
Appeal Decision

Hearing held on 11 February 2014

Site visit made on 11 February 2014

by Christopher Bowden MA (Oxon)

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

Decision date: 3 March 2014

Appeal Ref: APP/X5210/A/13/2207697

Linton House, 39-51 Highgate Road, London NW5 1RT

- 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 Linton Property Developments Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref. 2013/3494/P, dated 4 June 2013, was refused by notice dated 27 September 2013.
 - The development proposed is: *the erection of an additional floor at roof level to provide seven residential units (two x one-bed, four x two-bed, one x three-bed) and a ground-floor rear extension to accommodate a new entrance, cycle and refuse storage and installation of condenser units and enclosures at roof level.*
-

Decision

1. The appeal is allowed and planning permission granted for *the erection of an additional floor at roof level to provide seven residential units (two x one-bed, four x two-bed, one x three-bed) and a ground-floor rear extension to accommodate a new entrance, cycle and refuse storage and installation of condenser units and enclosures at roof level* at Linton House, 39-51 Highgate Road, London NW5 1RT in accordance with the terms of the application Ref. 2013/3494/P dated 4 June 2013, subject to the conditions set out in the attached schedule.

Procedural matters

2. As discussed at the Hearing, the description of the development proposed is taken from the decision notice. I consider that it describes the proposal more accurately than the one given in the application form, the scheme having been revised subsequently.
3. The decision notice cites Policies CS8, CS10, CS11, CS13, CS15 and CS 19 of the Council's Core Strategy, adopted in 2010 (CS), and Policies DP13, DP15, DP18, DP22, DP23 and DP31 of the Council's Development Policies, adopted in 2010 (DP). These policies appear to be broadly consistent with the thrust of the National Planning Policy Framework (NPPF), published in 2012, and I give them weight accordingly.
4. It was agreed at the Hearing that the drawings relating to the scheme decided by the Council and subject to this appeal are: location plan (unnumbered); 152 005 P1, 010 P1, 011 P1, 031 P1, 032 P1, 033 P1, 110 P1, 111 P3, 112 P3, 200 P3, 311 P3, 312 P3, 313 P3, 320 P3.

5. After the Hearing, the Inspectorate received a certified copy of a legal agreement signed and dated 13 February 2014 (discussion at the Hearing having been on the basis of an unsigned final draft agreed between the parties). The agreement covers car-free housing, sustainability measures, and financial contributions towards education and public open space. It is considered under 'Other matters'.
6. My attention has been drawn to a 2013 appeal decision dismissing a proposal to redevelop a Class B8 warehouse etc site for student housing elsewhere in the borough¹. I return to this below.

Main issue

7. This is the effect of the proposed development on the continued employment use of Linton House and sites in the Kentish Town Industry Area.

Reasons

8. Linton House is a five-/six-storey building fronting Highgate Road. It is a red-brick Victorian warehouse with plant and telecommunications equipment on the roof. It forms part of a group of Victorian warehouses, some of which have been extended at roof level. The building is in commercial use, being offices (Class B1) above the ground floor and with a dance school and café in parts below.
9. It lies on the edge of (but within) the Kentish Town Industry Area. This comprises various Class B1, B2 and B8 uses and some community use. The wider area is mixed and includes a predominantly residential area on the other side of Highgate Road from Linton House.
10. The proposal is to add an additional floor to the building at roof level to accommodate seven flats. A dedicated entrance would be provided by way of a ground-floor extension with access from Greenwood Place (which runs off Highgate Road).
11. The Industry Area is the only area within the borough designated for employment - specifically, warehousing and industry. Successive studies² have pointed to the decline in industrial floorspace in the borough, a situation in which demand "greatly outstrips supply".
12. Thus, in order to retain a strong and diverse economy in Camden, CS Policy CS8 seeks, among other things, to safeguard existing employment sites and premises in the borough and its main Industry Area. This is elaborated in the supporting text, which includes the statement that the Council will continue to protect industrial and warehousing sites and premises that are suitable and viable for continued use. With a mix of such uses and no housing, the text notes that the Industry Area is particularly suited for continued employment use. It states that development should not prejudice the nature of the Industry Area by introducing inappropriate or conflicting uses.³
13. The related guidance (CPG5⁴) says that the Industry Area will be safeguarded by resisting any proposals which jeopardise the continued use of sites for

¹ Ref. APP/X5210/A/13/2197192

² Employment Land Review Final Report 2008; Business Premises Study Final Report 2011

³ CS paragraphs 8.13 and 8.15.

