



Appeal Decision

Site visit made on 26 March 2025

by B Astley-Serougi BA(Hons) LLM MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2025

Appeal Ref: APP/A5840/W/24/3355599

249-251 Old Kent Road, Southwark, London, SE1 5LU

- 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 Mustafa Tahir against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 23/AP/2979.
 - The development proposed is described as construction of a 3rd floor level, mansard roof extensions to create one, 2-bedroom flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal is in a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The appellant submitted revised drawings to the Council in January 2024. The Council did not formally accept these plans during the application process. I have limited substantive evidence to demonstrate that these amended plans were subject to public consultation. Additionally, they did not form part of the Council's decision. Therefore, to consider such a modification would be a substantive difference and procedurally could prejudice interested parties by depriving those who should have been consulted on the change the opportunity of such consultation. Furthermore, it is not for the appeal procedure to advance proposals. This is best achieved through the submission of revised planning applications. For this reason, I have determined the appeal on the basis of the plans that were before the Council when it made its decision.

Background and Main Issues

4. During the Covid-19 pandemic the Council undertook a programme of consultation regarding the Thomas A'Becket and High Street Conservation Area (the CA). This included the sending of letters to the owners/occupiers of the properties in the immediate area and a wider boundary area around the proposed conservation area giving a twelve-week consultation period. The letters included guidance on the implications of a conservation area and how to access the relevant appraisal documents that were published on the Council's website. Consequently, there is limited substantive evidence to suggest that the Council failed to adequately consult residents proximate to the appeal site including the appellant. Nevertheless, the appellant acknowledges that it is their responsibility to know if their property is within a CA.

5. Therefore, the main issues are:

- whether the proposal makes adequate provision for any additional need of social rented, intermediate homes and open space arising from the development;
- whether the proposal would provide acceptable living conditions for future occupants, with regard to noise and disturbance and cooking smells;
- whether the proposal would provide acceptable standards of fire safety; and
- the effect of the proposal on the character and appearance of 249-251 Old Kent Road (Nos 249-251) and whether it would preserve or enhance the character or appearance of the CA.

Reasons

Adequate provision of social rented, intermediate homes and open space

6. The proposed development would introduce a single two bedroomed flat with no provision of open space. Therefore, according to Policy P1 of the Southwark Plan 2022 (the SP) the appeal scheme would be required to provide the maximum amount of social rented and intermediate homes or a financial contribution towards the delivery of new council social rented and intermediate homes with a minimum of 35% subject to viability.
7. The Financial Viability Review submitted by the appellant suggested that the appeal scheme would make a deficit of approximately £25,692 and consequently would be unable to provide a financial contribution towards social and intermediate housing. However, the Financial Viability Review conducted on behalf of the Council concluded that whilst the appeal scheme would not be able to contribute 35%, it would make a surplus and could consequently provide a financial contribution of approximately £95,672. This was adjusted to approximately £91,910 to reflect the estimated gross Community Infrastructure Levy payment and a financial contribution to improving open space off-site.
8. I have identified above that the appeal scheme does not include the provision of open space. There is also no existing communal outdoor amenity space on site. Given the constrained nature of the site the Council have indicated this would be acceptable as long as a financial contribution is made towards improving open space off-site.
9. The appellant has stated that they would be open to providing a contribution towards social and intermediate housing and highlights that one of the existing flats within the No 251 is currently used for social housing. However, in the absence of a complete Section 106 agreement in relation to both affordable housing and off-site open space provision, the appellant has not adequately demonstrated that the proposal would make an adequate contribution towards the provision of social rented, intermediate homes and open space.
10. In conclusion, the appeal scheme would conflict with Policy D6 of the London Plan 2021 (the LP) and Policies P1, P15 and IP3 of the SP. These policies seek, amongst other things, to ensure appropriate outdoor space for residents and where that cannot be provided as part of a development, that adequate financial contributions are made to off-site open space provision. Additionally, that

developments provide a financial contribution to social rented and intermediate homes where viable. Consequently, given the above, it would also fail to accord with the Section 106 Planning Obligations and Community Infrastructure Levy SPD 105 (November 2020 update).

Living conditions

Noise and disturbance

11. Old Kent Road is heavily trafficked and consequently is characterised by significant noise levels. The appeal scheme would result in one bedroom with a single aspect facing the Old Kent Road as well as one side of the living/kitchen/dining room.
12. Additionally, the existing extract flue located on the rear of the existing two storey rear extension which is used by the ground floor commercial unit would be close to the Juliet balcony of the proposed rear bedroom. A previous permission¹ was granted for an extract flue however the Council considers that the existing flue does not correspond to the approved plans. Moreover, the appellant highlights that the extract flue at Nos 249 and 251 would be removed. Nevertheless, the appeal scheme must be considered in the current built context at Nos 249 and 251 given that there is limited substantive evidence to suggest that the flues would be removed.
13. The Council has indicated concerns regarding the noise emission from the extract flue as well as from the Old Kent Road and the possible resultant harm upon the living conditions of any future occupants of the appeal scheme. Given that there is an absence of an adequate acoustic assessment, the appellant has not adequately demonstrated that the appeal scheme would not result in harm to the living conditions of future occupants with regard to noise and disturbance.

Cooking Smells

14. I have identified above the proximity of the flue to the Juliet balcony of the proposed rear bedroom. The flue discharges at the existing eaves height which would be below the proposed rear bedroom. The appellant has not provided an adequate kitchen extract odour risk/treatment assessment to demonstrate that the smoke and odour emitted from the flue would not result in harm upon the living conditions of future occupants of the appeal scheme.
15. Consequently, it has not been adequately demonstrated that the proximity of the flue to the aforementioned Juliet balcony would not result in harm to the living conditions of future occupants with regard to cooking smells.

Summary

16. Given all of the above, it has not been adequately demonstrated that the appeal scheme would not result in harm to the living conditions of future occupants of the proposed development with regard to noise and disturbance and cooking smells. It would therefore conflict with Policies D6, D14 and SI1 of the LP as well as Policies P15, P65 and P66 of the SP insofar as they seek to ensure that developments are of a high-quality design with regard to improving air quality as well as not resulting in significant adverse noise impacts for future occupants.

¹ Planning Application Ref: 15/AP/0646

Fire Safety

17. Policy D12(A) of the LP requires developments to provide the highest standard of fire safety. The London Plan Guidance on Fire Safety 2022 outlines criterion that should be considered in a fire safety strategy.
18. There is limited substantive evidence before me to demonstrate that the fire safety strategy submitted by the appellant was suitably qualified to prepare the strategy. Moreover, there is limited detail regarding the fire appliances and assembly points, passive and active fire safety measures, construction products and materials and access and equipment for firefighting. All of which are important given the appeal scheme would extend upwards.
19. Consequently, in the absence of an adequate fire safety strategy the appeal scheme would not provide acceptable standards of fire safety. It would therefore conflict with Policy D12(A) insofar as it seeks to ensure developments provide the highest standard of fire safety.

Significance of the CA

20. The CA covers an area encompassing the northern end of the Old Kent Road and extends from the former Thomas A'Becket public house to the Peabody estate at the junction with Mandela Way. A sub area of the CA extends to the west along East Street and includes a historic residential quarter around Surrey Square. Its significance is derived, amongst other things, from the 18th and 19th Century townhouses which have retained the architectural remnants of a busy town centre as well as the near continuous development fronting the street in a linear form. There are a number of early 18th century townhouses with Victorian and 20th Century ground floor front extensions fronting the street. The townhouses are predominantly London stock brick facades, with pitched roofs behind parapet.
21. Nos 249-251 are locally listed because they form part of a run of early Victorian terraces and form part of a wider terrace of near continuous parapet. Given their architectural merit and form they are classed as non-designated heritage assets (NDHA's).
22. Given the above, I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with the architectural and historic value of Nos 249-251. Consequently, they make an important contribution to the historic character and appearance of the CA as a whole.

