



Appeal Decision

Site visit made on 8 October 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal Ref: APP/H5960/C/22/3313682

Aminah Mansions, 55F Tooting High Street, London SW17 0SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Danish Hanif of Hamna Wakaf Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 10 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission and within the past four years, the unauthorised erection of 3rd and 4th floor extensions (4th and 5th storeys of the property) and the use of these extensions as self-contained flats within the property, numbered Flats 13 - 20 inclusive (the "Unauthorised Development").
 - The requirements of the notice are:
 1. Cease the use of the unauthorised 3rd and 4th floors as self-contained flats; and
 2. Remove the unauthorised 3rd and 4th floor extensions and return the property to its last lawful condition; OR
 3. Cease the use of the unauthorised 3rd and 4th floors as self-contained flats; and
 4. Carry out remedial works so that the layout of the property accords with the approved plans and conditions of either planning permission references: 2018/4880 or 2019/2486; AND IN EITHER CASE
 5. Remove from the property all debris arising from compliance with steps 1-2 or 3-4.
 - The period for compliance with the requirements is eight months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by deleting the text after (*the "Unauthorised development"*) beginning with the words *A retrospective planning application*, from section three of the notice (the matters which appear to constitute the breach of planning control).
2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

3. I have deleted superfluous wording from section three of the enforcement notice since it does not describe the alleged breach of planning control but provides background.

Preliminary Matters

4. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have

the power under section 177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the planning difficulties, at less cost and disruption.¹

5. What the caselaw² referred to demonstrates, is that whether an alternative scheme forms part of the matters is a matter of planning judgement.
6. In this respect the appellant does not seek planning permission for the as-built scheme, but instead has submitted three alternative schemes for consideration. Each scheme would see the reduction from eight to six flats, by amalgamating units. Alternative one would include balconies at fourth floor level and a new mansard roof to the north-west elevation.
7. The second alternative would also include a new mansard roof to the north-west elevation, along with changes to the fenestration and the provision of inset winter balconies to the fourth floor. Finally, alternative three would include changes to the fenestration and the provision of inset winter balconies to the fourth floor.
8. Each of the alternatives would involve changes to the layout, shape, and form of the fourth floor, albeit to a lesser extent in alternative three. They would also include the provision of balconies on the fourth floor where none currently exist. Considering the degree of physical alteration that would be required in the round, the suggested alternatives would amount to fundamentally different schemes, both in terms of overall design and number of flats.
9. Accordingly, the extent of the changes proposed, and new work required by each of the suggested schemes would be such that, in my judgement, they do not properly fall within the statutory power to grant planning permission.
10. I make no comment about the acceptability of the proposed alternatives, this would need to be determined through the submission of a planning application/s to the Council.
11. Since the appeal was made, the Wandsworth Local Plan 2023 – 2038 has been adopted (adopted July 2023). The Council were asked to confirm and provide copies of policies from the plan, which they intend to rely on. The appellant was given the opportunity to provide comments in relation to those policies and any comments received have been considered.
12. The Council in response referred to a number of policies, previously referred to in their submissions, except for Policy LP27. However, given that the policy was referred to throughout their submissions, it is evident the omission was an error. I have made my assessment on this basis and there is no prejudice to the appellant since they constructed an argument based on the interpretation of Policy LP27.

The appeal on ground (a) the deemed planning application

13. The main issues are (i) the effect of the development on the character and appearance of the area (ii) housing mix (iii) the effect on the living conditions

¹ Tapeccrown Ltd v FSS & Vale of White Horse DC [2006] EWCA Civ 1744

² Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566,
Bhandal v SSHCLG & Bromsgrove DC [2020] EWHC 2724 (Admin)

of occupiers with regard to the size of the accommodation and the provision of outdoor amenity space (iv) the provision of refuse and recycling facilities.

