
Appeal Decision

Site visit made on 17 January 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 01 February 2017

Appeal Ref: APP/C5690/W/16/3159999

5A Fir's Close, Forest Hill, London SE23 1BB

- 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 Mr Steve Ball against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/096701, dated 18 May 2016, was refused by notice dated 13 July 2016.
 - The development proposed is the removal of existing structures and erection of a terrace of 3 no. two storey houses comprising one 2 bed house and two 3 bed houses, including associated bin and cycle store and landscaping of existing access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the development on the living conditions of neighbouring occupiers with particular reference to outlook; and
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to sunlight.

Reasons

3. The appeal relates to a builder's yard situated in a backland location, accessed between the two storey residential properties at No 5 and No 7 Fir's Close. The main part of the site adjoins the rear of those properties as well the rear garden of No 3 Fir's Close. It presently accommodates a two storey and a single storey portacabin laid out in a right-angle arrangement in the south west corner of the site. The two storey element is positioned at the back of the site and therefore furthest away from neighbouring properties. The single storey portacabin extends along the western boundary towards the rear of No 7. An open sided storage shed is positioned between the end of this portacabin and the southern boundary of No 7. The remainder of the site is largely used for the open storage of building materials, with space for vehicles to access.
 4. The appeal proposal for three terrace properties would result in a substantial increase in built form within the site. The supporting plans show that the proposed terrace would be up to approximately 1.5m higher than the two storey portacabins. In addition, and in contrast to the two storey portacabins,
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the terrace would essentially fill the full width of the site. The depth of the terrace would also be substantially greater than that of the portacabins. As a result the proposal would bring a significantly taller, wider and deeper building closer to the residential properties at Nos 3, 5 and 7.

5. I appreciate that efforts have been made to minimise the scale of the development alongside the garden of No 3 by setting back the two storey element from its side and front. Nevertheless, the single storey element would, in itself, be approximately 2.9m high for a depth of approximately 9.1m. This would step up to two storeys within approximately 1m of the boundary, albeit for a reduced depth of approximately 5.5m.
6. I accept that in part the garden of No 3 would adjoin the front garden of proposed Unit A, rather than an area of open storage, however, the extent and proximity of the proposed built form to the garden of No 3 would be visually intrusive and overbearing. I appreciate that No 3 benefits from a relatively long garden, nevertheless, the proposed built form would run along approximately half its length and would dominate the outlook from that space. Moreover, in combination with the relatively large warehouse style building located immediately to the rear of No 3, it would create a considerable sense of confinement.
7. Given the position of the neighbouring lean-to extension at No 5, the focus for the outlook from the ground floor patio door of No 3 would largely be directed down the length of the garden and as such would not be unacceptably harmed. However, although not directly in line with the upstairs window, the presence of the terrace would be very apparent and because of its size and proximity it would add to the feeling of confinement from this property.
8. The proposed plans also show that the front of the terrace would be within approximately 5.6m of the rear garden of No 7 and at a height of approximately 6.8m it would have an overbearing effect on this space and on the rear upstairs windows of the dwelling. I accept that there would be a visual benefit arising from the loss of the builder's yard and the proposed landscaping, however, this would be at the cost of a much greater degree of built confinement. Whilst, on balance, the level of harm would not be sufficient to warrant withholding planning permission on its own, it does however add weight to my concerns relating to the effect on No 3.
9. I'm not though convinced that the use of dark finishing materials would materially elevate the harm I have described but, in any case, this is a matter which could be dealt with by way of condition.
10. Given the principal orientation of No 5 is towards the site access and the side of No 7, I do not consider that the proposed development would materially affect the outlook from that dwelling. Although a greater physical presence would be felt from its front garden than at present, this would be more than off-set by the benefits arising from replacing the existing vehicular access with a landscaped pedestrian access.
11. I also acknowledge that material benefits would arise from the cessation of the existing use of the site, particularly if it were to be run by a less considerate builder. I also acknowledge that taken in isolation, the proposed scheme, with associated landscaping, would improve the present appearance of the site. However, within the context of the appeal site and surroundings, the proposed

terrace would result in significant harm to the outlook of neighbouring occupants and this harm would outweigh the benefits I have identified.

12. I accept that close knit relationships often occur in urban areas but this in itself does not justify allowing the harm which would arise in the particular circumstances of this case. Similarly, whilst the scale of the development may be comparable with that of the surrounding properties, this does not translate in this case to it being compatible with the constrained characteristics of the appeal site.
13. Whilst it is stated that there is potential for a greater number of structures to be built at the builder's yard, I have no evidence to demonstrate what these would be, where they would be positioned and if planning permission is required, whether it would be forthcoming. Nor do I have evidence that such options would be pursued on the basis that the appeal is dismissed. These considerations therefore reduce the weight I can give to such matters. I accept that the site could be more intensively used, but the degree of intensification would be constrained by the size and nature of the site.
14. With regard to future occupiers, the application was supported by a Daylight and Sunlight Study (Within Development). The study is based on the tests laid down in the Building Research Establishment (BRE) Guide 'Site Layout Planning for Daylight and Sunlight: a good practice guide' 2011 (the BRE guide).
15. Although the new dwellings would receive adequate levels of daylight, the study highlights that the BRE guide recommends that where possible each dwelling should have at least one main living room window that faces within 90 degrees of due south. In this case, the main aspect for each dwelling is in a northerly direction. I acknowledge that Units B and C do include southerly facing windows to the dining area out onto a courtyard, however, the benefits are largely negated by the scale of development located immediately to the rear which would severely limit any sunlight reaching those windows. In any case, Unit A has no main living room window that faces within 90 degrees of due south. Whilst it is explained that the guide acknowledges that this is not always possible when it comes to flats, this caveat is not relevant to the appeal proposal for three family dwellings.
16. The study also highlights that the BRE guide recommends that main living room windows should receive 25% of the total annual probable sunlight hours, including 5% of the annual probable sunlight hours during the winter months (between 21 September and 21 March). However, the results of the study show that the main living room windows of Units A, B and C would respectively receive 9%, 10% and 9% of the total annual probable hours and would achieve 0% of the annual probable sunlight hours during the winter months.
17. Even for the dining room windows facing south for Units B and C, the total annual probable sunlight hours received would be 1% and 6% respectively. Unit 1 would achieve the recommended 25% for its kitchen but this is via a roof-light rather than a window. Furthermore, all south facing windows would receive 0% of the annual probable sunlight hours during the winter months. Whilst it stated that the occupants would rightly have access to all rooms within the dwelling and the varying levels of sunlight, none of the other windows would achieve the recommended levels of sunlight set out in the guide.

18. The proposal would not therefore provide adequate levels of sunlight for the future occupiers of these family dwellings. This inadequacy would not be compensated for by the proposed outdoor amenity space, which would be largely restricted to a relatively shallow depth of north facing garden in front of the dwellings.
19. Whilst it is stated that there are a large number of recent developments within the Borough that comprise single aspect properties, I have no details of the same to assess whether or not they are comparable to that currently before me.
20. I therefore conclude that the proposal would be harmful to the living conditions of both future and existing occupants and as such would be contrary to DM Policies¹ 32 and 33 and the London Plan Housing Supplementary Planning Guidance. These expect, amongst other matters, new residential development to provide a satisfactory level of outlook for its neighbours and state that an assessment will be made as to whether proposals provide accommodation that meets criteria which includes main habitable rooms receiving direct sunlight and daylight.

Other matters

21. Whilst it is stated that a further reduction in the footprint of the building would not be viable, I have no evidence to this effect, thus reducing the weight I am able to afford this assertion. Whether or not such a reduction would result in any significant improvement in the standard of the accommodation that would be provided is not a matter for me to speculate, as to do so would usurp the local decision making process.
22. I acknowledge that the Council has accepted the principle of a residential development and that there would be no harm to the character and appearance of the area and that a "car free" development is suitable. I find no reason to take a contrary position on these matters and agree that matters relating to landscaping, bin and bike storage can be satisfactorily controlled by way of condition. However, these are neutral matters in the planning balance and therefore cannot weigh in favour of the appeal proposal.
23. I do though acknowledge that the proposal would modestly increase housing supply and that it is intended to provide a high quality development using modern materials and sustainable construction techniques. These are matters to which I have attached moderate weight in its favour. However, when taken in combination, the benefits would not outweigh the significant harm I have identified.

Conclusion

24. For these reasons, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

Inspector

¹ Lewisham Local Development Framework Development Management Local Plan