The effect of the development on the significance of the CA and Nos 249-251

23. The appeal scheme would introduce a mansard roof to both buildings subject of this appeal. It would result in the loss of the original butterfly roof which is a valuable architectural feature of the appeal dwellings as well as the overall CA. The 'V' profile of the butterfly roof at the rear of the appeal dwellings would also not be retained because the rear wall would be built-up to form a parapet. Given that Nos 249-251 form part of a continuous terrace, the loss of the butterfly roof would disrupt and erode the overall rhythm of the terrace. This is supported by paragraph 5.5.15 of the Thomas A'Becket and High Street Conservation Area Appraisal which states that where roofs are continuous or near continuous in a terrace, the alteration of this should be resisted. It further highlights that mansard

roofs would not normally be permitted in a terrace where the majority design of the roofs are hidden behind parapets.

24. Given the above and the important contribution Nos 249-251 make to the CA, I find that the proposed development would be harmful to the significance of the NDHA's and the CA.
25. I acknowledge that there has been an addition of a mansard roof extensions at Nos 253 and 269 Old Kent Road. I do not have the full details of the circumstances which led to their construction and each application is determined on its own merits. Nevertheless, they were constructed prior to the designation of the conservation area and adoption of the Local List. Consequently, their existence does not justify the appeal scheme before me.
26. Paragraph 212 of the National Planning Policy Framework (the Framework) advises that when considering the impact of the development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 213 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and this should have a clear and convincing justification. The appeal scheme would fail to preserve the significance of the CA and given its scale, I find the harm to be less than substantial but nevertheless of considerable importance and weight. Under such circumstances paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
27. The appeal scheme would provide a two-bedroomed flat and contribute to the housing stock within the Borough and the appellant suggests it would extend the lifespan of the appeal buildings. There is limited substantive evidence to demonstrate the latter. Nevertheless, it remains that it would provide a public benefit, albeit modest due to the small scale of the proposal.
28. Additionally, the appellant is of the opinion that the development would provide a high standard of living conditions. However, this is a private benefit.
29. Given the above and in the absence of any defined significant public benefit, I conclude that, on balance, the proposal would result in an incongruous design that would be at odds with the original character of the Nos 249-251. Therefore, as a result, the appeal scheme would fail to preserve or enhance the character or appearance of the CA. This fails to satisfy the requirements of the Act, paragraph 213 of the Framework and conflicts with Policies D4 and HC1 of the London Plan 2021 as well as Policies P13, P20, P21 and P26 of the SP. These policies seek, amongst other things, to ensure that developments are of a high-quality design, sympathetic to a heritage asset's significance including conservation areas, conserve and enhance the significance of the local historic environment as well as NDHA's including those locally listed.
30. It would also fail to accord with the aims of the Thomas A'Becket and High Street Conservation Area Appraisal insofar as it seeks to ensure development preserves or enhances the character and appearance of the CA.

Other Matters

31. Additionally, the Council has provided a report dated November 2021 in which the programme of consultation regarding the CA was outlined and reported upon.

There is limited substantive evidence before me to demonstrate that the Council has mishandled the original application in relation to informing the appellant that Nos 249-251 are within the CA. Notwithstanding this, it is the appellants responsibility to ensure they are aware of any site constraints prior to making an application.

32. The Council has outlined the various reasons as to why the application was made invalid on multiple occasions. One of the reasons was in relation to the requirement of a Financial Viability Review amongst other things. Whilst I acknowledge the appellants frustration regarding the money they have spent in relation to the Financial Viability Review, it is a validation requirement for all developments providing new residential units as outlined in Policy P1 of the SP. Consequently, the Financial Viability Review was required prior to the assessment and outcome of the appeal scheme at application stage.
33. The Council has acknowledged the delay regarding the determination of the application. Nevertheless, this would not be a reason to justify the appeal scheme.
34. A lack of harm to the living conditions of neighbouring residents is a neutral factor in the determination of this appeal.

Conclusion

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

B Astley-Serougi

INSPECTOR