Reasons

Character and appearance

14. The site is in the town centre, off Tooting High Street, to the rear of premises in mixed use, generally consisting of commercial uses at street level with residential accommodation above. The site is accessed from the street via a relatively narrow alleyway between two terraces.
15. As noted in the officer report in respect of the 2018/4880 permission, most of the surrounding properties are four storeys, with some increasing to five at the rear, and the properties are of a wide variety of designs and built forms. In this context the increase in height is not itself harmful.
16. However, the north-west elevation appears as a large expanse of render, punctuated by a regular but unremarkable fenestration pattern, which does little to provide relief from the bulk and height of the building. Together with the flat roof form the resulting building has a rather monolithic appearance. Moreover, whilst the courtyard elevations reflect the approved development in terms of the fenestration, the balconies, and vertical supporting structures dominate the elevations and have a cluttered appearance.
17. Overall, the building could not be described as a visually attractive building that would be admired in the long term and is inferior to the approved scheme. Whilst only the north-west elevation is visible in limited glimpses from wider public views, that does not diminish the need for high quality design.
18. I conclude that the development causes significant harm to the character and appearance of the area, contrary to Policy LP1 of the Local Plan which requires that the scale, massing and appearance of development provides a high-quality, sustainable design and layout that enhances and relates positively to the prevailing local character and the emerging character (where the context is changing).
19. It also conflicts with the design aims of The National Planning Policy Framework (Framework) which sets out that planning decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development and are visually attractive as a result of good architecture.
20. The Council referred to Policy LP5 of the Local Plan which relates to residential extensions and alterations. However, read fairly this policy relates to extensions to existing dwellings. It weighs neither for nor against the development in this case.

Housing mix

21. Policy LP24 of the Local Plan states that development proposals creating additional residential units will be supported where the market housing dwelling mix: amongst other criteria, takes into account the existing housing stock in the neighbourhood in order to avoid any over-concentration of a single size of homes where this would undermine the achievement of creating mixed and balanced communities; and contributes to the borough-level indicative

- proportions detailed, which include 30-40% one bedroom, 30-40% two bedroom, 15-25% three bedroom and 5-10% four+ bedroom.
22. Furthermore, that planning applications will be required to be supported by evidence, proportionate to the nature and scale of development proposed, to justify the mix of new market homes to be provided. It is stated that the dwelling mix will be considered on a site-by-site basis and in applying the preferred housing mix regard will be given to current evidence in relation to amongst other criteria, housing need, the surrounding context and character and the financial viability of the scheme.
23. The development has provided eight flats, four one bedroom, two, two bedroom and two three bedroom. Other than to state that the town centre location and apartment typology makes four-bedroom units unsuitable, the appellant has not sought to justify the mix of homes provided with regard to housing need or the surrounding context and character.
24. Accordingly, in the absence of evidence, the development is contrary to Policy LP24 of the Local Plan.

Living conditions

25. Policy LP27 of the Local Plan states that all new residential development, including amongst others, new-build dwellings will be required to, amongst other matters, comply with the Nationally Described Space Standard (NDSS) and meet all requirements for housing standards and private internal space set out in Policy D6 of the London Plan, and provide private outside space to a minimum of 10 sqm for one and two bedroom dwellings and 15 sqm for dwellings with three or more bedrooms.
26. The NDSS sets out that a one bedroom, two-person single storey dwelling should provide a minimum gross internal floor area (GIA) of 50sqm with 1.5sqm of built-in storage. The Council stated that the GIA of flats 14 and 18 are 49.3sqm and 48.9sqm respectively, which is not disputed by the appellant. Although the shortfall is not great, the standards are minimum standards to be achieved to provide appropriate living conditions for occupiers.
27. The explanatory text to Policy LP27 at paragraph 17.31 explains that *for a long time, Wandsworth has used an established and evidenced standard for external amenity space, which seeks 10sqm of space in non-family sized units and 15sqm in family sized units. It remains appropriate – particularly in light of the importance of having private outdoor space during the pandemic - to continue to apply these standards to new residential development.*
28. The Council accepted a shortfall in the size of the private outside space provided in respect of the approved scheme, and in the delegated report referred to ground floor communal areas that could be used by all occupiers as amenity space. However, in this case flats 17–20 have no private outside space and the development is not in accordance with Policy LP27.
29. Moreover, whilst the courtyard could function as a communal area, there is no evidence of such use. Considering its position relative to the fourth-floor flats, and potential views from surrounding properties, this would likely limit its potential use by occupiers of the flats.

