

Item: 8.3	Classification: OPEN	Date: 11 March 2014	Meeting: Planning Sub-Committee A
Report title:	Development Management planning application: Application 13/AP/2160 for: S.73 Vary/remove conds/minor alterations Address: 88 BRANDON STREET, LONDON, SE17 1ND Proposal: Variation of Condition 2 of planning permission 10AP1253 (which itself was for: variation of Condition No. 9 LBS reg: 08-AP-1698 for: Demolition of existing public house with residential above and to erect a new four storey building comprising of 9 flats (5 No. one bedroom and 4 No. two bedroom flats) with A1 use on the ground and basement floors - to omit basement level and void and integrate with remainder of commercial space at ground floor); for alterations to the window openings; alteration to cladding on Brandon Street and Browning Street elevations; introduction of zinc cladding on set-back top floor, and introduction of obscured windows to rear (north) elevation.		
Ward(s) or groups affected:	East Walworth		
From:	Head of Development Management		
Application Start Date 10/09/2013		Application Expiry Date 05/11/2013	
Earliest Decision Date 26/10/2013			

RECOMMENDATION

- 1 That members grant a variation of planning permission under Section 73A of the Town and Country Planning Act 1990 subject to condition.

BACKGROUND INFORMATION

- 2 This application is referred to members for decision due to member interest.

Site location and description

- 3 The site contains a three storey development (plus set back third floor), which was completed in the last four years. The building is clad in brown weatherboard, and has UPVC framed windows. The building contains 9 flats, most of which are occupied, and there is a funeral director's shop (within A1 use class) operating on the ground floor.
- 4 The buildings in the surrounding area are of similar heights, and are mixed in appearance and style, although most predominant are the stock brick Victorian terraces to the west, between the site and Walworth Road. Opposite the site to the east is a residential care home, Walter's Close, which is a two storey yellow stock brick building. There are significant modern architectural developments to the north, including 60 Brandon Street (with red glazed bricks) and Garland Court on Wansey Street, with its orange cladding.

- 5 The property is not located within a conservation area, and is not listed. The Larcom Street conservation area lies to the rear of the site (to the north and west of the site). The elevations subject of this application face away from the conservation area, therefore are not considered to affect its setting.

Details of proposal

- 6 Following the implementation of the planning permission with reference 08-AP-1698 (detailed in the planning history section below), the building was found not to have been constructed in accordance with plans and was subject of an enforcement investigation.

Breaches include:

- 7
- Installation of UPVC framed windows;
 - Alteration of window sizes;
 - Alteration to cladding which has omitted the horizontal articulation;
 - Apparent alteration (increase) to parapet height;
 - Omission of ground floor detail to south elevation.
 - Installation of clear glazing to stairwell window instead of obscure glazing.
- 8 The applicant now proposes an alternative elevation treatment as set out below:
- Revised cladding detail of all four elevations to show 3 different randomly spaced colours (Dark Oak CL105, Red C33, and Atlas Brown C14 on the Marley Eternit Cedral Weatherboard Colour Chart). The spacing of the colours is shown on a marked up drawing, submitted with the application documents, reference 1816.SS.01.
 - Replacement of Brandon Street and Browning Street window frames with powder coated aluminium frames.
 - Enlargement of windows, by lowering the cill heights of all windows on the Browning Street and Brandon Street elevations.
 - Introduction of a horizontal timber banding (from the same material as vertical cladding), to be inserted between existing vertical cladding elements.
 - Introduction of painted render (light colour) to the set back upper floor.
 - Introduction of obscure glazing to rear (north facing) elevation.

Planning history

- 9 Planning permission with reference 08-AP-1698, was granted on 27/11/08 for the demolition of existing public house with residential above and to erect a new four storey building comprising of 9 flats (5 No. one bedroom and 4 No. two bedroom flats) with A1 use on the ground and basement floors. This has been implemented.
- 10 10-AP-1253: Variation of condition 9 (approved drawing numbers) of 08-AP-1698 was granted "to omit basement level and void, and integrate with the remainder of commercial space on the ground floor."
- 11 10-AP-1397: A non-material minor amendment to the above consent was granted on 30/06/10, which added a new condition (condition 9) citing approved drawing numbers.
- 12 An enforcement complaint was received on 03/08/11 (reference 11-EN-0320), which alleged changes to the design of the approved building (prominent window by the corner half blocked by sink units); two tone colour treatment not implemented (the use of wood cladding was supposed to provide variation of external finish, using darker tone for the ground floor and lighter tone for the upper floors); and crude colour treatment to the ground floor windows.

