards outlined in Policy T5 of the LP, which would require 2 cycle parking spaces for the duplex dwelling. While the specific cycle parking details have not been submitted, the store appears capable of accommodating the required number of spaces in a secure and accessible location. Further details could be secured by condition in the event of the appeal being allowed.
36. For these reasons, I conclude that the proposal would make suitable provision for cycle storage in accordance with Policy T3 of the LLP and Policy T5 of the LP, the aims of which have previously been set out.

Appeals A and B – Living conditions of neighbouring occupiers

37. The initially approved design for Building M1 positioned the first-floor wall slightly set back from the northern boundary. However, the revised proposal now moves this wall further north to align with the ground floor footprint. During my visit, I observed that the footprint and outer structure of Building

M1 had been constructed as per the revised proposal, enabling me to assess this issue based on the proposal as built.

38. Although the revised proposal brings the building closer to the rear boundaries of the terraced properties to the north than originally approved, the difference is not substantial. The outlook from the rear windows and gardens of the neighbouring properties under the original permission would have been largely similar to the current proposal. Accordingly, I am not convinced that this adjustment would significantly increase any sense of overbearing or enclosure.
39. Additionally, although the proposed development extends the ground floor massing slightly further west, this change would not be particularly noticeable to the neighbouring properties beyond their rear boundary fences.
40. For these reasons, I conclude that the proposal would provide acceptable living conditions for the occupiers of neighbouring properties, and it would therefore accord with Policy Q2 of the LLP, which requires development to provide acceptable levels of amenity.

Appeal B – Planning obligations

41. In the event that I was to allow Appeal B, a new planning permission would be created, affording the appellant the option of which of the planning permissions to progress. The appellant proposes that this should be granted subject to the UU accompanying the appeal, which seeks to vary the terms of the S106 agreement attached to the original permission.
42. The appellant has proposed amendments to the original obligations through the UU, including provisions that contributions would only be payable where they have not already been paid pursuant to the original S106 agreement. However, Section 106A of the Town and Country Planning Act 1990 (the Act) provides that once a planning obligation has been correctly executed, any variation document must be made by agreement between the appropriate authority and the person or persons against whom the obligation is enforceable. Accordingly, a UU cannot be used to modify an earlier planning obligation, as the Council must be a party to the variation document.
43. Therefore, allowing the appeal subject to the UU would fail to accord with the provisions of S106A of the Act. The submitted UU is therefore not an appropriate mechanism to secure these provisions.

Other Matters

44. In relation to Appeal A, the proposal would provide an additional residential unit in a sustainable location and would make efficient use of the land. This would provide a small but meaningful contribution to housing stock, aligning with the government's objective to boost the supply of homes, as set out in the National Planning Policy Framework (the Framework). Whilst these benefits offer some weight in favour of the proposal, they do not outweigh the harm previously identified.

Conclusions

45. In respect of Appeal A, although the proposal would provide appropriate cycle storage and would not harm the living conditions of the occupiers of neighbouring properties, it would fail to accord with the development plan as a whole and there are no other reasons, including the provisions of the Framework, to lead me to a decision other than in accordance with the development plan. For these reasons, I conclude that the appeal should be dismissed.
46. In respect of Appeal B, although the proposal would not harm the living conditions of the occupiers of neighbouring properties, the UU that is before me does not provide an appropriate mechanism to secure the provisions of the S106 agreement attached to the original permission. For this reason, I conclude that the appeal should be dismissed, and planning permission refused.

P Storey

INSPECTOR