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Making a Case Following Refusal of Permission



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Finding decent opportunities in the market is for many property investors and developers a daily task involving speaking with agents, using online search tools to look for vacant or ‘opportunity’ sites, or other ways of trying to find a ‘gem’ of a deal.

Looking for opportunity in refusals

Many successful developers and investors, especially those investing in their ‘local’ area or within an established market that they know, will keep an eye out for planning applications submitted to or recently decided by the local planning authority, especially if the decision was a refusal.

In such cases, a ‘tired’ landlord or property owner, or speculative developer seeking to ‘cut their losses’ after a disappointing planning result might be looking for a potential exit. If you know how to find potential solutions in a planning refusal, this can open up an opportunity to strike a great deal with a willing vendor.

This was exactly the case with this development, a proposal for rear extensions and extra units to a three-storey, semi-detached block in a Conservation Area in the London Borough of Southwark:

The existing property comprised 3 x 4-bedroom flats – one on each floor to the property, with a generous rear garden area:

Planning permission had recently been sought for a part-1 and part 2-storey rear extension and to convert the property into 6 flats – three studios on the ground floor and 2 flats on the first floor and a flat on the second floor:

However, this was refused for the following reasons:

“...poor quality, owing to undersized ground floor units A and B, poor outlook and access to daylight/sunlight, and the unacceptable risk to the privacy of occupiers of unit B”.



This referred only to the ground floor units, so it was assumed that the remaining proposed units to the upper floors were all acceptable.

Analysing the opportunity

No planning decision stands only on the decision notice. In many ways, the most important document is often not the decision notice, but the report that leads to and underpins or explains the rationale to the decision. This is called the ‘Officers’ or Delegated Report’ in the case of a delegated decision or, where a Committee grants permission, it is the ‘Committee Report’.

Therefore, when seeking the advice of a planning consultant as to the prospects of being able to turn a recent refusal to permission, then you should expect that the consultant will ask for not only the decision notice but also a copy of the report from the officer that led to the decision.

Therefore, in order to work out where the scheme needed to be redesigned to overcome officer concerns, you should start with the officer report consider it as a ‘guide’ to working out how best to overcome the issues at hand. A table of a similar format to that below for this case might be a helpful way of dissecting cases like this.

This exercise shows the value of not relying on just the decision notice. Officers will often indicate other concerns they have with a scheme that for any number of reasons were not considered to be of sufficient weight to find their way on to the decision notice, such as overlooking from proposed rear roof terraces. You need to understand the full scope of the officer’s issues with the proposal in order to avoid the prospect of delays to the grant of planning permission or last minute, foreseeable problems being thrown at you by officers (foreseeable because, although

not in the decision notice, the officer did refer to them in their official report).

Converting 1-bedroom units to studios

This can often help to preserve the number of units whilst also complying with size requirements. One bedroom 2-person apartments (i.e., a double bed is shown on plan) usually needs to be at least 50sqm GIA (or 58sqm if a duplex), whereas a 1-bedroom 1-person studio has a minimum GIA of 37sqm and is often therefore easier to fit into extended loft space or reduced space elsewhere.

As studios are usually mostly open plan (except for the bathrooms of course) they allow for better light penetration throughout, which is particularly useful if a bedroom area relies on borrowed light from the living room area. This would not be possible in a 1-b 2-p unit, which would have internal dividing walls between living spaces.

When drawing on plan, therefore, remove internal dividing walls, place living room space closest to the strongest light source if possible (so the bedroom receives borrowed light, not vice versa) and show a single bed and not a double.

Where the solution requires a reduction in the proposed size and bulk of a scheme, then value can be preserved in other ways. For example, although not the case with this property, if say a 2-bedroom 3-person unit (minimum 61sqm) had to be reduced to a 1-bedroom 2-person unit (minimum 50sqm), but there was sufficient space for a small second room (5-6sqm) for 'home working/office', then this can add significant value. In one scheme in which we were involved in Crawley, West Sussex, such 'home offices' carried a £15,000 premium per flat.

