



Appeal Decision

Site visit made on 11 November 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2024

Appeal Ref: APP/N5660/W/24/3339729

761 Wandsworth Road, Lambeth, London SW8 3JF

- 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 Chris and Jules Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 23/02053/FUL.
 - The development proposed is redevelopment of the commercial unit (Use Class E) and the yard to the rear, involving the erection of two 3- storeys buildings linked at lower ground floor level to provide 7 residential units (Use Class C3), including private amenity spaces, refuse and cycle stores.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the development from the Council's Decision Notice, as this more accurately describes the proposal.

Main Issues

3. The main issues are:
 - whether the proposed development would provide adequate living conditions for future occupiers with regard to internal space, outdoor amenity space, daylight and sunlight, and outlook;
 - whether the proposed development would preserve or enhance the character or appearance of the Wandsworth Road Conservation Area (CA);
 - the effect of the proposed development on the living conditions of neighbouring occupiers on Wandsworth Road with regard to privacy;
 - the effect of the proposed development on on-street parking and traffic congestion; and
 - whether the proposed development would provide appropriate cycle and refuse storage.

Reasons

Living conditions – future occupiers

Internal space

4. Policy H5 of the Lambeth Local Plan 2020-2035 (2021) (LP) states that proposals will be expected to meet the minimum private internal space standards set out in the London Plan (2021) (LonP) Policy D6. Whilst the LonP Policy D6 is not directly referenced in the Council's reason for refusal, LP Policy H5 clearly references LonP Policy D6 and therefore it is reasonable and appropriate to refer to the standards detailed in LonP Policy D6.
5. Based on the evidence before me, four of the units would provide or exceed the required minimum standards of internal space. However, three units would fall short of the required space standards, to varying degrees, and would result in constrained living conditions for their future occupiers. Whilst the deficiency for unit 1 in particular would be modest, the standards set out in LonP Policy D6 are minimum standards and exceedance of them is encouraged. There is no persuasive evidence before me to demonstrate that a departure from these standards should be made for the proposed developments. In failing to meet these minimum requirements, I find that the proposal would not be delivering accommodation with an internal layout that would provide adequate living conditions for future occupiers.
6. The evidence indicates that the proposed new block would provide ceiling heights of 2.5m, whilst the proposed extension would have ceiling heights of 2.3m. The proposed ceiling height of 2.3m would meet the requirements of the Government's Technical Housing Standards - Nationally Described Space Standard (2015). However, Policy D6 of the LonP indicates that the minimum ceiling height should be 2.5m for at least 75% of the Gross Internal Area of each unit. The standards are required to help ensure satisfactory light, ventilation and sense of space, with the figure set at 2.5m to address the impacts of the urban heat island effect and the fact that the majority of housing developments in London are made up of flats. As such, this is of relevance to the appeal scheme.
7. Whilst the 20cm shortfall in ceiling heights is in part due to the design of the proposal and a need to reduce the overall massing of the scheme, the effect of the shortfall, coupled with the failure of three of the units in meeting the minimum internal space standards, would contribute to the units' being cramped and constrained, and would not provide adequate living conditions for future occupiers with regard to internal open space.

Outdoor amenity space

8. Policy H5 of the LP states that private external amenity space should be provided at 10m² per flat or consolidated with communal amenity space. The evidence before me indicates that one of the proposed units would not provide any private external amenity space, and a number of the other units would not provide the required figure of 10m². Where bike storage is included in the units' private external amenity spaces, this reduces their size, functionality and usability for typical outdoor activities such as sitting out, drying clothes or outdoor socialising.

9. The proposed scheme would provide a communal outdoor area. However, this communal space includes bike storage and stairs, which would reduce the amount of usable communal amenity space available to be enjoyed by future occupiers. As such, the communal amenity space is not of an appropriate size or practical layout in order to mitigate for the shortfall in private amenity space.
10. The written text of LP Policy H5 indicates that in exceptional circumstances where it is demonstrated that site constraints make it impossible to provide private open space for all dwellings in flatted developments, the provision of additional internal living space equivalent to the amenity space requirement within a proportion of dwellings may be accepted. However, three of the flats, as detailed above, provide insufficient internal space, and the lack of outdoor amenity space would exacerbate the lack of overall space and unacceptable living conditions of the occupiers of the proposed development. The internal space would not compensate for the shortfall of adequate outdoor space.
11. The appeal site is close to outdoor green spaces. However, the supporting text of LP Policy H5 states that the proximity of existing parks or open spaces does not constitute a sufficient reason not to provide onsite external amenity space. No substantial evidence is before me to indicate that a departure from the outdoor amenity space requirements for the proposed development should be made.
12. The appellant considers that flats 1, 2 and 3 could be implemented via permitted development rights, and that the ceiling heights and amenity space associated with these units are not material planning matters. The consideration of a fallback position, including what could be erected under permitted development, is a well-established principle. Whilst there is no evidence that a Lawful Development Certificate has been submitted for the scheme, there is also no evidence before me to indicate that the permitted development rights could not be exercised. Consequently, there is a greater than theoretical possibility that, if the appeal is dismissed, the appellant might pursue the fallback proposal, so it is a material consideration.
13. However, for significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme. The concerns regarding internal layout, ceiling heights and outdoor amenity space in a number of the other units would remain. Therefore, particularly as there are limited details before me regarding the fallback scheme, it has not been demonstrated that the fallback scheme would be equally or more harmful than the appeal scheme. As such, it affords only modest weight which does not outweigh the harm that I have identified.

Light

14. Although a daylight and sunlight report has been provided with the application, this was undertaken in accordance with BRE guidance 2011 which has now been updated. Whilst the appellant may consider that the change in guidance may not be significant, I note from the report that a small number of rooms and outdoor amenity areas did not meet the previous recommendations. Without an updated report I cannot confidently conclude that the proposed scheme would provide adequate levels of daylight and sunlight for the future occupiers of the units. As this is essential to ensure the

acceptability of the proposal, in this instance this is not a matter that can be left to a planning condition.

Outlook

15. The majority of the proposed units would have a dual outlook. Units 1 and 2 would have habitable living rooms positioned on the lower ground level and would have a limited outlook, and due to the nearby proximity of outside walls they would have a sense of enclosure.
16. However, the main living area for both units would have two windows, and would look out onto proposed private amenity space. Whilst the outlook from units 1 and 2 would be limited, this would not be entirely unusual for lower ground floor flats in an urban area. I therefore find that whilst the outlook for units 1 and 2 is constrained to a degree, it would not be so inadequate as to harm the living conditions of the units' future occupiers.

Conclusion on living conditions for future occupiers

17. Whilst the proposed development would provide an acceptable outlook, it would not provide adequate living conditions for future occupiers with regard to internal layout, outdoor amenity space, daylight and sunlight. As such, the proposal would not comply with Policies H5 and Q2 of the LP which seek to ensure that developments provide adequate levels of internal space and outdoor amenity space and acceptable levels of daylight and sunlight.

Effect on the significance of the CA

18. The appeal site lies to the rear of 761 Wandsworth Road (No 761) in the Wandsworth Road CA, and the site abuts the boundary of the Clapham CA. The Wandsworth Road CA is characterised by 19th and 20th Century buildings with terraces of houses of largely two and three storeys lining the southern side of Wandsworth Road. The significance of the CA, as it relates to this appeal, derives from the buildings that were constructed at that time to serve the demand for a growing population of workers and artisans. The scale, combined with the relatively narrow street frontages creates a fine visual grain to the area, and with the architecture of the buildings provide an attractive character that contributes to the significance of the CA.
19. No 761 forms the end of a terrace of three storey (over semi-basement) houses, with a two-storey side extension built in the late nineteenth century which runs down the side of the building along Lambourn Road. To the rear of No 761 is an open yard area. A high boundary wall runs the length of the site, fronting Lambourn Road, with a pair of gate piers in glazed bricks either side of the entrance to the rear of the site. No 761 and its neighbouring properties are defined by their concealed roofs, strong cornices, stucco decoration and cast-iron decorative features to their window cills. No 761 has well-proportioned and detailed window openings and a decorative entrance, and is an attractive building within the street scene, with the glazed brick features at the rear of the property and the gate piers adding to its interest. Consequently, the appeal site contributes positively to the character and appearance of the CA.
20. The proposed windows of the extension would be multi-pane Crittal-style, rather than traditional timber sash windows. The proposed fenestration and openings would not relate well to the host building, particularly those that

front Wandsworth Road. The windows in the terrace along Wandsworth Road have a uniformity of design which gives a pleasant degree of consistency that enhances the street scene as a whole. In contrast, the proposed development's fenestration has no clear relationship with neighbouring properties.

21. The proposed windows would also have less deep reveals than is typical in surrounding properties, resulting in the elevations appearing as flat and out of keeping in the neighbouring context. The proposed openings and fenestration would therefore be unsympathetic to the style and appearance of the adjoining host building and would appear as inharmonious and visually jarring within the street scene.
22. In order to reduce the scale and impact of the proposed rear block, the roof would be pitched to the front and mansarded to the rear. Whilst a nearby property at Lambourn Road has a mansard roof, the hybrid roof design would be out of character with the roofscape of the surrounding properties and appear as incongruous. The proposed plans indicate that the rear of the proposed new block would have timber cladding which would not be in keeping with the traditional materials prevalent within the CA, and would be at odds with surrounding buildings. This would add to the proposal appearing as discordant within the CA.
23. The proposed dormers of the rear block would be large and would appear as over dominant within the roof. The proposed dormers would not align well with the other windows within the proposed block, which would result in an incohesive and somewhat jarring design.
24. The proposal would see amendments to the historic boundary wall, which is a feature of the streetscape, with the addition of railings. However, an element of the wall would be retained, and the evidence before me indicates that the existing ceramic decorative detailing to the rear gate entrance would remain. I noted from my site visit that a number of properties in the vicinity had railings along their front boundary. As such, the amendments to the boundary wall and the proposed railings would not be out of keeping with the surrounding streetscape nor harm the character or appearance of the CA.
25. Overall, however, the proposed windows of the extension and the proposed dormers and roof of the proposed rear block would appear as incongruous and untypical features in the street scene and would harm the character and appearance of the CA.
26. Whilst it may have been possible to control certain elements of the proposal through conditions, the scale of the changes necessary to ensure the acceptability of the proposal would amend the scheme to such an extent where it would not be possible to do so by conditions.
27. My attention has been drawn to examples of other developments with reference to their massing, additional storeys, retention of historical features and retention of details. However, I do not have full details of these schemes, which are in different locations, are a different scale and some of which are a different type of development. Therefore, they are materially different to the proposal before me. In any event, I have assessed the scheme on its own merits and site-specific circumstances.

28. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA.
29. The proposal would not preserve or enhance the character or appearance of the CA. As such the proposal would be contrary to the local distinctiveness, design and heritage protection objectives of policies Q2, Q5, Q7, Q8, Q11, Q14 and Q22 of the LP.
30. The harm which would be caused to the significance of the CA would be less than substantial, but nevertheless of considerable importance and weight. Under these circumstances paragraph 208 of the National Planning Policy Framework (the Framework) indicates that this harm should be weighed against the public benefits of the proposal. I consider these matters further in the overall heritage and planning balance.

Living conditions – neighbouring occupiers

31. The proposal would introduce a number of habitable windows within its upper levels which would directly overlook the amenity areas and habitable rooms of properties along Wandsworth Road. Whilst intervisibility between properties is not unusual in built-up residential areas, the presence of these windows at close proximity to neighbouring properties would be highly intrusive and lead to an unacceptable level of overlooking and loss of privacy to these properties, which would negatively impact the occupiers' enjoyment of their homes.
32. Attaching a condition to ensure that the relevant windows would be obscurely glazed would not be a satisfactory solution, as not all the rooms are dual aspect and the introduction of glazed windows would lead to an unacceptable loss of outlook for their future occupiers. Moreover, even if the windows were obscured, there would remain a harmful perception of overlooking and loss of privacy for neighbouring occupiers.
33. Consequently, the proposal would harm the living conditions of neighbouring occupiers on Wandsworth Road with regard to privacy. The proposal would therefore not accord with Policy Q2 of the LP which seeks to ensure that development does not lead to unacceptable levels of overlooking or perceived overlooking.