- 13 The enforcement investigations resulted in the submission of the most recent application, with reference 11-AP-2903, which was for variation of condition 2 of planning permission 10AP1253 (which itself was for: variation of condition No. 9 LBS reg: 08-AP-1698 for: demolition of existing public house with residential above and to erect a new four storey building comprising of 9 flats (5 No. one bedroom and 4 No. two bedroom flats) with A1 use on the ground and basement floors - to omit basement level and void and integrate with remainder of commercial space at ground floor); to allow the retention of UPVC double glazed windows. This application was refused on 07/02/12, for the following reason:
- 14 *'The UPVC windows as installed have a harmful impact on the appearance of the building, due to the appearance of the UPVC itself which is bulky and of a low quality. This, as well the mean size of the windows, results in a poor overall design response which fails to achieve the creative and high quality design solution required by saved policy 3.12 Quality in Design of the Southwark Plan 2007, and in turn fails to comply with SP12 Design and Conservation of the Core Strategy 2011'.*
- 15 The applicant submitted an appeal against this refusal, which was subsequently dismissed by the Planning Inspectorate on 04/12/12.
- 16 The Inspector, in his decision notice, drew attention to the fact that the building had not been constructed in accordance with the approved plans pertaining to reference 08-AP-1698 (as detailed above), in particular in regard to the positioning (and frame material) of the windows. He stated that the design of the original scheme had been given careful consideration, and that no reason had been cited in the appeal to depart from that. Finally, the inspector acknowledged that there had been no change to circumstances since the grant of planning permission that would illicit a different decision about the design of the building, aside from the publication of the National Planning Policy Framework confirming the importance of good design.
- 17 An Enforcement Notice was served on 04/04/13, which took effect on 08/05/13, with 6 months to comply with the following requirements:
- i) Remove the existing elevations of the building above ground level;
 - ii) Replace with permitted elevations in accordance with permitted planning applications 08-AP-1698 and 10-AP-1253;
 - iii) Remove all debris from the land resulting from the works.

18 Other relevant planning history

Approval was given for the following details:

- Samples of external cladding and opaque screen (10-AP-1445). Samples listed were as follows: Cedral weatherboard colour S30 (Brown), Cedral weatherboard colour S32 (Orange brown), and polycarbonate sheet to be used as opaque screen.
- Evacuation plan covering flood escape routes (10-AP-1451).

Planning history of adjoining sites

- 19 None relevant.

KEY ISSUES FOR CONSIDERATION

Summary of main issues

- 20 The main issues to be considered in respect of this application are:

- a) Amenity
- b) The impact of the proposed elevational changes on the appearance of the building within the street context.

Planning policy

- 21 Section 73(a) Town and Country Planning Act 1990
This section of the act allows an applicant to make an application for planning permission for a development which cannot comply with the conditions subject to which a previous planning permission was granted (ie: an application for variation or removal of condition).
- 22 The local planning authority can only consider the question of conditions subject to which planning permission should be granted, and -
 - a) if they decide planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly (ie: agree to amend or remove the condition).
 - b) if they decide that planning permission shall be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application (ie: not agree to amend or remove the condition).
- 23 National Planning Policy Framework (NPPF)
Section 7: 'Requiring good design' is particularly important.
- 24 London Plan 2011
Policy 7.6 Architecture
- 25 Core Strategy 2011
Strategic Policy 12 – Design and conservation
Strategic Policy 13 – High environmental standards
- 26 Southwark Plan 2007 (July) - saved policies
The Council's cabinet on 19 March 2013, as required by paragraph 215 of the NPPF, considered the issue of compliance of Southwark Planning Policy with the National Planning Policy Framework. All policies and proposals were reviewed and the Council satisfied itself that the policies and proposals in use were in conformity with the NPPF. The resolution was that with the exception of Policy 1.8 (location of retail outside town centres) in the Southwark Plan all Southwark Plan policies are saved. Therefore due weight should be given to relevant policies in existing plans in accordance to their degree of consistency with the NPPF.
- 27 3.2 Protection of Amenity
3.12 Quality in Design
- 28 Inspector's decision in relation to 11-AP-2903
The findings of the Inspector in relation to the above referenced appeal is also a relevant consideration in this case. This is summarised above at paragraph 16, and the full report is attached as an appendix to this report.

