
Appeal Decision

Site visit made on 14 February 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 7 March 2017

Appeal Ref: APP/E5330/W/16/3164537

Land rear of 11 Court Yard, Eltham SE9 5PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Yavuz against Royal Borough of Greenwich Council.
 - The application Ref 16/1245/F, is dated 20 April 2016.
 - The development proposed is the construction of a 3 storey building providing 3 flats (1x2-bed, 1x1-bed, studio flat).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was made in the name of Mr Yavuz although the name on the appeal form is given as Mr Can Yavuzarslan. The appellant has confirmed that both styles refer to him and he uses a shortened surname of Yavuz on occasions. The right of appeal rests solely with the original applicant, however on the basis of this clarification I am content that the appeal can proceed and I have used the abbreviated version of the appellant's name in the heading above as this is what appeared on the original application form.
 3. The drawings accompanying the application included a Block Plan and Site Location Plan which differ in the extent of a red outline indicating the application site. The smaller of the two excludes a small area which would be occupied by the proposed building. The larger outline includes an area formerly occupied by a ground floor part of the adjoining building which the appellant's Design and Access Statement advised would be demolished and replaced by an area notated as a Shared Recreational Space as well as encompassing the entire proposed building. This leads me to consider that the larger of the two areas outlined in red more accurately identifies the application site and I have determined the appeal on this basis.
 4. The appeal is against non-determination and the Council's Statement indicates that, had it been in a position to determine the application, it would have refused planning permission. This would have been on the following grounds:
 - a) failure to demonstrate that the viability of the adjoining public house would not be adversely affected;
 - b) overdevelopment of the site which would not complement the established pattern of development of this area;
 - c) a substandard quality of living accommodation for future occupiers of the ground floor flat in terms of outlook, sense of enclosure and lack of sun and day light;
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d) adverse impact on amenity and future use of land to the east, and; e) failure to demonstrate that sufficient waste and recycling storage can be provided.

Main Issues

5. Therefore, the main issues raised by this appeal are the effect the proposed development would have on:
- i) the living conditions of future occupiers of the proposed ground floor flat, with particular reference to outlook, enclosure and light;
 - ii) the viability of the existing pub at 11 Court Yard;
 - iii) the character and appearance of the area;
 - iv) the future use of land to the east, and;
 - v) waste and recycling storage.

Reasons

Future occupiers' living conditions

6. The appeal site is located to the rear of 11 Court Yard a four storey building with a pub (vacant at the time of my visit) at ground floor. It is accessed by a lane which runs between the pub and its neighbour which also serves the rear of other properties on Court Yard. The proposed flats would be arranged in a vertically stepped configuration and abut an existing, taller building to the north. The plans indicate that the appeal site was partly occupied by part of the ground floor of the existing pub at No 11 but at the time of my visit there were no buildings on the site
7. Bedroom windows serving the proposed ground floor flat would look out onto a narrow front garden and would be 9m from the rear elevation of No 11. This aspect of the proposal would be enclosed by the substantial built form of the adjoining building to the north as well as buildings to the south, albeit that there is a gap between the three storey form of buildings facing Court Yard and that of 11A Court Yard, a detached building to their rear. This is likely to significantly limit the amount of day and sun light reaching those west facing rooms.
8. Assuming the existing boundary wall is to be removed, the aspect would be more open to the east. Although the proposed windows serving the kitchen and Living/Dining area would be considerably larger than those on the west, their set back beneath the over sailing upper floors would also reduce the amount of day and sun light the property would receive. Whilst the proposal was supported by a Daylight and Sunlight Study this only evaluated the proposal's effect on neighbouring properties. In the absence of any substantive evidence to the contrary, the interior of the ground floor flat would be likely to be dark for much of the day and receive very little direct sunlight, particularly that part of the Living/Dining area farthest from the windows.
9. The outlook from the ground floor flat would be of the adjoining car park to one side and the Shared Recreational Space and the rear of the pub to the other. The latter space would provide for storage of waste bins and cycles and is therefore likely take on a utilitarian appearance, an effect which would be compounded if this space would also be used to store refuse for uses in No 11. The intervening front garden would be very narrow, bounded by low railings and unlikely to provide any significant relief from this outlook. The resulting

effect would be one which is oppressive and compounded by the taller buildings which predominantly surround the west aspect of the flat. The flat would not benefit from the vertical separation and additional southern aspect set back from No 11A that the upper flats would experience.

10. The combination of these effects would materially harm the living conditions of future occupiers. As such the proposal would not represent the high quality housing design that Core Strategy¹ (CS) Policy H5 and London Plan (LP) Policy 3.5 seek in new development. The latter is supported by Standard 32 of supplementary guidance² which states that all homes should provide for direct sunlight to enter at least one habitable room for part of the day, preferably living areas and kitchen dining spaces. It has not been demonstrated that the proposal would satisfy this standard. The proposal would fail to accord with the National Planning Policy Framework's (the Framework) core planning principle of always seeking high quality design and a good standard of amenity for all existing and future occupants.

Viability of pub

11. The plans indicate that the site was previously occupied by part of the ground floor of the adjoining pub, including toilets and storage, as well as stairs serving the cellar and upper floors. I have not been provided with any information regarding the role the rest of the site played in supporting the pub use. Changing the size, configuration and availability of outdoor space for customers and servicing all has the potential to affect how a pub may operate. Similarly, the erection of flats in close proximity may affect the activities and hours of operations of a pub. These are factors that could potentially have an effect on the viability of such a use.
12. However, the appellant advises that he is rearranging the pub internally across basement and ground floors with no change of use taking place. I have not been presented with any evidence that this is not the case. Nor is there any evidence that the removal of part of the ground floor and development on land to the rear would necessarily adversely affect the viability or long term use of the pub.
13. CS Policy EA(b) seeks to retain pubs and resist changes of use or demolition unless it has been demonstrated that they are no longer economically viable. However, in the absence of any evidence to the contrary it cannot be concluded that the proposal would result in the closure of the pub or create circumstances where it would no longer be viable. The proposal would therefore avoid conflict with this policy.
14. The Council refer to a planning application they are considering to convert space above the pub to flats and that the appeal proposal would be premature to the outcome of this application. From the description of that application provided by the Council this would not appear to include a change of use of the pub. No reasons or evidence have been provided to indicate what harm would or might be likely to arise should the appeal proposal be considered independently of that scheme. I can therefore only give this very limited weight and do not consider that my decision would prejudice the consideration of that application.

¹ Royal Greenwich Local Plan - Core Strategy with Detailed Policies, 2014.

² London Plan 2016 Implementation Framework – Housing Supplementary Planning Guidance, 2016.

Character and appearance

15. The surroundings of the appeal site are characterised by the rear of buildings on Court Yard and Eltham High Street. These are generally substantial in scale and vary in their design and appearance. They include flat roofed rear offshoots as well as the larger and taller brick building to the north of the site which has a parapet at roof level and the three storey No 11A to the south, also with a parapet at roof level. Beyond the surface car park to the east is a two storey building of commercial appearance. These buildings have a generally utilitarian appearance which, together with the intervening yards, servicing and parking areas, gives the area a workaday character distinct from the more formal and appealing frontages of shops and businesses to surrounding streets.
16. Although the stepped form of the proposal is not reflective of any existing built form in the vicinity, it's simple shape, flat roofs and brick facing material would not appear at odds with its surroundings. The line of the proposal's east elevation would broadly follow those of No 11A and the building to the north between which it would be situated. In doing so it would follow some aspects of the established pattern of development of its surroundings. Its stepped form at first and second floor levels would avoid it appearing as overdevelopment within this context.
17. As such, the proposal would provide a positive relationship with its existing urban context and would not conflict with the design requirements of LP Policies 7.4 and 7.6 and CS Policies H5, H(c) and DH1. CS Policy DH(b) seeks to protect the amenity of neighbouring occupiers and is therefore less pertinent to character and appearance issues.