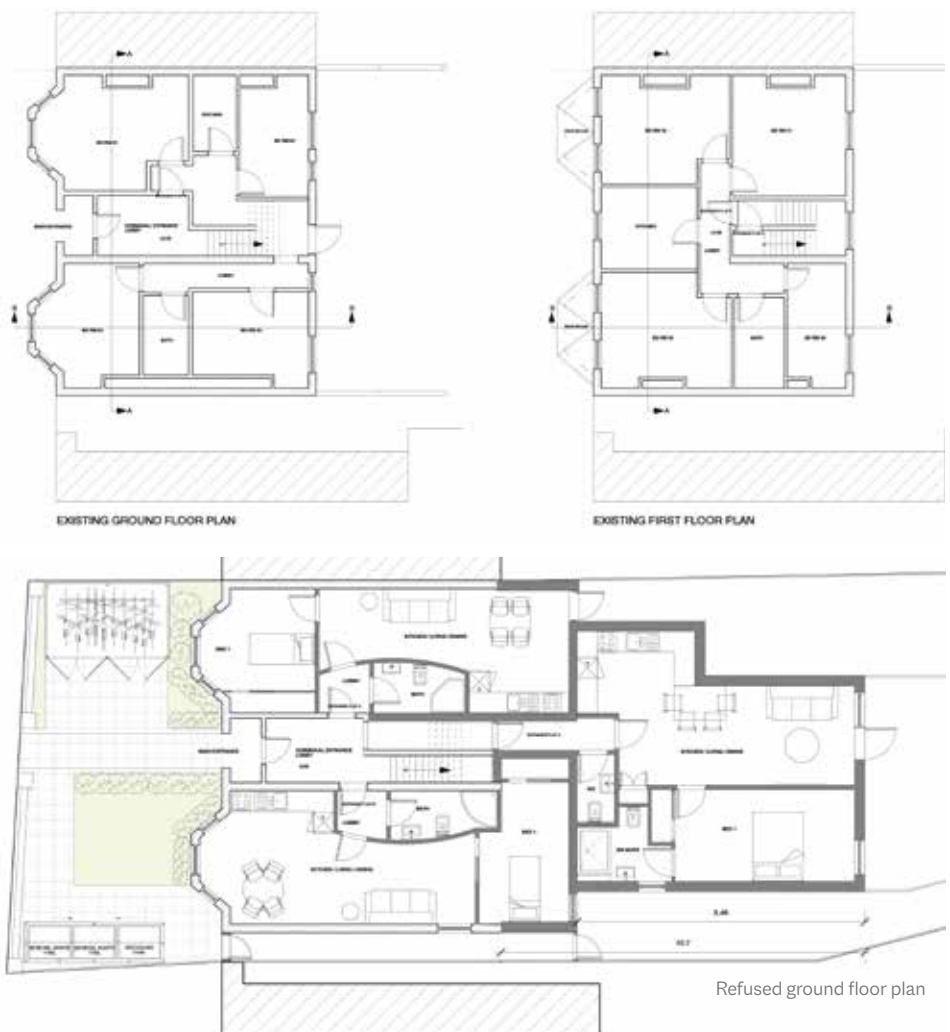
Finding creative solutions

A critical part of improving the scheme was reducing the size and depth of the gardens on the edges. We did not lose much in terms of quality or value to these units as a result, and the smaller gardens were probably more proportionate to the size of the studios.

In reducing these to shorter gardens, it also enabled side windows to be inserted to the middle unit, Unit C, providing this unit with 'dual aspect'.

Narrowing the size of the rear projection was also important for the following reasons:

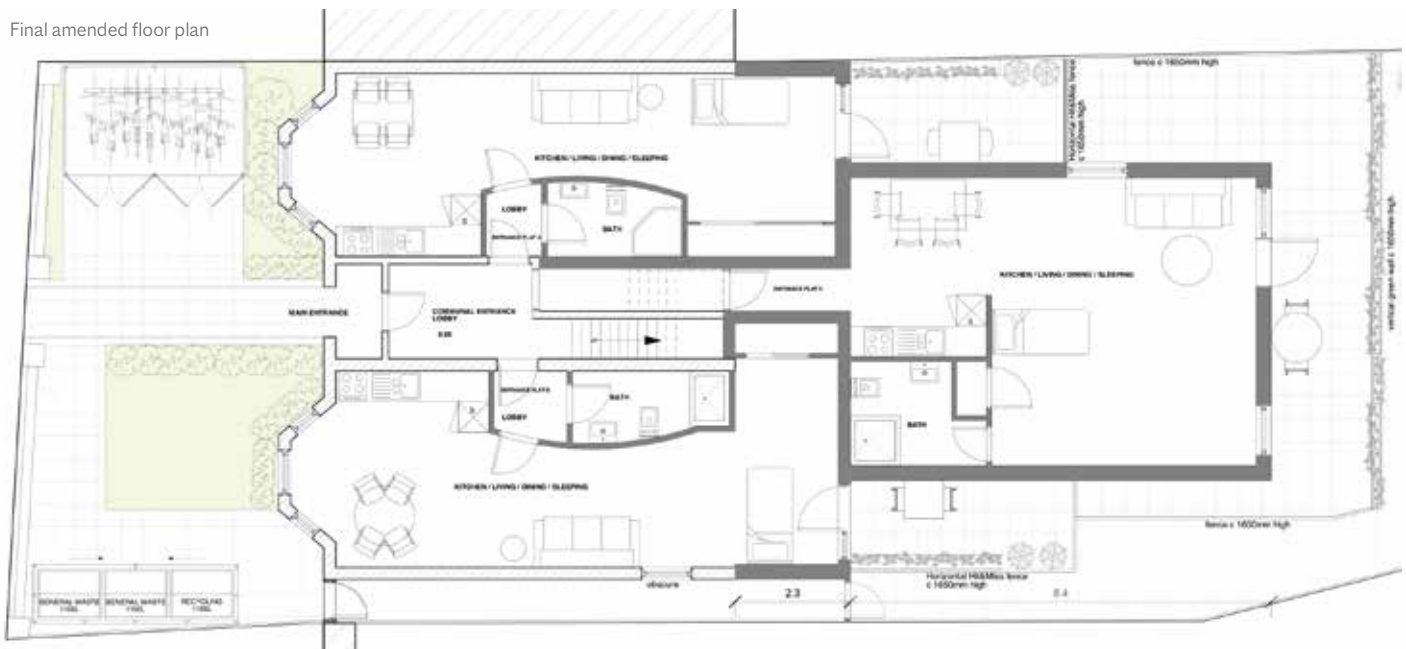
- ♦ We were reducing the depth of the terraces to the studios so wider terraces would maintain their utility



- ♦ Wider terraces meant we could also insert wider openings to the rear, improving sunlight, daylight and outlook to living spaces (bedrooms)
- ♦ Better outlook and light amenity helped to mitigate the effect of higher side boundaries (e.g., unit B, to shield it from overlooking from the side access)

OFFICER ISSUE	SCHEME RESPONSE	SUPPORTING DOCUMENT
Potential risk of overlooking from first floor rear roof terrace. High level terrace also considered harmful to the Conservation Area	Roof terrace set back/reduced in size	Floor plans, elevations
First floor unit too narrow with possibly poor natural light throughout	Side of first floor rear extension had to be reduced in size anyway, but daylight also assessed	Floor plans, Daylight and Sunlight report
Ground floor units under-sized for 1-b 2-p units and poor light and outlook	Ground floor units converted to studios and size of rear extension reduced in depth with additional window openings	Floor plans, elevations, Daylight and Sunlight report
Poor outlook to private terraces to the rear	Reconsider shape and size of terraces, propose 'hit and miss' fencing to allow light penetration whilst retaining effective screening and use CGIs to demonstrate effective quality space	Floor plans, elevations, CGIs
Single aspect to some ground floor units	Side windows placed to other elevations through changing the shape of outside and inside space	Floor plans, elevations
Lack of privacy to unit B, to the side of access to communal rear garden	Fencing to be provided to divide off Unit B from the side access and rear ground floor projection made narrower and shallower, so a larger window to the rear could be created to avoid oppressive outlook from the rear of this unit, and allow it to look on to a 'pocket garden'	Floor plans, elevations

Final amended floor plan



Improving the outlook for new units

Many councils often have minimum standards for outdoor space, sometimes seeking more than can be provided in built-up urban neighbourhoods as they usually fight to retain a lower density character to some areas. In London, we often find that these standards are in conflict with the London Mayor’s Housing Guidance, which usually allows for smaller units to have around 10sqm of garden space.

However, understandably, 10sqm can seem rather confined in some situations and you need to find a way to demonstrate to officers that the area would still be useable and attractive to future occupants. Hence, we had CGIs prepared to indicate how this might look to future users:



Timeline

It took roughly two weeks from our instruction for the architect to prepare and circulate a first draft of the new scheme. It then took about six weeks to settle the plans and get the Sunlight and Daylight report settled. An initial report on sunlight and daylight led to further scheme amendments to improve the results. The CGIs could then be completed, which took about another week; so roughly 2-3 months of team preparation.

It is worth investing that time at the front end rather than rushing in with an unprepared application for the sake of a few weeks’ (unless there are obvious reasons for such haste, either related to the deal or a possible change to local planning policy, or the availability of PD rights).

In addition, this pace should be weighed against the speed at which this passed through planning, given the time and care spent on this to ensure a high quality submission.

Dealing with heritage officers

Overall, the application went quite smoothly - until the Conservation and Design officer got involved! Their concern was that the extent of first floor projection proposed would harm the character and appearance of the Conservation Area and should project no further out than the depth of the neighbouring outriggers. We prepared a ‘photoshop image’ to show the officers that the difference in depth was imperceptible and thus not harmful.

Unfortunately, some heritage officers can have very fixed views of the ‘pattern book’ approach they want to see and can, as a result, be quite inflexible. This meant making the first floor into 2 x 1-bedroom units, and not 1 x 2-bedrooms, plus 1x 1-bedroom. However, instead of arguing the point over one unit, for the sake of the rest of the scheme we took a commercial approach to ‘bag’ the consent.

Planning permission – finally!

Finally, eight weeks after submission, we obtained planning permission for the same number of units that had been refused some nine months before. The previous refusal had merely laid the path toward success, but it doesn’t hurt to have a thorough approach and build your case using the officer’s report in order to get there.