⁴ CPG5: *Town Centres, Retail & Employment* (paragraphs 6.16 and 6.17)

- industrial, storage and distribution purposes. The guidance says that this includes proposals which would introduce residential uses.
14. DP Policy DP13 supports the delivery of CS8 by seeking to ensure that sufficient sites are retained to enable a variety of commercial and industrial businesses to find premises and continue to operate. The policy indicates, among other things, that the Council will consider redevelopment proposals for mixed-use schemes provided that the proposed non-employment uses will not prejudice continued industrial use in the surrounding area.
 15. I do not interpret the relevant policies and guidance as ruling out residential development in the Industry Area in all circumstances. The central question, to my mind, is whether the development proposed in this particular case would be prejudicial to the employment function of the building and the Industry Area more widely. This includes consideration of whether the appeal proposals would be inappropriate or conflicting or otherwise jeopardise the continuing use of sites for the purposes mentioned above.
 16. The appeal scheme would not involve the loss of any employment floorspace in Linton House: it would be an addition to the building. There is, however, concern that impact on the amenity of future occupiers of the flats could lead to pressures for restrictions on essential business functions leading to firms relocating and their vacant premises difficult to let, with consequent decline of the Industry Area and its contribution to employment and the local economy.
 17. As regards the relationship with existing uses in Linton House, these are offices above the ground-floor. The premises are not in use for industry or warehousing. Offices (and other Class B1 uses) are compatible with residential use by their nature and thus not considered bad neighbours⁵. The two can co-exist. It is also the case that, since May 2013, change of use from offices (Class B(1)(a)) to residential (Class C3) is permitted development⁶. In any event, the proposed flats would be separate from the rest of the building, with their own entrance and cycle and bin storage so as to minimise the potential for conflict between residential and business occupiers of the building. Conditions could address the matter of noise from plant and equipment and require sound insulation etc to limit noise from external sources in habitable rooms. In short, the proposal would not compromise continuation of the existing Class B1 use of the building.
 18. As to the wider Industry Area, the buildings nearest Linton House to north-west and south-west, are also in B1 use (together with a building in community use), with B2/B8 uses further beyond. These include the site of the Murphy construction company providing a significant number of jobs for local people. There is also the A and A self-storage facility to the south-east on the other side of Greenwood Place. This B8 use is roughly opposite where the entrance to the flats would be.
 19. The A and A facility is for domestic and business storage. It is not a 24-hour operation and closes at 6pm during the week (8pm on Thursdays) and earlier at weekends. The point was made at the Hearing that the opening hours are not subject to condition and could change in future. While that may be so, it seems unlikely that noise experienced at the entrance to the flats would give

⁵ The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁶ Subject to prior approval covering flooding, highways and transport issues, and contamination

rise to pressures to constrain the operation of the unit. Although the entrance would be within the Industry Area, it is off the busy main road where other residential entrances are located and this part of Greenwood Place does not give ready access to the heart of the Industry Area. As discussed at the Hearing, there is access to the areas of B2/B8 uses mentioned previously some appreciable distance away via Sanderson Close. That is a route taken by heavy lorries, for example, albeit adjacent to housing lying just beyond the boundary of the Industry Area.