Effect on adjoining land

18. The car park on the adjoining land to the east is accessed from Eltham High Street. Part of it is indicated as being within the appeal site although the drawings do not show any development taking place on that part of the site. The existing buildings to the north and south of the appeal site present blank flank walls towards this land.
19. The proposed flats would all have windows to habitable rooms, and balconies to the first and second floor flats, facing the adjoining site. Future occupiers would have a clear view of the land to the east and buildings beyond. However, the car park use would not be adversely affected by such overlooking and there is no evidence to suggest that such an arrangement would result in a loss of privacy, or any other harm, to occupiers of the buildings which lie on the other side of the car park which are some distance from the proposed building.
20. This arrangement has the potential to give rise to either overlooking of rooms or of spaces in any future development which may take place on land to the east or vice versa. The effect may be that any hypothetical development potential could not be fully realised and land not used efficiently to avoid such harm.
21. However, the Council have not provided details of any particular development proposals, site specific development plan policies or other indications of redevelopment ambitions relating to this land in support of their concerns about the proposal's effects. This generalised concern, unsupported by any

evidence that there is a realistic prospect of development, therefore carries very little weight.

22. Criterion i. of CS Policy DH1 expects new development to have positive relationship between the proposed and existing urban context taking account of the effective use of land, amongst other matters. However, in light of the lack of harm to any existing uses in this respect the proposal would avoid conflict with this policy and the amenity protection requirements of CS Policy DH(b) in this regard. Similarly, the proposal would not be contrary to the design and architecture requirements of LP Policies 7.4 and 7.6 in this regard.

Waste and recycling storage

23. The drawings indicate eight bins in the proposed refuse area which the appellant considers sufficient provision. The Council's (Waste Services) Strategy Manager had sought clarification as to whether the proposed containers would be shared between the appeal proposal and the adjoining site or whether each would have that level of provision. He does not express a view about the acceptability of either.
24. However, notwithstanding adverse effects on future occupiers' living conditions set out above, the area designated as Shared Recreational Space adjacent to the refuse area and cycle storage would appear to be of a sufficient size to accommodate additional waste facilities if required, including those serving the pub. There is no evidence to suggest that the capacity, arrangements and design of the storage could not reasonably be approved by way of a condition. In such circumstances the proposal would avoid conflict with criterion xi. of CS Policy H5 and criterion x. of CS Policy DH1 which require adequate provision for waste recycling and management.

Other Matters

25. The plans indicate that the covered area outside the east elevation of the ground floor flat would terminate with a return wall at the point where it would abut the adjoining building. I noted that there is an existing door in this location and that an interested party refers to this as an emergency exit serving shops on Eltham High Street. No further information has been provided about this relationship and whether the door would be retained or blocked off. However, if the route were to be retained, even if only used occasionally its proximity to the windows in the ground floor flat would compound the harm I have found to future occupiers' living conditions.
26. The proposed first and second floor flats would have windows to habitable rooms directly facing windows in No 11A which the appellant's Daylight and Sunlight Study identify as serving habitable rooms. A large window in the rear of No 11 is similarly classified. In both instances these windows would be very close to one another to the extent that they would result in a loss of privacy to occupiers of all three buildings. Although the Council have not raised an objection in this respect, the consequences of this arrangement would be that the living conditions of existing and future occupiers would be harmed. However, given my findings on the main issues above, I have not pursued these matters further.

Conclusion

27. The avoidance of materially harmful effects in respect of character and appearance, the viability of the existing pub, the future use of land to the east and waste and recycling storage do not amount to positive considerations in support of the appeal. The proposal would have benefits of delivering three dwellings and the accompanying social and economic gains which supports the Framework's approach to boost significantly the supply of housing. However, these benefits would not outweigh the material harm to future occupiers' living conditions which would be contrary to the development plan, supplementary guidance and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR