



Appeal Decision

Site visit made on 8 September 2025

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Appeal Ref: APP/N5660/W/25/3361679

17 The Cricketers, Kennington Oval, Lambeth, London SE11 5SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant 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 Ravinder Laly (RSL (Slough) Ltd) against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 24/00312/VOC, dated 30 January 2024, was refused by notice dated 15 October 2024.
 - The application sought planning permission for '*demolition of the existing building and redevelopment of the site to provide a part 6 / part 4 storey building with 21 residential units (including 7 affordable units) and 517sqm (GIA) of Class A4 public house floorspace at basement and ground floor with associated cycle parking and landscaping (amended description)*' without complying with conditions attached to planning permission Ref 18/00338/FUL, dated 23 January 2018.
 - The conditions in dispute are Nos 28 and 29 which state that:
Condition 28
Prior to the commencement of above ground works a BREEAM Design Stage certificate and summary score sheet demonstrating that a rating of 'Excellent' can be achieved shall be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure that the development has an acceptable level of sustainability (policy EN4 of the London Borough of Lambeth Local Plan (2015)).
And
Condition 29
Within three months of the occupation of the public house hereby approved, a final code certificate shall be obtained confirming the non-residential element of the development has achieved a minimum BREEAM New Construction rating of 'Excellent'.
Reason: To ensure that the development has an acceptable level of sustainability (policy EN4 of the London Borough of Lambeth Local Plan (2015)).
 - The reasons given for the conditions are:
Condition 28
To ensure that the development has an acceptable level of sustainability (policy EN4 of the London Borough of Lambeth Local Plan (2015)).
Condition 29
To ensure that the development has an acceptable level of sustainability (policy EN4 of the London Borough of Lambeth Local Plan (2015)).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The current development plan for the borough, the 'Lambeth Local Plan 2020 – 2035' (the LLP) was adopted in September 2021. The stated date of decision for the 2021 permission was 21 September 2021. Although I have not been advised of the exact date of adoption of the LLP the reasons given to support the planning conditions imposed on that decision quote the 'Lambeth Local Plan 2015' as being the then extant development plan.

3. Notwithstanding the differing iterations of the development plan, the policy most important to the determination of the application retained the same policy name and number; '*Policy EN4: Sustainable design and construction*'. The policy wording of Policy EN4 does, however, differ between the 2015 and 2021 versions and I have taken references by both parties to the provisions of Part (b) of Policy EN4 in their submissions to be that of the 2015 version. Whilst I am mindful of the provisions of the development plan as it was at the time of determination, I am required to determine the matter before me on the basis of the extant development plan. For the purposes of the matter before, the development plan comprises the LLP as adopted in September 2021 and the London Plan 2021 (LonPlan).
4. In the period between the Council's determination of the application and the submission of this appeal an updated version of the National Planning Policy Framework (the Framework) was published in December 2024. I am satisfied from this chronology that both main parties have had sufficient opportunity to reflect the provisions of the current Framework in their submissions. I have determined the appeal accordingly and on the basis of the current Framework.
5. The Council note that the 2021 permission¹ was granted subject to a condition² that the development to which the permission related was 'begun no later than three years from the date' of the decision notice. It has been further stated by the Council that the site was inspected on 20 September 2024 and whilst some demolition was stated as having occurred by that point in time, no evidence was before the Council that the permission had been implemented within the requisite time period.
6. This appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 for the development of land without complying with conditions subject to which planning permission had previously been granted. It is not ordinarily the role of such appeals to determine whether any other matter comprising a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful the lawful use of land or buildings, such as whether or not a development has been lawfully commenced. It is instead open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act, and this is a matter between the appellant and the local planning authority. Any such matter would be unaffected by my determination of this matter.

Background and Main Issue

7. The 2021 permission scheme granted planning permission for the redevelopment of the former 'Cricketers' public house in the terms set out in the banner heading, above. The permission was subject to a number of conditions, of which conditions 28 and 29 are directly relevant to this appeal. It is common ground that an application for approval of details pursuant to conditions 4, 5 and 7 of that permission was approved in 2023³.
8. The application and this appeal seek to change the wording of conditions 28 and 29 of the 2021 permission to substitute the word 'Excellent' in each condition for the words 'Very Good' in relation to BREEAM ratings. It is additionally sought to alter

¹ LPA Ref No: 18/00338/FUL – date of decision 21 September 2021

² Condition 1 of the 2021 permission

³ LPA Ref No: 23/01554/DET – date of decision 10 July 2023

the 'trigger point' in condition 28 from 'prior to the commencement of above ground works...' to a later part of the construction process.

9. Thus, the main issue is whether the disputed conditions are reasonable and necessary in the interests of the sustainability and energy efficiency of the development.