Principle of development

- 29 The issue before members is to determine whether they agree that the information submitted shows an improvement on the constructed elevations, which were not constructed in accordance with approved planning applications. In the event that Members agree with the recommendation, route 73(a) of the above act would apply.

Environmental impact assessment

- 30 None required, due to the modest size of the scheme.

Impact of proposed development on amenity of adjoining occupiers and surrounding area

- 31 The addition of obscured glazing to the north facing (stairwell) elevation would prevent harmful overlooking to nearby neighbouring windows and gardens. The drawings state that an opaque film would be applied to the elevation. It is not considered in this instance that directional opaque film would be appropriate, as some views can still be afforded at certain angles using such film. Due to the different types of opaque film available on the market, it is considered that a condition should be imposed requiring details to be submitted for approval, to ensure that neighbouring residential amenity is protected.
- 32 It is not considered that the revised elevations would adversely impact on the amenity of residents of the scheme, or neighbouring occupiers. Whilst residents of the application site would experience a small degree of disturbance during the construction works, this must be weighed up on balance in relation to the harm that is currently being caused to the wider streetscene. The harm identified is predominantly to the visual amenity of the area, rather than typical amenity matters such as loss of light, privacy, or disturbance resulting from a development's characteristics.
- 33 Therefore saved policy 3.2 (Protection of Amenity) is applied, and it is considered that the scheme complies with policy as it raises no concerns for harm.

Design issues

- 34 NPPF section 7, 'Requiring good Design' states that planning decisions should ensure that developments are visually attractive as a result of good architecture and appropriate landscaping. As set out in previous reports relating to this site, the appearance of the building has been reduced in quality due to various amendments to the design without planning permission. This results in what can no longer be described as a 'contemporary design' that was approved in accordance with the NPPF ethos, or with saved policy 3.12 Quality in design', but rather a poor quality interpretation of what was originally approved.
- 35 The works proposed within the scheme subject of this application would go as far as can reasonably required, to bring the scheme in line, as close as possible, with the approved scheme. Lowering the cill heights of windows facing Brandon Street and Browning Street would have the effect of enlarging the windows, and reducing the expanse of the elevations; the insertion of the horizontal banding between floors would bring back a more horizontal emphasis as in the approved scheme; and the addition of colour (in the random spacing shown) would lift all four of the elevations, making them appear less flat. The aluminium framed windows are considered appropriate for the two street facing elevations, as the frames would remain slender, and an appropriate solution for this site. An insistence on timber frames would be disproportionate here. Whilst aluminium is not a traditional material, the area is not within the conservation area, it faces away from the conservation area, and the design of the building is of a more contemporary appearance, within which aluminium would be successful.
- 36 The Inspector in his decision notice on the 2011 scheme, referred to the UPVC windows being readily visible from the public realm, and that they were having a

heavy and unsympathetic effect. Whilst the same heavy and unsympathetic effect is repeated on the rear (north) facing elevation, officers do not consider the harm here to be as great as that inflicted on the street facing elevations. For the above reasons it is not considered necessary for the windows on the rear elevation to be changed from UPVC to timber or aluminium.

- 37 The standing seam zinc cladding is an appropriate material for the set back upper floor.
- 38 It is considered that with the implementation of the measures described, the scheme would comply with section 7 of the NPPF (Requiring good design), and also saved policy 3.12 'Quality in Design' which states that new buildings and alterations to existing buildings should embody a creative and high quality appropriate design solution, specific to the site shape, size, location and development opportunities and where applicable, preserving and enhancing the historic environment.

Impact on character and setting of a listed building and/or conservation area

- 39 The development is not considered to affect the setting of the nearby Larcom Street conservation area, which is to the north and west of the site, and away from the affected south and east elevations of the proposal site.

Other matters

- 40 CIL - As no additional floorspace is being proposed, the development would not trigger CIL.
- 41 Whilst the enforcement notice seeks to require the originally approved design, it has been acknowledged by enforcement officers that implementation and completion of an alternative approved scheme would be acceptable. The applicant has requested the opportunity to put forward an alternative design, because their engineer advised them that the frame of the building as constructed makes it impossible, or virtually impossible to build out exactly the original design. It was considered that in the circumstances it was reasonable to allow the applicant an opportunity to find an alternative acceptable design for the site, that the applicant assesses can be constructed.
- 42 The enforcement notice compliance period has expired. It is proposed that once the decision notice is issued in respect of this application, whether a grant or a refusal, that the compliance period of the Enforcement Notice is extended for a period of four months to allow approved elevations either original, or as per this application (if approved) to be built out.

Conclusion on planning issues

- 43 The scheme would present an improved appearance to the streetscene, and would improve the impact on amenity of nearby neighbours. Planning permission is therefore recommended.

Community impact statement

- 44 In line with the council's community impact statement the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process.

a) The impact on local people is set out above.

Consultations

45 Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

Consultation replies

46 Details of consultation responses received are set out in Appendix 2.

47 Summary of consultation responses

Concerns over the type of obscure glazed film to be applied.
Objection to the retention of UPVC window frames to the rear (north) stairwell elevation.

Human rights implications

48 This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.

49 This application has the legitimate aim of providing elevational alterations to existing building. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

50 None.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/1090-88 Application file: 13/AP/2160 Southwark Local Development Framework and Development Plan Documents	Chief executive's department 160 Tooley Street London SE1 2QH	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: planning.enquiries@southwark.gov.uk Case officer telephone: 020 7525 5405 Council website: www.southwark.gov.uk

APPENDICES

No.	Title
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received
Appendix 3	Inspector's report
Appendix 4	Recommendation

AUDIT TRAIL

Lead Officer	Gary Rice, Head of Development Management	
Report Author	Susannah Pettit, Planning Officer	
Version	Final	
Dated	24 February 2014	
Key Decision	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director, Finance and Corporate Services	No	No
Strategic Director, Environment and Leisure	No	No
Strategic Director, Housing and Community Services	No	No
Director of Regeneration	No	No
Date final report sent to Constitutional Team		27 February 2014

Consultation undertaken

- 54 **Site notice date:** 02/10/13
- 55 **Press notice date:** N/A
- 56 **Case officer site visit date:** 02/10/13
- 57 **Neighbour consultation letters sent:** 03/10/13
- 58 **Internal services consulted:**
Design and Conservation Team
Enforcement Team
- 59 **Statutory and non-statutory organisations consulted:**
None.
- 60 **Neighbours and local groups consulted:**
2 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
19 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
20 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
3 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
21 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
18 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
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17 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
16 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
FLAT 1 26 BROWNING STREET LONDON SE17 1LU
78-82 BRANDON STREET LONDON SE17 1ND
FLAT 2 26 BROWNING STREET LONDON SE17 1LU
FLAT 3 26 BROWNING STREET LONDON SE17 1LU
9 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
5 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
4 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
6 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
8 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
7 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
FLAT 6 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 5 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 7 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 9 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 8 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 4 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 1 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 3 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
FLAT 2 SANT HOUSE 63 BROWNING STREET LONDON SE17 1AG
86 BRANDON STREET LONDON SE17 1ND
84 BRANDON STREET LONDON SE17 1ND
1 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
11 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
10 WALTERS CLOSE BRANDON STREET LONDON SE17 1NE
57-59 BROWNING STREET LONDON SE17 1LU
88 BRANDON STREET LONDON SE17 1ND
26 BROWNING STREET LONDON SE17 1LU
30 BROWNING STREET LONDON SE17 1LU
28 BROWNING STREET LONDON SE17 1LU
- 61 **Re-consultation:**
N/A

APPENDIX 2

Consultation responses received

62 Internal services

Design and Conservation, and Enforcement Team comments incorporated into report.

63 Statutory and non-statutory organisations

N/A

64 Neighbours and local groups

Two objections, one from 102 Brandon Street, and one from a nearby neighbour.