Transport Impacts

34. The scheme would not provide any car parking spaces, which would place increased demand for limited on-street parking available in proximity leading to additional traffic generation and congestion. The appeal property would therefore have been subject to a S106 for a Car Permit free agreement if otherwise acceptable. In addition, a Car Club membership and membership of the London Cycle Hire scheme would have been required and secured under a legal agreement for future residents of the site.
35. Whilst the appellant has confirmed that they would be happy to accept a condition to provide the appropriate S106 agreement, no completed Unilateral Undertaking has been provided for my consideration as part of the appeal. The Planning Practice Guidance states that a positively worded condition which requires the applicant to enter into a planning obligation or an agreement under other powers, is unlikely to pass the test of enforceability.

36. In the absence of a legal mechanism to restrict future occupiers from obtaining parking permits and providing future occupiers with car club membership, and cycle hire membership, I cannot conclude that the proposal would not lead to an increase in on-street parking and traffic congestion. The proposal would therefore be contrary to Policies T1 and T6 of the LP which promote sustainable transport and seek to ensure that where appropriate development is permit free and provides car club membership.

Cycle and refuse storage

37. The proposed development would need to provide both long stay and short stay cycle spaces and a percentage of accessible spaces. The plans indicate that cycle parking is provided within the communal amenity spaces, and within the units' private spaces. However, the proposed cycle spaces would be located at various levels within the development, and as such future occupants would need to carry their bicycles up and down the stairs and through doors to access the cycle parking. The proposal would therefore fail to provide cycle storage facilities that are conveniently located for future occupiers.
38. No car parking spaces are provided, and it is possible that future occupiers may rely on cycling for transport. Due to the constrained nature of the appeal site, it would not be appropriate in this instance to rely upon a condition to secure an amended scheme of cycle parking, which it may not be possible to achieve in terms of the amount to be provided in an appropriate and easily accessible location without exacerbating the identified shortfall in internal space and outdoor amenity space.
39. The refuse storage facilities would be located on the ground floor level of the proposed development and would be easily accessible for future occupiers of the units. However, the refuse storage would not accommodate the number of bins which would be required for the development. A condition could be attached to ensure the submission of a waste management plan including details of how pavement collection of waste would be managed. However, a condition regarding the location of further refuse storage would not be appropriate, as it is necessary to have certainty that additional refuse storage could be provided without further limiting the amount of usable outdoor amenity space.
40. Consequently, the proposal would not provide adequate cycle and refuse storage. The proposal would therefore conflict with LonP Policy T5 which provides minimum cycle parking standards for developments and Policies T3, Q12 and Q13 of the LP which seek to ensure that developments provide accessible cycle parking and sufficient refuse and recycling storage.

Other Matters

41. The appellant has had pre-application discussions with the Council relating to the proposal and has amended the scheme in order to try to address the Council's concerns and detailed comments. However, the amendments are not sufficient to overcome the identified harm and the conflict with the development plan.

Heritage and Planning Balance

42. The Framework states that great weight should be given to the conservation of a designated heritage asset, irrespective of whether the harm to its

significance is less than substantial. As indicated earlier, the Framework requires the less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal.

43. The provision of seven residential units would contribute to delivering the Council's housing requirement. The proposal would offer social, economic and environmental benefits that would also be of benefit to the public. Benefits would arise from the delivery of housing and increasing the choice of homes. There would be further benefits as future occupiers would support local services and facilities. There would be economic benefits relative to the construction phase and through additional occupiers contributing to the local economy. Environmental benefits would be secured through the efficient use of land and through the scheme being provided in an accessible location which may limit the use of the private car.
44. However, these public benefits do not outweigh the considerable weight to be given to the heritage asset's conservation.
45. The appellant has argued that as the Council could only just achieve a five year supply of housing (5.09 years) up to March 2022, it would appear highly possible that they can no longer demonstrate a sufficient supply. However, the Council have provided evidence of a housing land supply of 5.49 years, evidenced within the Lambeth Housing Development Pipeline Report 2022/23. I have been given no substantial evidence to doubt these figures.
46. In these circumstances, by virtue of Framework footnote 8, paragraph 11d) is not engaged in this appeal and the presumption in favour of sustainable development does not apply. In any case, the harm to the significance of the designated heritage asset would not be outweighed by public benefits, which would provide a clear reason for refusing the development proposed under the provisions of paragraph 11(d)(i) of the Framework.
47. The benefits that would be provided by seven additional residential units would be modest, and the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the development plan and the Framework.

Conclusion

48. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
49. For the reasons given above the appeal should be dismissed.

L C Hughes

INSPECTOR