Reasons

10. LLP Policy EN4 sets out the Council's approach to securing sustainable design and construction. All development will be required to meet high standards of sustainable design and construction and that (EN4(C)(ii)) all new non-residential development must meet at least BREEAM 'Excellent'. It goes on to state, at EN4(D), that planning applications for non-residential development should be accompanied by a pre-assessment demonstrating how the BREEAM standards, or any future replacement standards, will be met. This is broadly similar to the previous wording of the 2015 version of Policy EN4, albeit that that previous version is qualified by '*unless it is demonstrated that it is not technically feasible or viable to do so, in which case proposals should demonstrate a 'Very Good' rating with a minimum score of 63%*'.
11. The 2021 permission documentation was not accompanied by a pre-assessment of the non-residential element of the scheme and therefore there was no demonstration at that stage of how the scheme might meet BREEAM standards. The 2015 iteration of Policy EN4(b) stated that non-residential development should be accompanied by a pre-assessment.
12. The Energy Statement⁴ (ES) that was submitted with the application stated that the scheme would 'aim' to achieve 'a minimum' BREEAM 'Excellent' rating. The disputed conditions were, it appears to me from the Council's submissions, imposed on the 2021 permission as a means to mitigate the absence of the pre-assessment required by LLP Policy EN4 at the submission stage. The circumstances as to why a pre-assessment was not submitted at the submission stage, and thus its absence, have not been explained or justified by the appellant. Although the ES demonstrated reductions in carbon dioxide (CO₂) emissions compared with baseline compliance with Part L of the 2013 Building Regulations it did not demonstrate the proposal's position in the context of BREEAM ratings.
13. Although the current LLP's version of Policy EN4 has removed reference to the previous iteration's minimum score of 63% for a 'Very Good' rating, it seems that even that lower figure cannot be relied upon as a percentage rating against BREEAM standards for the appeal scheme. Moreover, the latest BREEAM pre-assessment⁵ predicts a score of 56.46% ('Very Good') but cautions this with a recommendation of a 10% margin of safety. Whilst this could suggest a figure somewhere in the mid-60s%, it could alternatively place it only just within the 'Good' rating. Even at the predicted 56.46%, this would only just fall within the 'Very Good' rating category and would fall significantly below the 'Excellent' rating which LLP Policy EN4 seeks to secure.
14. It is clear that there are elements of the non-residential portion of the scheme where available credits have been maximised in other areas of the BREEAM

⁴ 'Energy and Sustainability Statement' - SVM Consulting Engineers (Issued on 26 October 2018)

⁵ 'BREEAM 2018 V6 NC—Pre-Assessment Report' - Encon Associates (Date of first issue 12 July 2023 and Rev A 1 October 2024)

assessment. Nor have the Council expressed any concerns regarding the performance of the residential element of the appeal scheme. Nevertheless, the disputed conditions were clearly an attempt to mitigate deficiencies in the submission documents associated with the scheme granted by the 2021 permission. It has not been adequately explained by the appellant how or why the required information was not submitted with the application or during the course of the application's consideration by the Council and, although not specifically referred to in the current iteration of LLP Policy EN4, no justification has been attempted with regard to any effect on viability as set out within the version of Policy EN4 extant at the time of the application's determination, or the extent to which the delivery of the residential units is dependent upon the non-residential element of the scheme.

15. For these reasons, the variation to the wording of conditions 28 and 29 of the 2021 permission would fail to accord with the aims, provisions and requirements of LLP Policy EN4. The supporting text to this policy states that it is expected that the requirements will be met in 'all but exceptional cases' and that clear justification will be required if a particular standard is not met. The Framework is also clear that the planning system should, amongst other things, help to shape places that contribute to radical reductions in greenhouse gas emissions and to minimise vulnerability and improve resilience to climate change.
16. The implications of allowing the proposed modifications to conditions 28 and 29 would be a scheme that would fall some way short of the LLP Policy EN4 requirements for which insufficient justification and reasoning has been put forward. Nor am I persuaded that the circumstances set out by the appellant are exceptional in the manner envisaged by LLP Policy EN4 and its supporting text. I am not persuaded therefore to the justification set out by the appellant for the variation of the required BREEAM rating in conditions 28 and 29. Nor has the case been adequately made for revisions to the 'trigger point' for submission of the certification prior to above ground works.

Other Matters

17. It is common ground between the parties that the Council are currently unable to demonstrate a deliverable 5-year housing land supply. The appeal, should it succeed, would allow the delivery of 21 dwellings, including the provision of 7 affordable dwellings. This would contribute towards the Council addressing its shortfall in terms of housing figures and is a matter to which I attached considerable weight, particularly in light of the appellant's statement that the lower thresholds sought would enable the completion of the rest of the development, including the residential units.
18. Thus, it is also agreed between the parties that the provisions of Framework paragraph 11(d) are engaged, such that planning permission should be granted subject to the provisions of Framework paragraphs 11(d)(i) or (ii). Paragraph 12 of the Framework goes on to explain however that the presumption in favour of sustainable development does not change the statutory status of the development plan as a starting point for decision making.
19. Notwithstanding the Council's current position regarding housing land supply, LLP Policy EN4 is nevertheless consistent with the aims of the Framework in contributing to sustainable development, meeting the challenge of climate change

and to support the transition to net zero by 2050. The proposed revisions to conditions 28 and 29 of the 2021 permission would be at odds with the overall aims of LLP Policy EN4 and the Framework in

20. The 2021 permission was subject to a range of conditions and there is also an agreement pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) (the s106). The s106 specifically refers to the 2021 permission and secured a range of obligations including the provision of, and provisions relating to affordable housing; an employment and skills plan; highways improvements, parking provisions and car club memberships and financial contributions towards children's play space, a monitoring fee and carbon off-setting contributions.
21. The effect of a successful appeal against the wording of, or imposition of, conditions is to create a new planning permission. The two co-exist and the applicant may choose which permission to implement. Where the 'parent' permission was subject to a planning obligation, either a new obligation must be submitted with the s73 application or the original obligation varied to reflect the grant of a new planning permission. Without such provision, an applicant may choose to implement the new permission free of any obligations placed upon it by the original planning obligation.
22. It remains a matter of dispute between the parties as to whether or not the 2021 permission has been implemented, and thus whether the s106 and its obligations remain extant and binding. However, as I have concluded that the appeal fails for the reasons set out, I have not considered this matter, and the need for a new or revised s106, any further.

Conclusion

23. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR