
Appeal Decision

Hearing and site visit held on 11 February 2014

by M F Aldous BA (Hons) Dip Mgt MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 February 2014

Appeal Ref: APP/N5660/A/13/2207274
2A Mandrell Road, London SW2 5DL.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Capella developments (UK) Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 13/03322/FUL, dated 26 July 2013, was refused by notice dated 23 September 2013.
 - The development proposed is the demolition of existing warehouses and the erection of two terraces of four 4 bed dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing warehouses and the erection of two terraces of four 4 bed dwellings at 2A Mandrell Road, London SW2 5DL in accordance with the terms of the application, Ref 13/03322/FUL, dated 26 July 2013 subject to the conditions set out on the accompanying schedule.

Procedural Matters

2. At the hearing a completed unilateral undertaking dated 30 January 2014 was presented by the Appellant. This contained provisions relating to the making of financial contributions towards parks and open spaces and other local public realm improvements in the event of the appeal being allowed. The Council confirmed that notwithstanding its continued opposition to the proposal, the document was complete and in other regards acceptable. I have taken account of the content of the undertaking in my assessment of the merits of the proposal.
3. After the hearing closed, with my approval, there was an exchange of further written submissions relating to the position with regard to 'saved' UDP policies. I have also taken account of the content of this material in my consideration of the appeal.

Main Issues

4. The main issues in this case are:
 - i) Whether the proposal satisfies the tests set out in the adopted development plan and national planning guidance relating to the redevelopment of employment land for other land uses;

ii) Whether the loss of a locally listed heritage or community asset is acceptable; and

iii) Whether the rear roof form and structures for the proposed houses would have an acceptable impact on the character and appearance of the surrounding area.

Reasons

Retention of Employment Land

5. The Council has long employed planning policies designed to retain employment land for employment purposes, unless it can be established to its satisfaction that a site is no longer suitable for that use. This is a laudable objective in terms of ensuring economic opportunity and diversity, particularly within a heavily built up area such as Lambeth where such land resources might be in relatively short supply and not readily capable of being provided elsewhere.
6. The appeal site is located within a primarily residential area, although there are other land uses nearby which add to the local mixture. The site itself comprises old fashioned and somewhat inflexible warehouse space with access only from Mandrell Road, which is primarily residential in nature. It has established B8 usage. I noted on my site visit that whilst the buildings appeared to be watertight and in a usable condition, significant operational limitations are exerted by the absence of a yard for loading and unloading purposes and the somewhat restricted height for storage purposes. I also formed the view that given the nature and fabric of the buildings they do not readily lend themselves to conversion for alternative forms of modern employment usage.
7. The buildings appeared to be effectively unused on my visit, but there was evidence of recent use which demonstrates that they are capable of fulfilling a storage role. Despite this, the Appellant has been marketing the site for continued B8 employment related usage for some considerable time without success. This process has been handled by an appropriately established, qualified and professional agent as the documentation submitted to me amply demonstrates. The process appears to have been ongoing without break since December 2012.
8. Whilst there was criticism from some about the nature of the marketing process in relation to its advertising strategy and the advertised letting rates, it appeared to me that what had been undertaken had been sustained and contained components that are typical of what might be expected for premises of this kind. It is also widely acknowledged within the field that advertised letting rates are presented in the knowledge that there is ample room for negotiating manoeuvre.
9. There was also some criticism that the Appellant had not sought to engage the Council's Enterprise Officer in the marketing process. I have some sympathy with this view. It seems to me to represent a simple and obviously beneficial tool that would have been to the Appellant's advantage had it been used, as the Officer represents a focal point for business contact within the local authority. Engagement might also have resulted in agreement, or at least have offset some criticism, at the outset, over the nature of the marketing process

undertaken and ensuring full consistency with its informal guidance note 'Marketing of Employment Premises and Sites'. Whilst this was unfortunate it does not in my view represent a decisive deficiency in the Appellant's marketing approach.

