



Appeal Decision

Hearing Held on 27 June 2017

Site visit made on 27 June 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 5 July 2017

Appeal Ref: APP/C5690/W/16/3161112

154-158 Sydenham Road, Lewisham, London SE26 5JZ

- 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 Family Mosaic against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/096301, dated 19 April 2016, was refused by notice dated 26 August 2016.
 - The development proposed is the construction of a part 2/ part 3/ part 4-storey with basement building providing 18, one, two and three bedroom self – contained residential flats and 155sqm ground and first floor commercial floor space (use classes A1, A2, B1, D1, D2), and a part 2/part 3-storey terrace comprising 10, three bedroom single dwelling-houses, 1, one bedroom self-contained flat and 1, two bedroom self – contained maisonette, together with the provision of upper floor balconies, associated landscaping, PV panels, 14 parking bays (including 4 disabled spaces) and 68 secure cycle spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised drawings that have been submitted with the appeal have indicated that the proposed three storey terrace of houses towards the back of the appeal site would be moved further away from the properties in Hillmore Grove. This change in the scheme is reasonably minor and interested parties would have had an opportunity to review the amended drawings. As a consequence, no party would be prejudiced by me accepting and considering the amendments, which I have done.
3. I viewed the appeal site from Nos 12, 24 and 26 Hillmore Grove, 9 Knighton Road and 140 Sydenham Road. From visiting these properties I am satisfied that I have a good appreciation of the effect of the proposal on the occupants of the houses in Hillmore Grove. I have taken the description of development from the appeal form as this more precisely describes the proposal. This course of action was agreed at the hearing.

Main Issues

4. The main issues in this appeal are the effect of the proposal on: 1) The living conditions of the occupants of Hillmore Grove, with particular reference to outlook, visual impact and privacy; and 2) The character and appearance of the area.

Reasons

The effect on living conditions of the occupants of Hillmore Grove

5. It is understood that the appeal site was formerly a haulage yard. It is now vacant with many of the previous structures having subsequently been demolished, leaving the site broadly open save for an 'L' shaped building to the north of the site. To the immediate south of the appeal site is a row of residential properties fronting Hillmore Grove. The rear outlook from these properties is towards and over the southern boundary of the appeal site. The properties in Hillmore Grove have modest gardens, out riggers arranged over two storeys and some have been the subject of various ground floor extensions and alterations.
6. The appeal scheme would incorporate a terrace of properties located to the north of the row of properties in Hillmore Grove. The terrace would be arranged over three storeys with a 'saw tooth' roof design. The revised drawings demonstrate that the proposed terrace would be located approximately 10 metres from the southern site boundary of the appeal site and around 21 metres from the rear face of the upper floors of the out riggers. The proposed terrace would be notably higher than the structures that previously occupied the appeal site.
7. The combined effect of the height, length and siting of the proposed terrace relative to the rear elevations and gardens of the properties in Hillmore Grove would result in the outlook from these dwellings being unreasonably dominated by the proposed structure, which would tower above them with an unavoidable and overbearing presence. Such an impact would significantly harm the living conditions of the occupants of the properties in Hillmore Grove (Nos 10-26).
8. The outlook from Nos 28 and 30 Hillmore Grove would not be harmed as the proposed terrace would step down in height to two storeys at this point. Nevertheless, the absence of harm to the occupants of these properties would not mitigate for the harmful impact upon the occupants of Nos 10-26.
9. The area around the appeal site has an apparently compact character with rows of terraces and flats located close to the back of the pavement edge. The appellant's architects have undertaken a Contextual Separation Distances Study of some of the perimeter blocks near to the appeal site and have found the back to back distances to average something in the region of 18 metres. As a consequence, the appellant suggests that the distance of 21 metres between the proposed terrace and the properties in Hillmore Grove, and thus the effect on outlook, would not be untypical.
10. However, the terraced properties in the vicinity of the appeal site that have rear elevations facing one another tend to be two storeys in height¹ whereas the appeal scheme would be three storeys in height. Thus, the proposed arrangement would be untypical. The additional storey in the appeal terrace would result in extra height, bulk and massing that would have a dominating visual impact upon the outlook from Nos 10-26 Hillmore Grove and thus an undue sense of enclosure.
11. The Council does not dispute the appellant's analysis that the properties in Hillmore Grove would have adequate access to daylight were the appeal scheme to be implemented. This has been demonstrated, in part, through the application of the Building Research Establishment's 25 degree angle test, which is shown on

¹ Some properties have had dormer windows inserted into the roofs but these have rarely increased the height of the buildings, being positioned below the original ridge lines.

page 9 of the appeal statement prepared by the appellant's architects. There is some merit in the proposition that access to natural daylight, and views of the sky, are a component of outlook and therefore the 25 degree angle test has some relevance when considering any effect on outlook. It is also important to distinguish outlook as a distinct concept from a private view. However, a consideration of outlook has some subjectivity and factors such as the height of the existing and proposed buildings, the distances in-between them, the surrounding context, the existing arrangement of the built form and the magnitude of change are factors that need to be weighed together.

12. In this instance, the proposed terrace would be too tall given its proximity to the rear elevations and gardens of the properties in Hillmore Grove. It has not been clearly demonstrated that the proposed arrangement is typical of the area and the magnitude of change for the occupants of Hillmore Grove would be significant, given their existing outlook. These factors are not outweighed by the residual access to natural daylight and views of the sky that would remain in spite of the proposed terrace. It must also be noted that the proposed terrace would probably breach the 25 degree angle line when drawn from any point within the rear gardens of 10-26 Hillmore Grove. This would, when using the appellant's own analysis, suggest that the outlook from the gardens of Hillmore Grove would be severely compromised by the proposed development.
13. Turning to the effect on privacy. The rear windows in the proposed terrace would be positioned around 21 metres from the windows in the rear outriggers of the properties in Hillmore Grove. This distance would increase to around 23-24 metres from the windows in the rear elevations of the properties in Hillmore Grove. The distance would then decrease to between 17 and 19 metres from the rear most point of the outriggers, which are the single storey additions. However, these spaces did not incorporate the principal living accommodation of the properties and tended to be bathrooms, utility rooms or stores. As such, it is not essential to retain a 21 metre distance between windows to safeguard the privacy of the occupants of Hillmore Grove when they are within these rooms/spaces, as they would be used infrequently and some of the windows had frosted glass.
14. Nevertheless, the three storey design of the terrace would result in the future occupants of the proposed development having a direct line of sight from the upper floor windows into the gardens of the properties in Hillmore Grove. Unlike the proposed first floor windows, it would be more difficult to mitigate the overlooking from the upper floor through the provision of boundary treatment, including trellis, and planting. The combined effect of the number of windows in the proposed terrace, the elevated position and the direct line of sight would result in the occupants of Hillmore Grove losing all sense of privacy when in their modest rear gardens. This is an impact that adds weight to my previous findings that the living conditions of the occupants of Nos 10-26 Hillmore Grove would be harmed by the appeal scheme.
15. The Council's Residential Standards Supplementary Planning Document (SPD), which was updated in 2012, states that there should be a minimum separation of 21 metres between directly facing habitable room windows on main rear elevations with 9m between the rear elevation and rear boundary of a property. The term 'main rear elevations' is not defined but there would be 21 metres between habitable windows in the appeal scheme and the properties in Hillmore Grove and the proposed rear gardens would be greater than 9m in depth. The proposal therefore adheres, in part, to the SPD.

16. However, the SPD also states that a greater separation distance will be required when higher buildings are involved. This adds weight to my concerns that the upper floor windows would harmfully reduce the privacy currently available to the occupants of Hillmore Grove when in their gardens. As such, the proposal would not adhere to the SPD when read as a whole.
17. In reaching this view I note that it is possible for some overlooking in between the occupants of Hillmore Grove at oblique angles. However, and unlike the appeal scheme, this is not a direct form of overlooking from a considerable number of windows at a second floor height. Consequently, the impact from the appeal scheme would have a materially different and more uncomfortable character and impact.
18. I therefore conclude that the appeal scheme would significantly harm the outlook and privacy of the occupants of Nos 10–26 Hillmore Grove. It would therefore be contrary to DM Policies 30, 32 and 33 of the Development Management Local Plan 2014 (DMLP), which seek to protect the privacy and outlook of a development's neighbours. The proposal would also be contrary to Policy 15 of the Lewisham Core Strategy 2011 (CS), which has similar aims and is consistent with Paragraph 17 of the National Planning Policy Framework. As such, Policy 15, and the conflict with it, can be afforded significant weight.

The effect on the character and appearance of the area

19. The appeal scheme has a short frontage onto, and is accessed from, Sydenham Road. This is a busy thoroughfare characterised by properties with ground floor commercial uses with residential accommodation above. Buildings along Sydenham Road in the vicinity of the appeal site tend to be three storeys in height and are positioned at the back of the pavement. In this respect, the recessed position of the existing building within the appeal site is untypical.
20. Many of the streets branching off Sydenham Road, including Knighton Park Road, are characterised by a residential character with terraces of predominately two storey properties arranged to front and frame the streets. As such, there is a clear hierarchy to the built form of the area, with the buildings along Sydenham Road generally being taller and grander than those on the surrounding residential streets.
21. At the hearing it was a point of agreement between the Council and the appellant that the style, height and massing of buildings along Sydenham Road varies. This conclusion is supported by the appellant's Townscape Note submitted with the appeal. Nevertheless, the appeal site's frontage onto Sydenham Road is flanked to either side by period style terraces. Those to the east curve round into Kent House Road and display a broadly consistent height with a group value and coherent character. When viewed from the east in particular, the appeal site is appreciated in the context of this existing terrace. Thus, it is necessary for the appeal scheme to respond positively to this terrace, which contributes to the character and appearance of the area.
22. The appeal scheme would incorporate a four storey block at the site frontage. Within this block there would be a commercial use on the ground floor with residential accommodation above. The position and use of the frontage block would be wholly consistent with the area and the structure would partially fill the discordant gap currently found between 152 and 160 Sydenham Road. The lower three floors would harmonise with the terrace to the east of the appeal site as the

eaves height would line through and the fenestration would have a similar pattern which would incorporate window reveals. The brickwork finish would also assist in integrating the lower floors with nearby buildings.

23. However, the fourth floor of the frontage block would be recessed from the lower floors and would have the appearance of a mansard type structure partially located behind a parapet wall. Due to its position, solidity, form and use of materials, the mansard floor would be a strident feature when viewed from numerous vantage points along Sydenham Road. It would appear as a discordant roof addition out of step with the consistent roof height and form of the terrace to the east, from which the proposal derives some of its context and would otherwise integrate comfortably with in the absence of the mansard roof feature/fourth floor.
24. The mansard roof would detract from the street scene to such an extent that it would override the broadly positive contribution the rest of the structure would have as a contemporary interpretation of those properties to the immediate east of the appeal site entrance. The mansard roof would therefore harm the character and appearance of the area. The appellant's visualisations only serve to confirm my reservations that the mansard roof would be an incongruous addition to the street scene of Sydenham Road.
25. The mansard roof would be partially obscured by the parapet but not to the extent that it would not harm the street scene. This is because the mansard addition would be exposed to views from both the east and west along Sydenham Road due to the lower height of the terrace to the immediate west of the appeal site and the gap in the frontage that would be created by the site access. A planning condition omitting the mansard style element could not reasonably be imposed as this would go beyond the scope of a planning condition, as such an amendment would be significant and it is unclear to what extent the mansard is severable.
26. A recent appeal decision² at 138 Sydenham Road was referred to at the hearing. The Inspector was apparently unconcerned with a proposal to incorporate a recessed upper floor. Nevertheless, the context of 138 Sydenham Road is different to the appeal site as it is opposite the large Hexagon building and is not 'read' alongside a long row of terraced properties that exhibit a consistent height and roof design. As such, my findings are not inconsistent with those of the Inspector that considered the scheme at No 138.
27. Additionally, I have afforded some limited weight to the Council's concerns that the construction of a mansard roof at the appeal site would make it harder to resist similar piecemeal additions to the terrace to the east of the appeal site, which could individually or cumulatively erode the pleasing contribution the terrace currently makes to the street scene. Moreover, evidence has not been presented to suggest the proposal has been the subject of a design review encouraged by Paragraph 62 of the Framework.
28. The height of the proposed development would recede to two storeys behind the frontage block. It would then increase to three storeys with a further up lift in height for the terrace to the rear (south) of the site. The rearmost terrace would be higher than the surrounding two storey buildings and the appeal drawings suggest it would also be taller than the three storey terrace to the east of the appeal site fronting Kent Hall Road. As a result, the appeal scheme would not respect the hierarchy of form found locally, whereby the scale of buildings tends to

² APP/C5690/W/16/3160985

decrease away from the main thoroughfares of Sydenham Road and Kent Hall Road thereby providing a sense of hierarchy and subservience to the built form. This is a limitation that weighs against the appeal scheme.

29. The proposal is not without design merit. In fact there are some very positive aspects. I have already stated that the frontage block without the mansard roof would have the potential to improve the street scene. The 'saw tooth' roof form of the rear terrace takes its inspiration directly from surrounding buildings. It would also have a symmetry and vertical emphasis that is found locally. The materials and architecture, whilst being contemporary, would harmonise with the surrounding context. Additionally, the site would be well landscaped. Nevertheless, and on balance, I am not satisfied these positive aspects outweigh the adverse impacts of the scheme, particularly the mansard roof, which would be a prominent and harmful feature within short and medium distance views along Sydenham Road.
30. I therefore conclude that the proposal would harm the character and appearance of the area. It would therefore be contrary to DM Policies 30, 32 and 33 of the DMLP, which seek to secure high standards of design that respects the character of the area. The proposal would also be contrary to Policy 15 of the CS, which has similar aims and is consistent with Paragraphs 17 and 58 of the Framework.

Other Matters

31. The proposal would have a number of notable benefits including the provision of housing, including affordable and family housing, on previously developed land that is accessible to public transport and local services. However, such benefits are to be expected and are not determinative in this instance, especially as the Council currently has an adequate housing supply, albeit with a recent dip³. Thus the harm I have identified, which would be both cumulatively significant and unnecessary, outweighs the benefits in this instance.
32. There was a discussion at the hearing as to the acceptability of the parking strategy advanced by the appellant. However, given my findings on the main issues it is unnecessary for me to reach a conclusion on this matter as the appeal has failed. Likewise, for similar reasons it is superfluous for me to consider the necessity of the planning obligations contained in the unilateral undertaken presented at the hearing.

Overall Conclusion

33. I conclude that the appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. As such the proposal would not be sustainable development and accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

³ See the Annual Monitoring Report 2014-15

APPEARANCES

FOR THE APPELLANT

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INTERESTED PARTIES

Cllr Chris Best
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A. Benmansour
A.M. Batteson
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M. Kelleher

Borough Councillor
Chair, Sydenham Society
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident

DOCUMENTS

1. Petition by local residents.
2. Appeal decision APP/C5690/W/16/3160985 accompanied by the appellant's analysis.
3. Unilateral Undertaking submitted by the appellant dated 27th June 2017
4. Revised list of suggested planning conditions prepared by the LPA