

Appeal Decision

Site visit made on 20 January 2015

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 9 February 2015

Appeal Ref: APP/N5660/A/14/2216737

124-128 Brixton Hill, Brixton, London SW2 1RS

- 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 Lexadon Property Group against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 14/00423/FUL, dated 28 January 2014, was refused by notice dated 26 March 2014.
 - The development proposed is: "Erection of a pair of linked 5-storey buildings, comprising 10 studio/office units (B1 use class) and 8 flats, together with cycle parking and refuse/recycling storage".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In the application, the site address is given as 124 Brixton Hill. It now seems to be agreed that the correct address is Nos 124-128.
3. Three amended plans were submitted with the appeal, numbered 1111 rev. P2, 1115 rev. P2, and 1116 rev. P2. The changes relate to minor details only. I have taken these into account.
4. Two unilateral undertakings have been entered into, both relating to financial contributions and restrictions on parking permits. Both undertakings are dated 30 May 2015.
5. An application for costs has been made by the appellant against the Council, and this is the subject of a separate Decision.

Main Issues

6. In the light of the submissions and other information presented by the parties, the main issues in the appeal appear to be:
 - Whether the inclusion of the 8 proposed residential units in the scheme is acceptable in principle, having regard to the designation of the area as a Key Industrial and Business Area (KIBA);
 - Whether the proposed design is appropriate, having regard for the development's effects on the character and appearance of the area, including the settings of the nearby conservation area and listed buildings;
 - Whether the development's impact on public open spaces in the area would be adequately mitigated by the submitted undertakings.

Reasons for decision

The principle of residential development in relation to KIBA policy

7. In the Core Strategy¹ (the CS), Policy S3 states that the Council will support local economic development by giving priority to economically beneficial uses in appropriate locations. Amongst other measures, the areas designated as Key Industrial and Business Areas (the KIBAs) are seen as strategic reservoirs of land for new employment, which are to be safeguarded for business, industrial, storage, waste management and other commercial uses. The appeal site falls within one of the KIBAs.
8. At national level, the National Planning Policy Framework (the NPPF) states that the government is committed to securing economic growth, to create jobs and prosperity, and that the planning system should do everything it can to support such growth where it is sustainable (paragraphs 18-19). However, paragraph 22 states that policies should avoid the long-term protection of sites for employment use where there is no reasonable prospect of the site being used for that purpose. The same paragraph also goes on to say that such allocations should be regularly reviewed, and where there is no reasonable prospect of a site being used for the allocated employment use, alternative uses should be treated on their merits, having regard to the need for different land uses to support sustainable communities.
9. With regard to housing, the NPPF seeks to boost the supply significantly (paragraph 47), and to deliver a wide choice of high quality homes, widen opportunities and create sustainable, inclusive mixed communities (paragraph 50). In addition, the 3rd bullet point of paragraph 17 makes it clear that development of all kinds, including residential, has a role to play in sustainable economic growth.
10. Overall therefore, the main thrust of the relevant NPPF policies is to ensure that sufficient land is available for business and employment growth, but also to take a flexible approach where necessary. Where policies and allocations have not produced the desired result, it may be preferable to look at other options, including housing, rather than risk continued stagnation.
11. In the present case, the appeal site is a former petrol station, which closed at least 10 years ago. Notwithstanding its inclusion within a KIBA, the site occupies part of an attractive main road frontage, just off Brixton town centre. Most of Brixton Hill itself and much of the surrounding area, excluding the appeal site, is designated as a Conservation Area², and a number of the nearby buildings are listed. Since the filling station's closure, the site has been used for tyre fitting, and as a car wash, and now for car sales. None of these uses appears to have been authorised, and there is no suggestion that these are the kinds of uses that the Council wishes to encourage in this location. The large steel framework which once supported the main canopy, remains on the site and is now in an unsightly condition. At the time of my visit, there were also two galvanised steel containers, apparently being used as a temporary office and stores for the car sales operation. In the absence of any other buildings on it, the site allows views through to the industrial buildings behind. Overall therefore, the site is a prominent and long-standing eyesore, and a blight on the otherwise pleasant surroundings.

¹ The Lambeth Core Strategy, adopted in January 2011

² The Rush Common Conservation Area

12. The KIBA in which the appeal site is included has been designated since at least 2004³. In 2005 and 2006, two applications to redevelop the appeal site for mainly residential uses were refused, on grounds including conflict with the KIBA policy. The second of these schemes went to appeal, and was successfully defended by the Council⁴. After that, no further redevelopment proposals were received until 2013, when a scheme for 12 commercial units and 9 flats was refused, again on KIBA policy grounds amongst others. The present appeal scheme followed shortly after that refusal.
13. The Council has thus been pursuing its present approach to the appeal site, of attempting to attract a 100% employment-generating development, in accordance with KBIA policies, and resisting any other options, for a period that now stretches to around 10 years. That approach has not yet borne fruit. In its present condition, the site is clearly unable provide any meaningful economic benefits, and has a damaging effect on the local environment. Whatever the merits of the KBIA approach as a whole, it seems to me that the continued rigid application of that approach to the appeal site is likely to perpetuate this present impasse. Consequently, having regard to the NPPF policies identified above (which post-date Policy S3), and the circumstances of this particular site, the balance of advantage now favours the alternative approach advocated in NPPF paragraph 22.
14. The development now proposed would provide 10 units of studio/office space, totalling just under 400 sq m. These units would range in size from 22 sq m – 45 sq m, and would thus be suitable for small businesses, but could also be combined into larger units if required. Four of the units would be on the ground floor, and would have the potential for a 'shop-front' style presence if needed. Together, it seems to me that these units would provide high-quality, flexible and useable space, capable of supporting a significant number of new jobs. In addition, the scheme would provide 8 residential units in various sizes ranging from one to four bedrooms. These would contribute to the aims of boosting housing supply, widening choice, and reinforcing the area's established role as a mixed, inclusive and sustainable community.
15. Both elements of the development would also support the wider aims of economic growth, in the form of new investment, construction activity, and the potential spin-off effects for the suppliers of local goods and services. The development might also act as a catalyst for further redevelopment elsewhere in the KIBA.
16. I accept that the Council would like to maximise the employment element if possible, but there is no guarantee that anything more will come forward than what is proposed now. The appellants' detailed viability analysis suggests this is unlikely, and I note that this evidence has not been challenged.
17. The view that I have reached on this issue differs from that of the Inspector who dealt with the previous appeal on this site, but that was now seven years ago. For the reasons that I have explained, the passage of time is a telling factor. And in any event, that scheme included only a token amount of employment, alongside 25 residential units, whereas the balance of uses now proposed is more evenly matched.

³ In the Lambeth Borough Unitary Development Plan (UDP), 'Revised Deposit' version submitted in 2004

⁴ APP/N5660/A/06/2029308: 25 flats and 2 Class A1/B1 units, at 124-128 Brixton Hill

18. I therefore conclude that whilst the inclusion of the proposed 8 residential units is in conflict with Policy S3, that conflict is outweighed by the desirability of securing the site's redevelopment, to end the current visual blight and stimulate the regeneration of the wider area. Moreover, it seems to me that the quantity of business space proposed in the present scheme, together with the economic and social benefits of the scheme as a whole, would make a valuable contribution to the local economy. In the circumstances, I consider the development now proposed acceptable in principle.