10. On the basis of all the documentation made available to me, I consider that the marketing campaign that has been conducted was appropriate, thorough and sustained. The fact that it has been singularly unsuccessful in attracting any interest other than in the sites potential for residential redevelopment, reflects my own observations about the nature and location of premises discussed above and its probable inability to attract renewed B8 related investment. No contrary professional valuation exercise was undertaken by the Council.
11. I also consider it improbable that any potential interest in the retention of employment usage at the site might have been deterred by the submission of the planning application which now features under this appeal. It is clear that the site was actively marketed for many months before the application was lodged in the summer of 2013 without any positive interest being shown.
12. On this basis and notwithstanding the debate about the status of the Council's 'saved' UDP policies, which do appear to be extant, it is clear to me that criteria (b)(ii) of policy 23 applies, and that it has been demonstrated that there is no reasonable prospect in the medium term of the re-use or redevelopment of the site for modern employment purposes. It could also be argued with some voracity that criteria (b)(i) is also engaged as the site is no longer suitable for employment use given primarily vehicular access, and relationship to adjacent housing, environmental concerns.
13. I have also taken account of the much more recent policy S3 of the Council's Core Strategy adopted in 2011, which seeks to protect key business areas (KIBA's) whilst entertaining the notion of maintaining a stock of other commercial sites and premises, but subject to the suitability of the site and its location. For the reasons outlined above I do not consider that the current proposal is inconsistent with this policy. I am unable to attach any significant weight to emerging local plan policies which have yet to be subjected for soundness scrutiny.
14. Finally, I have of course also had full regard to the content of the National Planning Policy Framework, which in paragraph 22, indicates that planning policies should avoid the long term retention of employment sites where there is no reasonable prospect of a site being used for that purpose.
15. On this basis I consider that the proposal satisfies the tests set out in the development plan and national planning guidance for the redevelopment of employment land for other purposes.

Loss of locally listed heritage and community asset

16. The wall along the Mauleverer Road appeal site frontage contains a large mural painted in 1983 during an era when other such work was being undertaken at various locations within the Borough. It is now somewhat faded, given the ravages of time, and as it was painted directly onto brickwork which has since deteriorated. However, it is still impressive in its scope and content as I witnessed on my accompanied site visit.

17. The mural appears to be held in good local regard and features on a mural trail with other works of this kind. In 2012 in recognition of their value as community/heritage features the Council added the murals to its local list of such assets.
18. Whilst this does not afford any statutory protection, it does indicate the value placed on the murals; most of which survive with only a small number having been lost to redevelopment. I therefore place due weight on such considerations.
19. The proposal before me would see the demolition of the wall in question and the resultant loss of a significant part of the mural. This is inherently regrettable. However, given the nature of what is being proposed, there is no realistic scope for the mural to be retained if this part of the site is to be redeveloped for residential purposes.
20. Given my findings with regard to the retention of the site for employment purposes and some minor design concerns, which are addressed below, I have to consider whether otherwise acceptable development, which would deliver new housing (stated to be a priority within the Borough), should be resisted solely on the grounds of mural retention.
21. It seems to me that little or no attention was given to mechanisms for the sustainable maintenance and retention of the Brixton murals painted during the 1980's. It appears to me that notwithstanding the local listing, this is therefore very much down to the goodwill of the owners of the various host structures.
22. The Appellant pointed out that under permitted development rights the owners could paint over the mural or indeed remove the wall at any time. No contrary interpretation of the situation was suggested by the Council. In these circumstances, and given their desire to redevelop the site as evidenced by the current proposal, it seems highly improbable that the owners of the wall would sanction the refreshment or restoration of the mural, which will otherwise continue to deteriorate and decline in its visual value. To do so would clearly be to their disadvantage in terms of using their land asset in their preferred manner.
23. Notwithstanding this, the Appellant as a token of goodwill, is prepared to make quite generous funds available to the Council to provide for the commissioning of an alternative artwork at another agreed location within the Borough. The mechanism for delivering this objective is via the unilateral undertaking referred to in paragraph 2 above.
24. This would not permit the existing mural to be retained but it would provide a goodly sum of money that would assist in the commissioning of a new piece of artwork, perhaps in the form of a new mural, which would contribute to the social and cultural assets of the Brixton area.
25. Given the legal difficulties identified above in terms of the retention of the existing mural at its current location, this appears to me to represent a pragmatic, if slightly regrettable way forward in this case. Accordingly, for the reasons given I have to conclude that resistance to the proposal in the terms expressed under saved policy 46 of the UDP (which relates primarily to buildings and structures of local historic or architectural interest), cannot be sustained in this particular case.

26. I do however commend content of the unilateral undertaking offered by the Appellant which would go some way to offsetting the loss of the mural.

Character and Appearance considerations

27. There is no dispute between the parties about either the principle of residential as a replacement use of this site, or the general design and scale of the housing proposed. The Council was however critical of the scale and design of the rear facing dormer windows featured in the submitted plans. It did however confess that these were rather subordinate concerns compared to the issues discussed above, and in their own right would have been unlikely to have justified resistance to the proposal.
28. The dormer features would be set within the sloping rear roof form from eaves level towards, but below, the ridge line. I agree that that they would represent rather large and bulky structures that would not relate well to the general proportions of the roofscape. However, they would not be visible from the public realm, their visual impact being limited to back to back views between the proposed terraces which would be mutually similar. The site is not within a conservation area and there are other examples nearby of rear dormer features which have been constructed under permitted development rights which have a not dissimilar visual effect.
29. On this basis, and given that in all other respects there is mutual agreement that the proposed design of the properties would reflect prevailing Victorian characteristics, I do not consider that this aspect of the proposal would seriously undermine the character or appearance of the locality, and accordingly resistance to the proposal in these terms can not be sustained. As such there is no harmful conflict with saved policy 33 of the UDP or policy S9 of the Core Strategy.

Conditions

30. I have considered possible conditions, including those discussed at the hearing, against the advice contained in Circular 11/95 (the Circular). In the interest of delivering an environmentally acceptable development, which also respects local amenity considerations, conditions relating to adherence to approved plans, details of external materials of construction, details of walls, fencing and railings, no external pipework and achievement of level 3 of the Code for Sustainable Homes will be employed.
31. For similar reasons, other conditions will deal with Lifetime Homes standards, demolition and construction methodology, cycle and refuse storage arrangements, building height control, utilisation of 'Secured by Design' standards and highway restoration work.
32. A condition requiring excessive further detailing of external materials to be used is not necessary as the site is not within a conservation area and it does not adjoin any listed buildings. A suggested condition relating to the participation of the Appellant in securing a potential location for a replacement mural or other artwork is not appropriate as it does not meet the tests set out in the Circular as it is not essential for the development to proceed nor is it precise, reasonable or enforceable.

Conclusions

33. I am satisfied that this proposal would have an acceptable impact on the character and appearance of the surrounding area. I also consider that a sufficiently convincing case has been made to show that the site does not retain attraction or potential in the short or middle term for continued B8 usage, as the marketing campaign has demonstrated. In this regard I am also mindful of the particular operational constraints of the appeal site and its location within a primarily residential area.
34. The potential loss of the mural on the Mauleverer Road frontage is to be regretted. However, it is gradually deteriorating and there seems little realistic prospect of its repair or refreshment given the priorities or aspirations of the owners of the wall in question, and also being mindful of what they could do under permitted development rights. In these circumstances, and given the undertaking the Appellant has provided that would fund alternative artwork, even potentially a new mural, at another agreed location within the Borough, I reluctantly conclude that resistance to the proposal before me in these terms cannot be sustained.
35. For the reasons set out above, and having had full regard to all other matters raised, I conclude that this appeal should succeed subject to the imposition of the conditions set out in the accompanying schedule.