20. I also note that the Council has resolved to grant permission⁷ for a scheme for redevelopment of land broadly to the south of the site (Ref. 2013/5974/P). It includes highway improvements to Greenwood Place, such as a wider pavement outside the proposed residential entrance in the appeal scheme and the introduction of a pedestrianised area in the existing narrow section of the road. These measures would improve the amenity of the entrance and there would be no route for vehicles through Greenwood Place. Moreover, the scheme includes a residential building of some 42 units. The building itself, with access from Highgate Road, would be just outside the Industry Area. However, it would be next to the A and A self-storage facility and look towards the Murphy's yard beyond the existing community building (and the Centre for Independent Living that would replace it as part of the scheme).
21. The planning officer's report for that scheme indicates that the dominant sources of noise for the residential component would be traffic (buses), and to a lesser extent from events at The Forum that lies further to the south, and that it would be less affected by commercial noise sources. It further considers that noise from external sources could be controlled to satisfactory levels for internal habitable areas by way of condition.⁸ In this connection, I note that the Council's own guidance for redevelopment of that site says that any new development should be designed and located so it does not prejudice the operations of existing or future business occupiers by introducing inappropriate or conflicting uses.⁹ I appreciate that the scheme has not yet been implemented but it confirms the acceptability of residential development next to a building in Class B8 use (closer than the appeal flats would be). This is not altered by the fact that the residential building and access would be just beyond the Industry Area boundary and the appeal flats and their access just within it.
22. As mentioned previously, suitable conditions could mitigate noise in the appeal scheme too. This is consistent with the findings of the noise assessment submitted in this case. The appeal flats would also be separated from the B2/B8 uses some distance to the south-west by the tall warehouse buildings currently in B1 use.
23. In the light of the above, I do not consider that the residential development proposed in the appeal scheme, or the entrance to it, would be likely to pose any threat, by way of pressures for restrictions, to the operation of the adjacent storage facility or to that of the B2/B8 areas, including Murphy's, in the wider Industry Area.

⁷ "Subject to a shadow S106 legal agreement"

⁸ Paragraphs 6.70, 6.74/75

⁹ Camden Site Allocations Local Development Document (September 2013) page 163

24. As regards the potential for introducing new industrial or warehousing uses in this location, it was agreed at the Hearing that there was no realistic prospect that the A and A site (next to the residential development approved as above) would change to Class B2 use. As to Linton House and nearby buildings currently in B1 use, there is no dispute that there is a demand for industrial and warehouse space in the borough. Light industry (Class B(1)(c)) is capable of being carried out in a residential area in any case. Change of use of the premises from office to Class B2 or B8, through conversion or redevelopment, does not appear to be economically realistic, given evidence submitted about comparative rental values, and there is no information to suggest that occupiers of existing Industry Area land in B2/B8 use have any ambitions to expand to this part (which is quite different in character in any event). Though not protected by any designations, the architectural characteristics of this cluster of Victorian warehouse buildings are also likely to be a constraint to demolition and rebuilding for industrial purposes, Linton House in particular occupying a prominent position on Highgate Road visible in long views.
25. By contrast, and as noted above, change of use from offices to residential is now permitted development on a prior approval basis. An application for such a change was submitted in 2013 in relation to the third and fourth floors of Linton House (Ref. 2013/7270/P). This was refused in January 2014 for reasons concerning absence of legal agreements on a variety of matters. The outcome remains to be seen but it suggests that the introduction of residential uses is a realistic possibility independent of the appeal scheme.

Conclusions

26. The flats proposed in this case would not supplant employment floorspace and the building to which they would be an addition is not in warehousing and industry use in any case. It is predominantly offices, a use with which residential can co-exist. Conditions could deal with the potential for noise disturbance of future residential occupiers from the surrounding area, as demonstrated by the Council's approach to the adjacent housing development on the other side of Greenwood Place. I do not consider that either the appeal flats or the location of their entrance would give rise to amenity concerns resulting in calls from their occupiers for restrictions on the operation of employment uses in the Industry Area, including those in B2 and/or B8 use now.
27. The legislative changes permitting change of use from office to residential in defined circumstances themselves have implications for the future employment contribution of Linton House. In any event, for the reasons given above, I consider it unlikely that change of use to warehousing or industry would be sought for this building or its B1 neighbours, though the Council's approach to the housing development mentioned above has also demonstrated that residential and B8 storage can sit side-by-side.
28. Thus, in the circumstances of this particular case, I do not consider that the residential development proposed would be prejudicial to the employment function of the building or of the Industry Area more widely. It would not be inappropriate or conflicting or otherwise jeopardise the continuing use of sites for warehousing or industry purposes. Nor would it be at odds with the

Framework's emphasis on economic growth or advice relating to the economic dimension of sustainable development.¹⁰

29. In reaching this view I have taken account of the appeal decision mentioned above but I do not consider it directly comparable to the case before me (eg it involved the actual loss of a site in B8 use) and I have determined this appeal on its own merits. I recognise there is concern that allowing the appeal would set a precedent for applications for residential development elsewhere in the Industry Area. I have discussed above the basis for my view in relation to the proposal before me, which takes account of its specific location and relationship with surrounding uses. Any future applications for other sites in the Industry Area would need to be considered on their merits in their own circumstances.
30. I conclude that the proposed change of use would not have a materially harmful effect on the continued employment use of Linton House and sites in the Kentish Town Industry Area. As such, I find no conflict with the objectives of CS Policy CS8 or DP Policy DP13.

Other matters

31. As regards the legal agreement, its provisions on notification of occupiers about parking permit eligibility are justified to ensure that the development is genuinely car free in an area of parking stress with a high level of access by public transport and to promote sustainable travel, in line with the objectives of development plan policy. The requirement for preparation of a sustainability plan, securing provision of a range of sustainability measures and their subsequent maintenance, is necessary to underpin plan policies on promoting sustainable design and construction as part of a strategy to tackle climate change.
32. The education contribution of £15,174, calculated in accordance with the Council's guidance on planning obligations¹¹, reflects the scale and mix of the development. The contribution is necessary in order to mitigate the additional pressures arising from the development on local schools through enhancing provision and capacity at primary and secondary levels, though I note that this may be done by pooling contributions from other developments. Similarly, the public open space contribution of £9,167, calculated on the basis of the formula in the Council's guidance on amenity,¹² reflects the scale and mix of the scheme. It is necessary to mitigate additional pressures on local parks and spaces through improvements in the vicinity of the site, again noting that this may be done on a pooled basis. This contribution is justified notwithstanding the inclusion of private amenity space within the scheme.
33. The agreement also includes a monitoring fee of £1,460. At the Hearing, the Council explained that this sum represents £365 per head of term (there being four of them) and reflects its standard fee for a development of the size proposed. The Council also confirmed that the fee was specifically for monitoring the obligations in this agreement over and above its day-to-day development control activity.

¹⁰ Framework paragraph 7

¹¹ CPG8: *Planning Obligations*

¹² CPG6: *Amenity*

34. In the light of the above, I consider that the agreement overcomes the Council's concerns about the matters it addresses and meets the relevant statutory and policy tests. I therefore give it significant weight in this appeal.
35. There were representations about the effect of the proposal on the height, bulk and architectural integrity of a building that is already prominent and on the outlook of residential properties in the area, including those in the Dartmouth Park Conservation Area (CA). I note that the Council did not object on these grounds and that the site itself is outside the CA. The scheme was revised before it was decided and set further back from the edge of the building. The extra floor would be visible from certain perspectives, including longer views from within the CA and without, but it would appear a subordinate addition. I do not consider, therefore, that it would be a dominant feature in the street scene or have a materially harmful effect on views of or from the CA. Indeed, it would represent an improvement on the array of telecommunications equipment currently visible on top of the building. Given the above, and bearing in mind the relative positions of the extra floor and residential properties in the vicinity, I do not consider that neighbours' outlook would be harmed materially, through a sense of enclosure or otherwise, or that there would be any unacceptable overlooking of dwellings.
36. Concerns about the sustainability of the development and its impact on parking and congestion in the area are addressed by the agreement discussed above.

Conditions

37. The Council suggested ten conditions. I have considered them in the light of Circular 11/95 and discussion at the Hearing.
38. A condition on commencement is needed to comply with section 91 of the Town and Country Planning Act 1990. In the interests of proper planning and for the avoidance of doubt, a condition is necessary to require the development to be carried out in accordance with the approved plans, other than as set out in the related decision and conditions. A condition on external materials is needed to ensure that the development has a satisfactory appearance and it was agreed at the Hearing that the two proposed by the Council could be simplified and merged. Similarly, a condition on balustrade details is necessary to ensure a satisfactory visual relationship with the building.
39. Conditions on bicycle storage and on Lifetimes Homes are required in the interests of sustainability and accessibility respectively. A condition on noise from plant and equipment on the general lines suggested is needed to safeguard the amenity of future occupiers of the flats, as is the additional one discussed at the Hearing relating to sound insulation to mitigate noise from external sources.
40. A condition was suggested seeking details of a Construction Management Statement, required by development plan policy "where appropriate". In this case, the scheme is a relatively minor one, the extent of demolition would be minimal, and there is a service yard to the rear of the building (within the site boundary) where construction plant and equipment and materials, for example, could be located. However, the building is on the busy Highgate Road and next to its junction with Greenwood Place, which provides access to the storage and other businesses and community centre mentioned above as well as to the service yard of Linton House itself. On balance, therefore, and recognising the

controls available under other legislation, I consider that a statement would be justified in order to avoid obstruction of the highway and to safeguard the amenities of adjacent premises.