Design and the effects on the area's character and appearance

19. Although the appeal site itself is excluded from the Conservation Area (CA), it is an integral part of the street scene of Brixton Hill, which forms the CA's main focus. Any development on the appeal site will therefore have an important relationship to the CA, and a significant effect on it. In addition, the group of listed buildings at Nos 132-138 Brixton Hill are within about 18m from the site at their nearest point, and again the appeal site forms part of their setting. The predominant historic building forms in the CA all derive from the mid-19th century. On this side of Brixton Hill, to the north of the appeal site are mainly 4-storey terraced mansion blocks, comprising shops with residential accommodation above. To the south, including the listed buildings, there is more of a mixture, but generally lower and more domestic in scale, including some 2- and 3-story buildings.
20. The Council's objections as stated in refusal reason 2 (RR2), relate principally to the proposed development's bulk, scale, mass and form. These concerns are not elaborated upon to any great degree in the Council's subsequent submissions, but nonetheless, I must judge the suitability of the design in the light of the evidence before me, including my own observations. It is evident from the appellants' submissions that a good deal of careful consideration has gone into the present proposals. The site is constrained not just by its townscape context, but also by private rights of way and the nature of the adjoining uses, and finding the best design approach is clearly not a simple matter. However, I must also have regard for the statutory provisions relating to CAs, and to listed buildings and their settings, and the legal duty to preserve or enhance their character and appearance, under the 1990 legislation.
21. The two linked buildings now proposed would be effectively 5 storeys high. However, the top floor of each would be set back from their respective front elevations, and the two blocks would be staggered to line up with the existing building line on either side. As such, I do not consider the height or overall massing of the buildings now proposed to be excessive. The proposed link at second and third floor levels is not characteristic of the area, but in the context of this particular scheme, it seems to me that its effect would be a positive one, in unifying the two blocks, despite their necessary differences. And whilst the contemporary style would be different from the older buildings in the area, that in itself is not objectionable, and indeed the Council itself acknowledges that a modern design could be acceptable.
22. However, there is another key element of the design that would play an important role in the way that the proposed development would present itself to the street, and in its consequent effect on the CA and the setting of the listed buildings. That element is its fenestration. On the northerly of the two proposed blocks, the fenestration would be recessed into the facing brickwork,

and would have a regular, orderly pattern of windows of equal width, one above the other. The ratio of glazing to brickwork would also be restrained. The fenestration of this block would be acceptable in its context.

23. But on the southern block, the arrangement and detailing would be entirely different. There, the proposal is to have windows of differing widths above and below one another, in an irregular, overlapping pattern. To my mind, this arrangement would give the southern block a distinctly unsettling appearance, which would not sit comfortably alongside the CA's historic buildings. In addition, the ratio of window to wall in this block would be increased, giving greater emphasis to an already unsatisfactory feature. And, most conspicuous of all, the windows themselves would be set within bold, projecting surrounds. These would have the effect of making the windows appear even larger, and more prominent, and the gaps between them correspondingly narrower. All together, these features would result in the southern block's front elevation appearing poorly proportioned, badly composed and over-assertive. In these respects, the proposed design would be at odds with the character of the surrounding townscape.
24. I note the other matters raised with regard to the materials, the balcony doors, balcony screens and balustrades. To my mind these are relatively minor details. Some are effectively dealt with in the amended plans already submitted, and the others could have been dealt with by conditions. I note the appellants' view that conditions could also be used to resolve the problems that I have identified with the fenestration of the southern block. However, these issues are more fundamental. Given the importance of the street scene in this location, I am not satisfied that the redesign of such a substantial part of the front elevation could be left to conditions.
25. As currently proposed, for the reasons that I have explained, the proposed development would be a discordant feature, substantially damaging to the character and appearance of the Rush Common CA, and to the settings of the listed buildings at 132-138 Brixton Hill. In this respect therefore the development would conflict unacceptably with Policies 45 and 47 of the UDP.

Open space contributions

26. RR3 states that the proposal would fail to mitigate its impacts on Council-provided initiatives and services, in accordance with CS Policy S10 and the Planning Obligations SPD. From the Officers' report, it appears that what is being sought by the Council is a financial contribution towards the improvement of Windmill Gardens, a nearby local park. This is said to be required in lieu of meeting the full standard for on-site amenity space provision as contained in the Housing Standards SPD.
27. Policy S10 states that obligations will be sought to mitigate the impact of developments and to contribute to the delivery of infrastructure made necessary by them, including parks and open spaces. The supporting text states that detailed requirements will be set out in a SPD. The Obligations SPD contains details of the amounts required per dwelling, depending on the number of bedrooms in each. For parks and open space, these are set out in Table D1.
28. The two undertakings entered into by the appellants each provide for financial contributions, which are stated to be for public open space improvements in

the vicinity of the site. The two contributions are £11,617 and £14,694. The appellants indicate that the second undertaking is meant to supersede the first. However, there is no mechanism for withdrawing either of the undertakings except with the Council's agreement, and I have no knowledge of any such agreement between the parties. Both of the undertakings have been executed, both are dated identically, and it seems to me that in the event of permission being granted, both would therefore come in to effect.

29. No other evidence or submissions are before me on any of these matters. No explanation has been given as to the reasons for requiring a financial payment; or the amount sought by the Council; or the calculations behind the sums offered by the appellants; or the Council's current position in the light of the undertakings. I can only draw my own conclusions from the information before me.
30. In the light of the evidence that I have, it seems to me that in order to offset the lack of amenity space within the proposed development, and to accord with Policy S10 and the obligations SPD, a contribution to outdoor amenity space is necessary, to make the development acceptable. If the money were spent on Windmill Gardens, as apparently intended, the payment would be directly related to the development. As far as I can see, and in the absence of any indication to the contrary, the lesser of the two sums provided for in one of the undertakings (£11,617) appears to accord with the total that would result from the application of the formula in Table D1. This amount would thus be fairly and reasonably related to the development. On this basis, it seems to me that the undertaking for £11,617 meets the relevant legal and policy tests for planning obligations⁵.
31. The obligation for the higher amount of £14,694 is therefore superfluous, but nevertheless, the development's impact would be adequately mitigated.

Other matters

Entrance to upper floors of the southern block

32. The sole pedestrian entrance to office units Nos 5-10 and residential unit No 7 would be from a lobby positioned towards the rear of the southern block, and accessed via a 2m-wide footpath, running down the side boundary, adjacent to the flank wall of the adjoining site. I accept that new lighting could be provided, but nonetheless, this would be a doorway onto a narrow passageway, in a confined space between buildings, away from the road, and with very little natural surveillance. As such, it would provide poor safety for users.
33. I note that there is a lockable gate, but given that this would need to be used for a variety of commercial as well as residential users, there can be no guarantee that it would be kept locked. Indeed there seems every chance that a gate left unlocked would simply provide an additional hiding place for any potential assailant. There would also be a number of other places for concealment immediately around the proposed side entrance. There are some existing windows facing this passage, but they are small and do not appear to be habitable rooms. I note that the passage serves as a private right of way to the building at the rear, which includes three existing flats, but for the reasons already given, this does not allay my concerns.

⁵ Regulation 122 of the Community Infrastructure Levy Regulations 2010; and paragraph 204 of the NPPF

34. Even if there were no reason to fear for the users' safety, a main entrance in the position proposed would not be readily legible from the street, and thus would not be convenient for users of the building, and particularly visitors.
35. Overall, I consider this a significant weakness in the design and layout of the proposed scheme, resulting in unacceptably compromised levels of safety and convenience for users, and impacting adversely on living conditions in the case of residential unit 7.

Living conditions in residential unit 1

36. Proposed residential unit No 1, at first floor level, would have its windows to the sides and rear. All of these windows would be very close to the site boundaries, looking directly onto the adjoining industrial buildings and yards. From all of this unit's windows the outlook and natural light would be limited, by buildings and walls. And, in all cases, the view gained, if any, would be unsightly. As a result, unit 1 would fail to provide good living conditions or an acceptable residential environment.

Lack of parking and servicing space

37. None of the proposed residential or office units would have any provision for parking, servicing or loading and unloading, apart from two spaces for disabled users. As far as the lack of parking for cars is concerned, the site is reasonably accessible by public transport, and consequently I accept that a car-free approach is acceptable in this location. There is also provision in the two undertakings for a restriction on permits for on-street parking, to mitigate any overspill to the wider surrounding area. In the circumstances, this approach seems to me reasonable and necessary.
38. However, none of this explains the rationale for the lack of provision for delivery and service vehicles, for either the residential or commercial elements. To my mind, failing to provide any space of for this purpose would be likely to lead to such vehicles having to park either on the highway, which would block the bus lane, or on the vehicular right-of-way to the premises at the rear, again causing obstruction. The only alternative would be to pull onto the area designated as 'hard landscaping' at the front of the site; but that would destroy one of the proposed scheme's supposed benefits, in presenting an attractively landscaped frontage to the street. None of these options seems satisfactory.

Conclusions

39. For the reasons that I have set out above, I conclude that the inclusion of an element of residential accommodation in the proposed development is acceptable. I also consider that the development's impact on public open space would be sufficiently mitigated by one of the legal undertakings that has been entered into. However, the design now proposed would cause unacceptable harm to the area's character and appearance. It would also have some serious shortcomings in terms of the safety and convenience of users, living conditions, and servicing. Together, these significantly and demonstrably outweigh the development's potential benefits. The appeal is therefore dismissed.

John Felgate

INSPECTOR

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