Michael Aldous

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr T Hill QC	Barrister for the Appellant
Mr R Veevers	Montagu Evans
Mr C Miele	Montagu Evans
Mr R Cleminson	Kinleigh Folkard and Hayward

FOR THE COUNCIL

Mr C Griffiths	Senior Planning Officer, London Borough of Lambeth
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INTERESTED PERSONS

Ms V Lewis	Brixton Society
Mr W Linskey	Brixton Society
Ms R Mller	London Mural Preservation Society
Ms J Gifford	Mural artist
Ms R Su	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Document 1	Unilateral Undertaking dated 30/01/2014.
Document 2	Appellant's comments on suggested conditions.
Document 3	Appellant's suggested highway condition.
Document 4	Copy of letter dated 06/07/2010 from Government Office for London to Lambeth Borough Council.
Document 5	Bundle of letters and emails submitted after the hearing relating to Council 'saved' UDP policies.

CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1302 01B, 02A, 03D, 04B, 05B, 06B, 07A, 08A, 11B, 13C, 14B, 15C, 16C, 17B, 18B, 19C, 20 and 21.
- 3) No development shall take place until detailed drawings, a brick and render sample board and a schedule of all materials to be used in the elevations and roofs within the scheme hereby permitted are submitted to and approved in writing by the local planning authority. Work shall be undertaken in accordance with the approved details.
- 4) No development shall take place until details of all walls, gates, fencing and railings have been submitted to and approved in writing by the local planning authority. Work shall be undertaken in accordance with the approved details before any property is first occupied and permanently retained thereafter unless varied by the prior written approval of the local planning authority.
- 5) No external plumbing or other pipes, other than rainwater pipes, shall be fixed to the external faces of the buildings hereby permitted without the prior written approval of the local planning authority.
- 6) The dwellings hereby permitted shall achieve at least Level 3 of the Code for Sustainable Homes, or such equivalent measure of sustainability which might replace that scheme. No dwelling shall be first occupied until a Final Code for Sustainable Homes Certificate has been issued certifying that Level 3 has been achieved. Development shall be undertaken in accordance with the details so approved to achieve the agreed rating and maintained as such thereafter.
- 7) All of the residential units hereby approved shall be constructed to Lifetime Homes Standards in accordance with the approved plans.
- 8) No development shall take place a Method of Demolition and Construction Statement has been submitted to and approved in writing by the local planning authority. The Statement shall include details of measures to prevent mud and debris being deposited on the public highway, parking arrangements by site operatives and delivery vehicles, materials and plant storage arrangements, work hours, phasing of development and the safe operation of the public highway. Work shall be undertaken in accordance with the agreed details throughout the demolition and construction process.
- 9) No development shall take place until details of arrangements for cycle storage have been submitted to and approved in writing by the local planning authority. Work shall be undertaken in accordance with approved details before the first occupation of any dwelling and thereafter permanently retained.
- 10) No development shall take place until details of refuse storage and recycling have been submitted to and approved in writing by the local

planning authority. Work shall be undertaken in accordance with the approved details.

- 11) The proposed buildings shall be built to the ground levels and heights shown on the approved plans or lower, and if the heights of the indicated existing heights and levels of neighbouring properties should prove to be erroneous, then the heights of the proposed buildings shall be no higher than the relative height differences between the heights of neighbouring properties and proposed buildings unless as otherwise first agreed in writing by the local planning authority.
- 12) The development hereby permitted shall meet 'Secured by Design Standards', consistent with Section 17 of the Crime and Disorder Act 2005, unless otherwise first agreed in writing by the local planning authority.
- 13) Notwithstanding the details shown in the approved plans, no development shall take place unless otherwise agreed in writing with the local planning authority, until a detailed scheme for off site highway improvement works shown within the area marked in blue on plan 1302-23 have been submitted to and approved in writing by the local planning authority. Works shall be undertaken in accordance with the approved scheme prior to the first occupation of any of the dwellings hereby approved.

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