
Appeal Decision

Site visit made on 14 March 2017

by A Napier BA(Hons) MRTPI MIEMA CEnv

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

Decision date: 29 March 2017

Appeal Ref: APP/T5720/W/16/3161322

1 York Road, South Wimbledon, London SW19 8TP

- 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 Ajay Marria (Equity Stockwell Ltd) against the decision of the Council of the London Borough of Merton.
 - The application Ref 16/P0735, dated 17 February 2016, was refused by notice dated 31 August 2016.
 - The development proposed is described as 'the redevelopment of the existing site to provide two separate blocks, a three storey block comprising of 372.9 SQM of commercial use over lower ground and ground floors and 4 self-contained residential units over first and second floors & a two storey block comprising of three duplex residential units split over lower ground, ground and first floors with associated amenity space, car parking and landscaping works'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the living conditions of neighbouring residents, with particular regard to outlook and light. The Council's decision notice refers specifically to the potential impact on the adjoining occupiers at No's 1A and 1B York Road. However, concerns have also been expressed by other neighbouring occupiers about the effect of the proposal on their living conditions and, as part of the appeal process, an opportunity has been provided for the appellant to respond to those concerns. As such, I am satisfied that my intention to also consider this issue in respect of other neighbouring occupiers would not prejudice the interests of any party.

Reasons

3. The appeal site is located within a built up part of London, within an area mainly comprised of relatively high density terrace development. Whilst examples of commercial and community uses exist nearby, the immediate area is predominantly residential in character. The site is accessed by a driveway from York Road and adjoins the rear and side boundaries of properties on Haydons Road, Effra Road, Ashbury Place and No's 1A and 1B York Road. Unlike much of its surroundings, the site is largely cleared and, from the evidence submitted, I understand it has been vacant for several years.
 4. It is not a matter of contention that the site was previously developed and evidence of this is apparent, with the floor slabs of the previous buildings
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clearly visible. However, with the exception of an outbuilding towards the rear, the appeal site is currently largely open. Although there is no public access to the site and it is enclosed by fairly high fences and walls to its boundaries, clear views of the site are possible from the upper floors of neighbouring dwellings. In addition, the relative absence of built form on the site makes a significant contribution to the sense of openness within the immediate area, enabling extensive sky views from neighbouring dwellings and their gardens.

5. Within this context, even taking into account the urban location of the site, the impact of the appeal scheme would be significant. Built development would extend across much of the appeal site, with two sizeable buildings proposed, one of three storeys in height above ground level (Block A) and the other of two storeys in height above ground level (Block B). In both cases, the blocks would be built immediately adjacent to boundaries of the site, with a relatively modest amount of space retained for access and parking.
6. Block A would be sited immediately adjacent to the rear boundary of the neighbouring dwellings on York Road. The rear gardens of these properties are relatively modest and therefore there would be only limited separation between the proposed development and the rear elevations and windows of No's 1A and 1B York Road. Given this siting and the mass, height and form of Block A, the proposal would significantly diminish the outlook available from the rear windows of those dwellings. For similar reasons, it would also considerably increase the sense of enclosure from the garden areas of those properties and the garden of No 6 Ashbury Place.
7. As a result, I consider that the proposal would represent an unacceptably oppressive and overbearing form of development, which would have a seriously detrimental effect on the living conditions of those neighbouring occupiers. In addition, whilst the siting and orientation of Block A relative to those neighbouring properties would not cause a detrimental loss of sunlight, due to its close proximity and the overall scale and form of the building, I consider that it would be very likely to lead to some loss of light, particularly to the garden areas of those dwellings.
8. The design of both proposed buildings includes the use of obscured glazing to a significant number of windows, including both bedroom windows to two flats in Block A, and the balcony screens to the rear of Block B. Whilst this may prevent the potential for direct overlooking from and to the proposed development, the use of obscured glazing would not address the potential for a harmful perception of overlooking, which I consider very likely to result from the fenestration details proposed, particularly in relation to the windows facing No's 1A and 1B York Road.
9. The first floor bedroom and balcony of one of the end units of Block B would be situated immediately adjacent to the western boundary of the site. No obscured glazing is proposed for these elements of the scheme. In this respect, concerns have also been expressed about the potential for the loss of privacy to No 5 Ashbury Park. At the time of my visit, trees adjacent to the boundary provided a high degree of screening of this neighbouring property from the site. However, although it may be possible to control the protection of these trees during the development process, I am mindful that trees cannot by their nature provide permanent screening. Consequently, given the relationship between the proposal and the neighbouring property, I am not

satisfied that the details provided adequately demonstrate that the scheme would not result in an unacceptable loss of privacy for these neighbouring occupiers. This adds further weight to my findings above.

10. Local concerns have also been raised in relation to the potential for dust and noise and disturbance to neighbouring living conditions during the construction process. Whilst I consider that such matters would be reasonably capable of being addressed by the use of appropriate conditions, this would not address or outweigh my findings of harm above.
11. The planning history of the site has been drawn to my attention. I understand that there have been a number of previous applications on the site, including two schemes that were considered at appeal, in 2008 and 2009. Although only one of these proposals was allowed, in both cases, the impact of the proposals on neighbouring living conditions was considered to be acceptable. Whilst the Council does not dispute that the scale, form and siting of these earlier schemes were not dissimilar to the proposal before me, I do not have full details of those schemes. From the relatively limited details available to me, including the description of the developments concerned, there would appear to be some material differences between these earlier proposals and the current scheme, including in relation to the number and size of residential units proposed and the extent of non-residential floorspace.
12. In addition, I note that the previous Inspector in 2008 considered that proposal would create no more intrusive an impact than the former or then permitted buildings on the site. I have no details of the previously permitted 2004 scheme referred to in that decision. However, from my visit to the site, the floor slab remains of the previous buildings within the site appear to be notably different in siting and extent to that of the development currently proposed. Paragraph 2.9 of the appellant's statement indicates that the design of the current scheme has evolved from revisions of previous design options and there is nothing before me to indicate that details of the appeal scheme, such as the position and type of fenestration and the balcony arrangements, would be the same as those of earlier proposals. Consequently, overall and from the evidence available to me, I am not satisfied that it has been adequately demonstrated that the impact of the appeal proposal on neighbouring living conditions would be directly comparable to these previous schemes.
13. Furthermore, whilst it has been suggested that there have been no material change to circumstances within the local area since the time of the previous decisions, I do not have full details of the background to those decisions. In terms of planning policy, I recognise that previous development plan policies also sought to protect residential amenities and, although I have not been provided with a copy, I understand that the Council's Supplementary Planning Guidance on New Residential Development has not altered since that time. Nonetheless, these appeal decisions were made several years ago and pre-date the Council's *LDF Core Planning Strategy* (CS), adopted in 2011 and the *Sites and Policies Plan* (SPP), adopted in 2014. Moreover, they also pre-date the 2012 National Planning Policy Framework (NPPF) which, in paragraph 17, identifies as a core planning principle the need to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. As such, I am not satisfied that there has been no material change to the planning policy context.

14. I have found above that the appeal proposal would cause significant harm to the living conditions of neighbouring occupiers, particularly in relation to outlook, but also with regard to loss of light and privacy. In light of these findings and for the reasons given, I am not satisfied that the previous decisions on the site represent an appropriate reason to find in favour of a scheme that would be unacceptably harmful.
15. Accordingly, overall and for the above reasons, I conclude that the proposal would have an unacceptably harmful effect on the living conditions of neighbouring occupiers. It would be contrary to CS Policy CS14 and SPP Policy DM D2, where they seek to protect residential amenities. It would also not meet the aims of paragraph 17 of the NPPF. I give this significant weight.

Other matters

16. The proposal would enable the redevelopment of this currently vacant area of previously developed land. It would result in the development of seven dwellings, which would make a contribution towards meeting local housing needs. It would also provide for a greater amount of employment floorspace within the site than the previously permitted scheme. The development would be located within easy reach of a wide range of local services and facilities and would be likely to result in some support for these, both during construction and after occupation. The re-use of the site would also have some positive impacts on the character and appearance of the area. As such, the scheme would have a number of benefits that weigh in its favour. Given the overall scale of the development and the characteristics of the site, I consider that these benefits would be likely to be relatively limited and the impact of the proposal on the wider character and appearance of the local area would be relatively modest. Nonetheless, having regard to the general support for such development within the NPPF, I give these benefits moderate weight.
17. The three roles of sustainable development are mutually dependent. Paragraphs 6-9 of the Framework indicate that 'sustainability' should not be interpreted narrowly. Elements of sustainable development cannot be undertaken in isolation but should be sought jointly and simultaneously. Sustainable development also includes 'seeking positive improvements in the quality of the built, natural and historic environment as well as in people's quality of life'. For the reasons given above, I conclude that the significant harm to neighbouring living conditions would outweigh the benefits resulting from the proposal. As such, I find that the proposal would not be in accordance with the development plan as a whole and would not represent sustainable development.
18. A number of other local concerns have also been raised about the proposal. These mainly include the living conditions of potential future occupiers, the contemporary design approach of the scheme, flood risk, contamination, basement construction, maintenance of neighbouring properties, parking, congestion, access arrangements, including for emergency service and servicing vehicles, energy efficiency and water consumption, covenants, security and property values. However, given my findings above, it is not necessary for me to consider these matters further as, even if I found in favour of the proposal in these respects, this would not lead me to alter my findings above.

19. Some suggestions have been made for possible alternative schemes for the site. However, the appeal process is not an appropriate mechanism to address such matters and I have considered the appeal on the basis of the proposal that was before the Council when it determined the planning application.
20. Concerns have also been expressed about the absence of community involvement at a pre-application stage and aspects of the processing of the planning application by the Council. However, these matters are not primarily before me as part of this appeal, but are largely issues for the local planning authority in the first instance. In any event, they are not matters that would lead me to an alternative conclusion in respect of the appeal.

Conclusion

21. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

A Napier

INSPECTOR