41. The suggestion relating to bat and bird bricks is not underpinned by any ecological information (eg confirming the presence of bats) and does not appear to me to be necessary to make the development acceptable. The development would include a brown roof, mentioned in CS Policy CS15 as a measure to provide habitats.

Conclusion

42. For the reasons given above and having regard to all other matters raised, including third party representations, I conclude that the appeal should be allowed.

Christopher Bowden

INSPECTOR

SCHEDULE OF CONDITIONS

- 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: location plan (unnumbered); 152 005 P1, 010 P1, 011 P1, 031 P1, 032 P1, 033 P1, 110 P1, 111 P3, 112 P3, 200 P3, 311 P3, 312 P3, 313 P3, 320 P3.
- 3) No development shall take place, including any works of demolition, until a Construction Management Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period.
- 4) No development shall take place until a detailed scheme of sound insulation and attenuated ventilation has been submitted to and approved in writing by the local planning authority. The scheme, which shall ensure that noise from external sources shall not exceed 35dB(A) LAeq,t in any noise sensitive room, shall be carried out as approved before the residential units hereby approved are occupied.
- 5) Notwithstanding condition 2, no development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Notwithstanding condition 2, no development shall take place in connection with the balustrade shown in the approved plans until details of the balustrade have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Notwithstanding condition 2, before the development hereby permitted is occupied storage for eight bicycles shall be provided in accordance with details submitted to and approved in writing by the local planning authority and retained thereafter.
- 8) Before the development hereby permitted is occupied Lifetime Homes features and facilities shall be provided in accordance with the approved plans and the Design and Access Statement dated August 2013 and retained thereafter.
- 9) Noise levels from fixed plant and equipment associated with the development hereby permitted at a point 1 metre external to sensitive façades shall be at least 5dB(A) less than the existing background measurement (LA90) expressed in dB(A) when all plant and equipment (or any part thereof) is in operation unless the plant and equipment will have a noise that has a distinguishable discrete continuous note (whine, hiss, screech, hum) and/or there are distinct impulses (bangs, clicks, clatters, thumps) in which case the noise levels from that item of plant or equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

[end of schedule]

APPEARANCES

FOR THE APPELLANT:

Simon Wallis	Savills
Nigel Dexter	Savills
Richard Ground	Barrister, Cornerstone Barristers
Clive Sall	Clive Sall Architecture
Jack Linton	Linton Property Developments Limited and Norman Linton (Holdings) Limited
Gary Linton	Linton Property Developments Limited and Norman Linton (Holdings) Limited

FOR THE LOCAL PLANNING AUTHORITY:

Ben Le Mare	Senior Planning Officer
Pritej Mistry	Legal
Seonaid Carr	Senior Planning Officer
Deirdre Trayner	Appeals Section

DOCUMENTS

- 1 Decision dated 6 January 2014 on Linton House prior approval application: change of use of two floors from Class B1a to Class C3 (Ref. 2013/7270/P)
- 2 Delegated report on the above prior approval application
- 3 Statement by Nick Boles MP: *Change of use: New homes*: February 2014
- 4 Pages 25/28 of Camden Business Space Study Final Report March 2011
- 5 Undated, unsigned unilateral undertaking: draft agreed between appellant and Council
- 6 Council's note on planning obligations addressed by unilateral undertaking
- 7 Page 22 (Lifetime homes) of Design and Access Statement dated August 2013
- 8 Appellant's alternative draft condition on noise
- 9 Policy DP2 of Camden Development Policies and related text
- 10 Maps of Dartmouth Park Conservation Area
- 11 Camden Local Development Framework proposals map (2010)
- 12 Mr Ground's closing comments on behalf of appellant