30. I have had regard to the planning permission in respect of 25-29 Tooting High Street however, in that case all the units would have dedicated private outside space, albeit a shortfall in size was accepted considering the combination of access to private and communal areas. It is not therefore directly comparable to this case where no private outside space has been provided for flats 17-20 and is a matter of little weight.
31. In the appeal decision provided³ there were evidently constraints to providing private outside space, not least the potential harm to the living conditions of neighbouring residents. Moreover, the site was in proximity to the well-used public spaces of Clapham and Wandsworth Common.
32. Other than reference to the planning permission and appeal decision, the appellant has provided no explanation why the policy requirements should be set aside.
33. Consequently, in the absence of adequately sized accommodation for occupiers of flats 14 and 18, and private outside space for the occupiers of flats 17-20, the accommodation does not provide satisfactory living conditions for occupiers, contrary to Policy LP27 of the Local Plan which seeks high quality housing. It also conflicts with the Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.

Refuse and recycling

34. Policy LP2 of the Local Plan sets out that development must include sufficient waste and recycling storage facilities on-site unless there are exceptional circumstances. Such facilities should be provided in accordance with the Council's adopted 'Refuse and recyclables in developments SPD' (2014) or successor document.
35. The SPD sets out that wherever practical it should be possible to collect waste direct from the storage area so that there is no requirement for it to be moved to a separate collection point in advance of collection, particularly to a collection point on the public highway. Where separate collection points are required, internal management arrangements to present waste there by 6.30am on collection day must be protected by covenants attached to any relevant leases to ensure that they can be relied upon to continue in perpetuity.
36. It goes on to state that *if internal management arrangements are proposed to move or otherwise manage waste internally prior to collection, those arrangements must be detailed in a waste management plan. This plan should detail how waste is proposed to be managed from the time it is discarded by the occupant to the time it is collected. Any such internal management arrangements must also be protected by covenant to ensure that they continue in perpetuity.*
37. The appellant has not sought to demonstrate that the existing refuse and recycling arrangements are acceptable, although I acknowledge that the Council's photographs are not necessarily representative of usual conditions. However, in the absence of existing details, I cannot conclude that the arrangements accord with Policy LP2 of the Local Plan, nor that such

³ APP/H5960/W/24/3342383

arrangements could be secured by condition, given the requirement in the SPD for covenants in certain circumstances.

Other Matters

38. Footnote eight indicates that paragraph 11 d) of the Framework is also triggered in circumstances where the Housing Delivery Test (HDT) indicates that the delivery of housing has been substantially below the housing requirement over the past three years.
39. The appellant acknowledged that the latest HDT results, published in December 2023, show the Council delivered 4,969 homes over the three-year period 2019-2022, which constitutes 103% of the minimum target of 4,824 homes specified by the HDT. Although this may have been due to adjustments made for delivery slow-down during the global pandemic, paragraph 11 d) is not triggered.
40. The Written Ministerial Statement – Building the homes we need, makes it clear that we are in the middle of the most acute housing crisis in living memory. However, notwithstanding the acknowledged need to significantly boost the supply of homes, this does not mean having no regard for the quality of homes or the wider context, even where a site is relatively well contained.
41. The appeal site is previously developed land in a sustainable location and would add to the supply of housing, in this case used for social housing, which are benefits. However, four homes would make only a very modest contribution to housing supply and these benefits carry little weight.

Conclusion on ground (a)

42. For the reasons given, the development conflicts with the development plan taken as a whole and the advanced considerations do not indicate that the appeal should be determined other than in accordance with the development plan.

Conclusion

43. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR