

Appeal Decision

Site visit made on 12 January 2017

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 15 March 2017

Appeal Ref: APP/E5330/W/16/3159334

142 Humber Road, Blackheath, London, SE3 7LY

- 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 Dr Erling Refsum against the decision of Royal Borough of Greenwich.
 - The application Ref 16/1511/F, dated 12 May 2016, was refused by notice dated 16 August 2016.
 - The development proposed is the demolition of a single garage on land to the rear of 142 Humber Road and the erection of a self-contained one storey plus basement single family dwelling.
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Procedural Matter

1. The appellant has submitted additional plans with the appeal documentation and during the course of the appeal. Drawing Ref. 883/107 indicates a section through the terrace as was originally proposed, with supporting details of the Daylight Study as undertaken by the appellant in response to the Council's second reason for refusal. I am satisfied that this relates directly to the scheme which was considered by the Council, and is reasonable in its scope in providing part of the technical response to the Council's refusal. I accept the submission of this plan.
 2. Further submitted plans include drawing Ref. 883/108, which indicates an alternative arrangement for the terrace to the layout considered by the Council in conjunction with the decision on the planning application. Drawing Refs. 883/109 & 883/110 show a further revised arrangement for refuse and recycling storage provision (as well as the amended terrace layout), and were submitted in addition to a written response following a request for comments on the requirements within local policy related to waste and recycling storage provision.
 3. I have considered the implications of accepting these plans in the light of the principles of the '*Wheatcroft*' judgement. It is evident that the inclusion of these plans could have proved fundamental in the determination of the planning application, and I am satisfied that the further information would alter the basis for assessment of the appeal from the development which was originally proposed, and assessed by the Council. In this respect, whether intentionally or unintentionally, the consequence would be that the appeal process would have been used as a means to amend the scheme so as to overcome a reason for refusal and address other outstanding issues, thus removing the ability of the Council to formally determine the revisions on a
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fresh basis. It is therefore my conclusion that the plans indicating the alternative arrangement for the terrace and revised refuse and recycling storage provision should not be accepted, and they have not therefore formed any part of my assessment of the proposed development.

4. I have had regard to some variation in the identification of policies between the Reason for Refusal included on the Notice of Decision, and those which have been highlighted within the Council's Delegated Report. I note that the Notice of Decision includes reference to Policy DH(c) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies, adopted 2014 (the Local Plan), whilst the Delegated Report refers to Policy H(c). However, I am satisfied on the basis of the reasoning provided by the Council, as well as the copies of relevant policies provided with the appeal, that Policy H(c) of the Local plan is the correct reference, and I have therefore determined the appeal with reference to this policy.

Decision

5. The appeal is allowed and planning permission is granted for the demolition of a single garage and the erection of a self-contained one storey plus basement single family dwelling on land to the rear of 142 Humber Road, Blackheath, London, SE3 7LY in accordance with the terms of the application, Ref 16/1511/F, dated 12 May 2016, and subject to the conditions attached in the annex.

Main Issue

6. The main issues are;
 - whether the proposed development would preserve or enhance the character or appearance of the Westcombe Park Conservation Area; and,
 - whether the proposals would provide adequate living conditions for future occupiers of the dwelling, having regard to outlook and daylight.

Reasons

Conservation area

7. The appeal site is located within an existing residential area and occupies a more elevated position to the rear of the garden of 142 Humber Road, a semi-detached dwelling. The site currently accommodates a single storey flat-roof garage linked physically to an adjoining garage structure to the rear of No. 140 Humber Road, both of which are accessed from Beaconsfield Road.
8. I am mindful that I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the impact of the proposal on the special architectural and historic interest of the setting of the heritage asset (the conservation area). Section 72(1) of the Act sets out that in the exercise of planning functions, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
9. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 134 of the Framework confirms that where a development proposal would lead to less

than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.

10. The Council has highlighted its principal concern as being that the introduction of a new dwelling in the back garden of No. 142 would not be acceptable by reason of its siting and relationship with the surrounding area, which would as a consequence be contrary to Policy H(c) of the Local Plan. Furthermore, conflict has been highlighted with Policies DH3 and DH(h) of the Local Plan in respect of the need to conserve the significance of conservation areas.
11. In these respects, I would not disagree that the form of the proposed development would be unusual in comparison with the identified townscape character of the area of late Victorian and Edwardian buildings, and in particular the generous plot sizes referred to within the Westcombe Park Conservation Area Character Appraisal 2010 (the Character Appraisal). However, whilst having regard to this characterisation, it is evident that even allowing for the prevailing description of the area, that there is nevertheless some variation in the form of development and plot size in the vicinity of the appeal site. I am satisfied that the residual plot size remaining at No. 142 Humber Road would still compare favourably with other plots nearby, and that the curtilage available for the proposed dwelling, whilst admittedly smaller than many, would be commensurate and appropriate in respect of the size of the proposed dwelling.
12. I note that although the overall floor area would increase from the existing, this would be achieved through the excavation of a basement level rather than by an increase in the volume or footprint over that of the existing structure. As a consequence, the physical extent of the *above ground* element of the building would have no greater volumetric impact than the existing, and the building would retain the same roof form, albeit slightly lower than that of the existing garage.
13. Whilst the Council has not directed me to any specific aspect of the elevational design with which it objects, I consider that the overall design and appearance of the building's elevations would clearly appear as a departure from the prevailing character and appearance of dwellings rather than structures within the area. However, given the limited visibility of the resultant building, which would be mitigated further by the retention of the existing adjacent gates which as indicated on the submitted plans, the maintenance of a broadly similar scale and appearance to neighbouring structures, and the use of traditional materials prevalent within the locality, I do not consider that there would be a harmful visual impact from the development.
14. I have noted the references which have been made to the conclusions in respect of the impact on the Conservation Area reached by Inspectors on previous appeals for similar forms of development on the appeal site. However, I am mindful that these earlier appeal proposals indicated resultant developments which were larger either in height or footprint than the structure of the existing garage, and were therefore visually more prominent within the Conservation Area. I have considered the proposal on its own merits based upon the appeal submissions and my own observations on the site.
15. I am satisfied that the proposed development would be of an acceptable scale, and whilst the form would be a departure from the prevailing character and

appearance of the Conservation Area, I do not consider that the impact would be harmful. The proposals would therefore preserve the character and appearance of the Conservation Area. I do not therefore find there to be conflict with Policies DH1, H(c), DH(h) and H5 of the Local Plan, and Policies 3.5, 7.4 and 7.8 of the London Plan: The Spatial Development Strategy for London Consolidated with Alterations since 2011, adopted 2015 (the London Plan), or the Character Appraisal. These policies require buildings to provide a high quality design response and site-specific design solution, with development conserving the significance of heritage assets and preserve or enhance the character or appearance of Conservation Areas.

Living conditions

16. The Council has highlighted that the proposed dwelling would accord with the gross internal floor area for a 2 bed/3 person dwelling over two floors as set out in the London Plan and the Technical Housing Standards – Nationally Described Space Standard (March 2015), and would also provide a reasonable level of external amenity space. However, the Council has retained specific concerns regarding the availability of outlook and natural light to the proposed basement accommodation as a consequence of the proximity of the retaining wall within the lightwell created to facilitate the occupation.
17. In response to the reason for refusal the appellant has submitted Average Daylight Factor calculations, which based upon the dimensions of the terrace and the provision of full height glazing to the basement accommodation, indicate that a good level of daylight would be available to the living accommodation. I have also had regard to the references made to the BRE publication 'Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice', which indicates the necessary thresholds of visible sky angles and where either conventional or large windows will be required. In this respect, it would seem clear that the provision of full height windows as proposed, would be more than satisfactory in addressing the availability of light.
18. I note that the Council has not made any contrary technical submissions on daylight during the course of the appeal, and has not therefore provided any opposing technical evidence to counter the appellant's viewpoint. I accept the Council's point that outlook would be limited from the basement accommodation, although I consider this to be a *de facto* characteristic of this type of accommodation, which would certainly not be regarded as unusual within many urban areas, although I note that the dwelling would still retain a reasonable outlook from the ground floor accommodation.
19. On the basis of the submitted technical information, I am satisfied that the proposed development would provide adequate living conditions for future occupiers of the dwelling, having regard to outlook and daylight. As a consequence, I do not find there to be any conflict with Policies DH1, H(c) and H5 of the Core Strategy, and Policy 3.5 of the London Plan. These policies seek to ensure that dwellings are of the highest quality internally with an adherence to minimum space standards, as well as protecting the living conditions of both future and neighbouring occupiers.

Other Matters

20. A number of further issues and concerns have been raised by interested parties. It is contended that there is no need for an additional dwelling as a

consequence of the Council being able to demonstrate a five-year supply of deliverable housing sites. However, whilst this has not been raised as an issue by the Council, even if this were to be the case, I have not found the proposals to be in conflict with the Development Plan, and in such a circumstance the demonstration of a five-year supply is not in itself a reason to withhold planning permission.

21. Concerns have been raised over the drainage of the appeal site and over the potential for damage to surrounding property as a consequence of the basement being excavated, as well as noise and disturbance during the construction period. In these respects, I have not been provided with any detailed evidence that the appeal site or immediate areas suffers from poor drainage and this again has not been raised as a concern by the Council. Whilst I am sympathetic to the concerns of neighbouring occupiers as a consequence of previous experiences of development involving excavation, I note that the footprint of the proposed development is set away from neighbouring dwellings, and as a consequence I am not persuaded that any excavation will give rise to problems for adjoining development.
22. In respect of noise and disturbance during the construction period, this would ultimately be for a temporary period, and whilst acknowledging the need for excavation of the appeal site, there is no evidence before me that this would create extraordinary disruption during this period.
23. I have noted the Council's comments regarding the accessibility of the appeal site to nearby bus and rail services, and the consequent absence of a need for specific parking provision. Whilst I have considered the contention regarding the exacerbation of parking problems in the area, I see no reason in light of its accessible location to set local policies on parking provision aside.
24. I have also had regard to concerns raised regarding the impact of the development on wildlife habitat and trees. However, I consider that the limitation of the proposed building to the footprint of the existing garage structure combined with the limited scale, would not result in a significant impact on wildlife habitat or trees.
25. It has been argued that allowing this appeal would set an undesirable precedent for similar development. However, a scheme genuinely comparable with this one would be likely to be acceptable and I envisage that the Council would successfully be able to resist any development which could be shown to be likely to cause demonstrable harm. In respect of the existence of any covenants related to the development of the land, I am satisfied that these would not be material planning matters.
26. It has been highlighted that the Council adopted a Residential Extensions, Conversions and Basements SPD in July 2016, prior to the decision being made on the planning application in August 2016. It is contended therefore that in accordance with the SPD, the Council should procedurally have required the appellant to submit a Basement Impact Assessment.
27. I note that the content of the SPD and requirement for such an assessment was drawn to the Council's attention by interested parties during the course of the planning application, although there is no evidence the Council sought the submission of such an assessment from the appellant prior to reaching its decision. However, it would appear that the requirement is in fact embedded

within the registration and validation stages of a planning application, which would clearly have meant a retrospective application of the need for the assessment in this instance, with the registration of the planning application pre-dating the adoption of the SPD.

28. Furthermore, I am satisfied that the purpose of a Basement Impact Assessment is essentially a means of drawing together the various issues which would be raised by a basement form of development in a single document, but which as material planning considerations would all have been appropriately assessed during the course of the planning application by the Council in any event. In this respect, I have already addressed the principal concerns raised by the Council, and in the absence of any detailed evidence on other matters as already addressed, I do not attach any significant weight to the absence of a Basement Impact Assessment.

Conditions

29. Conditions relating to timeliness and the identification of plans are necessary in the interest of proper planning and to provide certainty. Conditions concerning the submission of full details of materials and finishes would be necessary to preserve the character and appearance of the Conservation Area.
30. I have had regard to the duplication within the suggested conditions over the restriction on the hours of working in respect of the demolition and construction on the appeal site, and have sought to combine these into a single condition requiring a demolition and construction method statement, which I consider would be in the interests of the living conditions of neighbouring occupiers. However, I have amended the imprecise reference to '*no audible work*' on Sundays and Bank Holidays with a reference to '*no work*'. I have also noted the Council's suggestion of a condition seeking to control and mitigate internal noise levels within the dwelling in the interests of the living conditions of neighbouring occupiers. However, given that the proposal is for a residential use within a residential area, I do not consider this condition to be necessary.
31. Conditions related to the submission of an asbestos survey, the preparation of a ground contamination risk assessment (with a requirement for further works if the need is identified) would be required in the interests of ensuring that contamination is not present on the appeal site. A condition seeking to secure an appropriate level of cycle parking would be required in the interests of promoting sustainable transport.
32. A condition seeking to secure a minimum reduction in carbon emissions with the requirement to submit an energy statement for approval, would be in the interests of the mitigation of climate change. However, the requirement for the submission of a Section 106 legal agreement to address any remaining regulated CO2 emissions cannot appropriately be dealt with by planning condition, and I have therefore removed this requirement.
33. Whilst I have had regard to the suggested condition promoting the need for water efficiency, I note that these requirements are addressed through the Building Regulations (as amended), and I therefore see no need for duplication of the requirement from other legislation.
34. Turning to the provision of waste and recycling storage, from what I have seen on site and in consideration of the plans submitted with the planning

application, I consider that it would be possible to incorporate a sufficient level of provision within the proposed development, and that the condition would therefore be reasonable.

Conclusion

35. For the reasons given above, and subject to the conditions listed, I conclude that the appeal should be allowed.

M Seaton

INSPECTOR

Annex

Conditions

- 1) The development hereby approved 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:

Drawing Nos. 883/01, 02, 100 Rev E, 101 Rev G, 102 Rev F, 103 Rev C, 105 Rev A, and 106 Rev A; Flood Risk Sheet and Planning Statement.
- 3) Full details of all facing materials and finishes to be used on the building shall be submitted to, and approved in writing by, the Local Planning Authority prior to the implementation of the development and the development shall thereafter be implemented in accordance with these approved details.
- 4) Prior to the commencement of demolition, a survey shall be carried out on the existing buildings to establish the presence/location of asbestos and thereafter any asbestos identified should be removed under controlled conditions and disposed of in an appropriate manner.
- 5) Prior to the commencement of the development a demolition/construction method statement for the development shall be submitted to, and approved in writing by, the Local Planning Authority. The method statement should include details of the following:-
 - Hours of work shall be between Monday to Friday – 8.00am to 6.00pm, Saturdays - 8.00am to 1.00pm, with no work on Sundays and Bank Holidays;
 - Haulage routes;
 - Likely noise levels to be generated from plant;
 - Details of any noise screening measures;
 - Proposals for monitoring noise and procedures to be put in place where agreed noise levels are exceeded;
 - Likely dust levels to be generated and any screening measures to be employed;
 - Proposals for monitoring dust and controlling unacceptable releases;
 - Wheel washing facilities and facilities for discharging the water;
 - Identification of the roles and responsibilities with regard to managing and reporting on the construction phase sustainability measures and protection of any existing wildlife.
- 6) Prior to the commencement of the development the developer shall undertake:
 - (a) A preliminary risk assessment;

Should the preliminary risk assessment identify the need for further investigation;

(b) A site investigation scheme to provide a detailed assessment of the risk to all receptors, including off site receptors;

(c) A remediation proposals based in the results of the site investigation and risk assessment in (a) & (b) above giving full details of remediation required;

The preliminary risk assessment, site investigation and remediation proposals shall be agreed with the local planning authority. On completion of the remediation but before the site is first occupied the developer shall-

(d) Provide a verification report to demonstrate the completion of the works set out in the agreed remediation proposals in (c) above.

- 7) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.
- 8) Prior to the occupation of the development, details of cycle storage facilities provided within the development shall be submitted and approved in writing by the Local Planning Authority. The cycle storage facilities shall then be implemented in accordance with the approved details.
- 9) In accordance with the need to reduce carbon emissions;
 - a) The development hereby permitted shall seek to achieve one hundred per cent (100%) reduction in regulated building carbon dioxide emissions over Part L 2013 of the building regulations and achieve no less than a thirty five per cent (35%) reduction in building carbon dioxide emissions over Part L 2013 of the building regulations.
 - b) No development shall take place until an energy statement is submitted to planning control detailing how the development proposals, in accordance with the energy hierarchy, meet the required minimum 35% reduction target.
 - c) Prior to first occupation of the building the developer shall submit evidence that the minimum 35% reduction over Part L 2013 of the building regulations has been achieved.
- 10) Notwithstanding the approved plans, prior to the implementation of the development, full details of the refuse storage facilities/bin stores and refuse collection arrangements for the residential accommodation, including the bulky waste storage area shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and the refuse storage facilities/bin stores and bulky waste collection arrangements for the residential accommodation shall be completed prior to the occupation of the development.