The Planning Inspectorate

Appeal Decision

Hearing Held on 7 November 2017 and 12 June 2018

Site visit made on 12 June 2018

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th September 2018.

Appeal Ref: APP/C5690/W/17/3172093
Land adjoining 25 Fordyce Road, Hither Green, London

- 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 Harry Gerard, Fordyce Limited against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/16/096329, dated 20 April 2016, was refused by notice dated 6 January 2017.
- The development proposed is the demolition of the existing garages and the construction of 4 three storey three bedroomed houses with garden area, together with the provision of cycle spaces and bin stores.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I adjourned the Hearing on 7 November 2017 to allow interested parties sufficient time to consider evidence of the appellant as they had previously not had the opportunity to do so. Consequent to that adjournment, written evidence was submitted by Lewisham Park (Crescent) Residents Association (LPCRA) on 7 December 2017 and 16 January 2018, and rebuttal evidence of the appellant submitted 5 January 2018 and 25 March 2018. All evidence has been taken into account. The Hearing resumed on 12 June 2018.

3. The appellant's Rebuttal Statement of 21 June 2017 contained two statutory declarations relating to the lawful use of the site. On 5 January 2018, the appellant withdrew those statutory declarations from their evidence. I have not, therefore, taken those into account.

4. The revised National Planning Policy Framework (the Framework) was published in July 2018 subsequent to the Hearing. The parties were therefore given opportunity to comment on the contents of the Framework and I have taken those comments into account.

5. I have had regard to the comments of the parties in respect of the emerging Draft London Plan. However, given the stage of preparation of the plan, I am unable to afford the relevant policies contained therein more than very little weight.

6. The address in the heading above is taken from the application form. It was argued at the Hearing that, as the site does not physically adjoin 25 Fordyce

Road, interested persons would be prejudiced by the 'mis-description'. However, there is no evidence of any party having been prejudiced by the site address. As pointed out at the Hearing the Council's notification procedures would have been no different were a different address used. I am satisfied that the address used identifies the appeal site with sufficient accuracy that no party would be prejudiced and I have determined the appeal on that basis.

7. The application was made in the name of Mr Oliver Pedley, Fordyce Limited. The appeal was subsequently made in the name of Mr Harry Gerard, Fordyce Limited. It was confirmed by My Pedley at the Hearing, and thereafter in writing, that permission was given for the appeal to proceed in the name of Mr Gerard.

8. It was agreed by the main parties at the Hearing that the description of development need not refer to the address of the site. The description in the heading above is therefore taken from the Statement of Common Ground dated 19 February 2018 with the address omitted.

9. At the initial Hearing, it was apparent that revised and additional plans had been submitted. The parties confirmed subsequent to that that those plans had not been taken into account by the Council when it made its decision. The parties agreed that the plans on which the appeal should proceed are those listed in paragraph 3.3 of the Statement of Common Ground as those were the plans taken into account by the Council. I see no reason why any party would be prejudiced were I to determine the appeal on that basis and have therefore done so.

Application for costs

10. An application for costs was made by Mr Harry Gerard, Fordyce Limited against the Council of the London Borough of Lewisham. However, it was confirmed at the Hearing, and subsequently in writing, that the costs application has been withdrawn. I have therefore taken no further action in respect of the costs application. No other applications for costs have been made.

Main Issues

11. The main issues are:

- the effect of the proposal on the character and appearance of the area; and,
- whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to internal and external space.

Reasons

Character and Appearance

12. Located to the rear of 45 Lewisham Park and to the north of 25 Fordyce Road, the appeal site lies in an area of predominately residential character. To the west, Lewisham Park is characterised by grand, two and three storey properties arranged in a crescent around a mature, green space. Plots are generally large, the grain of development one of low density and the properties exhibit a high standard of architectural composition.

13. The Lewisham Character Study 2010 (the Character Study) identifies a clear distinction between residential development which follows a conventional perimeter block layout and those which have a looser free form structure. Several typologies are set out within the perimeter block layout. The lowest density perimeter blocks are those in the 'villa' typologies where the grain of development is more regular and features large, individual plots accommodating significant houses. Lewisham Park and its surroundings exude a sense of spaciousness and grandeur and are typical of the 'villa' typology identified in the Character Study.

14. Whilst Lewisham Park is not designated as a conservation area (and thus not a designated heritage asset), it is proposed to be. The appeal site lies within the proposed boundary. I am satisfied that, having particular regard to the detailed evidence set out in the Lewisham Park Crescent Conservation Area Appraisal 2014, the area is of some historical significance. Thus, it is of sufficient interest to be considered in this appeal as a non-designated heritage asset. Paragraph 197 of the Framework is clear that the effect of a proposal on the significance of a non-designated heritage asset should be taken into account. It goes on to state that, in weighing proposals that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

15. In contrast to Lewisham Park, the eastern side of Fordyce Road is largely characterised by late Victorian, semi-detached and terraced two-storey housing which are smaller and more modest in architectural composition than the housing to the west.

16. The appellant argues that Fordyce Road and the streets to the east conform to the 'urban terrace block' typology identified in the Character Study. Such areas are typically arranged in terraced blocks on grid patterns with gardens backing onto one another.

17. From the evidence before me, and from my own observations, I agree with the appellant's analysis in respect of the eastern side of Fordyce Road. Although not strictly a terrace, the properties are tightly knit and back onto the similarly arranged street of Littlewood, whilst the properties on Mount Pleasant Road and beyond to the south exhibit similar characteristics.

18. However, the western side of Fordyce Road is, apart from the uncharacteristic 1970s terrace of 23-25 Fordyce Road, largely free from built form. There is no established pattern of terraced or semi-detached housing. Indeed, from No 25 up until the point the road turns eastwards and is abutted by the rear gardens of Harvard Road, the western side Fordyce Road is characterised by the long, expansive rear gardens of Lewisham Park. Built form is limited to subservient garages and domestic outbuildings set behind boundary walls and vegetation.

19. The appeal site is firmly located on the western side of Fordyce Road and is similarly occupied by two single storey garages buildings and hardstanding. Around 390m² in size and widely overgrown with vegetation, it has a high wall along its eastern boundary up against the footpath of Fordyce Road.

20. Historically having been part of the garden of 45 Lewisham Park, the appeal site was delineated from the garden of No 45 in 2006 when a fence was erected between the two and the appeal site sold off thereafter. It is indicated

that the garages were previously used for the storage and servicing of vehicles connected to a tree surgery business and competitive rally cars.

21. The appellant argues that the site has no visible role or connection to the character of Lewisham Park, rather it is self-contained, with street frontage and, as such, plays a role in the 'urban terrace block' pattern of development on Fordyce Road.

22. However, the western side of Fordyce Road offers views through to the large, maturely vegetated back gardens of Lewisham Park and the houses beyond. These views provide a genuine sense of the sylvan character of the area to the west. Moreover, I was able to see from my site visit that the appeal site bears little difference spatially, and indeed visually, from the adjacent gardens of Lewisham Park. It is, like those, occupied by garages of subservient scale, bound by a high wall and has a dense cover of vegetation.

23. Furthermore, as the appellant pointed out at the Hearing, the appeal site presents an opportunity to create and reflect the 'urban terrace block' typology found on the eastern side of Fordyce Road. That in itself suggests that the appeal site does not currently play a role in that typology.

24. As a result, I find the character of the appeal site is, physically and functionally more closely related to the 'villa' typology pattern of development of Lewisham Park to the west as it positively contributes towards the sense of spaciousness provided by the rear gardens of Lewisham Park. Moreover, I find it plays a modest but nevertheless important role in the significance of the non-designated heritage asset.

25. Policy DM33 of the London Borough of Lewisham Development Management Local Plan 2014 (DMLP) relates to development on infill sites, backland sites, back gardens and amenity areas. The general principles of the policy are that, depending on the character of the area and the urban design function a space fulfils in the streetscape, some sites will not be considered suitable for development, whilst, if a site is considered suitable for development, permission will not be granted unless it is of the highest design quality.

26. Policy DM33 sets out how the four separate types of sites will be dealt with. Paragraph 2.251 of the supporting text to the policy sets out the characteristics which form each type.

27. The Council's first reason for refusal identifies the appeal site as a 'back garden' site. DM33 is clear that the development of 'back gardens' for separate dwellings in perimeter form residential typologies identified in the Character Study will not be granted planning permission. Paragraph 2.251 identifies 'back gardens' as private amenity areas that were the entire back garden to the rear of a dwelling as originally designed.

28. It is clear therefore that, as I have found the site falls within the 'villa' perimeter form residential typology identified in the Character Study, if it falls within the description of a 'back garden', the development would conflict with Policy DM33.

29. The appellant argues that the appeal site is not presently in use as a private amenity area and does not fall clearly within the 'back garden' definition as the site is not a more or less enclosed rear garden. I recognise that there will be instances where sites do not fall squarely within the definitions under

paragraph 2.251 of the Policy. It is evident that the land does not presently function as part of the rear garden of No 45.

30. However, I saw little on my site visit to suggest the land is not capable of functioning as a private amenity area. Indeed, it displayed several similar characteristics of a back garden. It contained garages similar to other gardens here whilst it was also enclosed by fences and walls and heavily vegetated. I agree with the Council that the reference to 'enclosed' in paragraph 2.251 of DM33 does not necessarily mean enclosed by other development, as suggested by the appellant.

31. Moreover, the appellant indicated at the Hearing that, whilst no longer garden land, in land use terms the appeal site is a private amenity area. In my view, notwithstanding any intervening uses, lawful or otherwise, I find the appeal site physically has the characteristics of a back garden and see no reason why it could not function as such.

32. The appellant argues that the site is not an integral part of the original design of Lewisham Park. However, it is clear that, given the depth of the neighbouring gardens, the appeal site performed a clear and important function in the original layout of Lewisham Park. It was one of many long, rectangular laid out rear gardens that contribute towards the sylvan vibrancy of the historical grain.

33. Whilst I recognise that No 45 retains a reasonably generous rear garden even with the subdivision that has occurred, I consider that the appeal site would have been integral to the original character of Lewisham Park. Policy DM33 is clear that 'back gardens' are private amenity areas that were the entire back garden to the rear of a dwelling as originally designed. That is the case here.

34. It was put to me at the Hearing that the appeal site has characteristics with the 'infill' type, principally because there is street frontage to Fordyce Road. The appellant argues that 23-25 Fordyce Road has established the principle of development on the frontage of this part of Fordyce Road.

35. However, those properties seem to me to be somewhat anomalous to the overarching character of the western side of Fordyce Road, which is dominated by the verdant sense of space resulting from the gardens of Lewisham Park. Moreover, there is no development to the north of the appeal site as it adjoins a rear garden or indeed immediately to the south, where it adjoins an access road. Indeed, Fordyce Road almost entirely abuts the rear gardens of Lewisham Park up until the point where it turns eastward. Thus, it seems to me that the appeal site could not reasonably be considered to meet the definition on an 'infill' site under paragraph 2.251 of Policy DM33.

36. Consequently, whilst it is not a matter for me under this section 78 appeal to determine what is or what is not the lawful use of the land, in the context of Policy DM33 I find the physical characteristics of the appeal site bring it more closely in line with the 'back garden' definition referenced therein. Moreover, I find that the proposal would be harmful to the 'villa' perimeter form typology in that it would introduce development on land that contributes to the spaciousness of Lewisham Park. In such circumstances, Policy DM33 directs that the development should not be permitted.

37. Nevertheless, as pointed out by the appellant at the Hearing, one must also consider the scheme against the general design principles of DM33, and other relevant policies, before coming to a view as to whether the development would conflict with the development plan as a whole.

38. The development would comprise the demolition of the existing garages and the construction of four, three-bedroom dwellings. The development would follow the front building line of No 23-25, with an appropriate set back from the road whilst the width and rhythm of the properties would reflect the immediate context.

39. However, the properties would be three-storeys in height, in contrast to the modest, two-storey heights of the properties opposite. The eaves of the properties would sit above those of 25 Fordyce Road. Moreover, due to the changes in ground level, they would sit higher than the properties of Lewisham Park. Whilst the properties would have a height that broadly reflects the roofline of neighbouring buildings, the additional storey would increase the massing of the built form.

40. Furthermore, the properties would have gable elevations to the front, exposing the full three storeys to Fordyce Road. This would be in stark contrast to the shallow, hipped roofs of the properties opposite and would amplify the scale and massing of the properties. Indeed, the properties would be arranged in a continuous line and the gaps between the roofs would be relatively narrow. This would further increase the sense of mass and appear somewhat alien to the properties on Fordyce Road and Lewisham Park which are largely broken up either with set-backs or gaps between.

41. In addition, the materials involved would utilise large expanses of white render whilst fenestration would largely be aluminium frames. Little of these materials are found in the area with properties on Fordyce Road and Lewisham Park predominately brick with traditional windows. Nor has the design picked up on the double height bay windows, ornate detailing, arched porticos and recessed doors of the surrounding properties. Instead, the front elevations would be wholly contemporary, with little symmetry in the arrangement of windows and few features drawn from its local context.

42. In my view, the development would appear as a cramped and dominant feature within the street scene, obscuring views of Lewisham Park and creating a contemporary introduction ill at ease with its immediate context.

43. I recognise that the development would replace what is presently a redundant site in terms of the buildings contained therein. However, I do not consider the existing condition of the site to be so poor that it would justify the introduction of the proposal. Indeed, I find that, despite the poor quality of the buildings on the site, it overall contributes positively to its surroundings.

44. I note the extensive, iterative process that has gone into the final design of the scheme. The design of the properties is not, in itself, intrinsically poor however, it would not relate well to its surroundings and as a result would not suitably integrate with its context.

45. Consequently, I find the development would appear as an overbearing and discordant feature to the detriment of the street scene and the significance of the non-designated heritage asset of Lewisham Park Crescent.

46. I conclude, therefore, that, taking into account all the evidence before me, overall the development would have a harmful effect on the character and appearance of the area. As a consequence, it would be in conflict with Policies DM30 and DM33 of the DMLP which state that all development proposals are to attain a high standard of design, that height, scale and mass should relate to the urban typology of the area, that development should create a positive relationship to the existing townscape, that building materials should be sensitive in relation to the context of the development, and finally that planning permission will not be granted unless the proposed development is of the highest design quality and relates successfully and is sensitive to the existing design quality of the streetscape, and is sensitive to the setting of heritage assets. This includes the spaces between buildings which may be as important as the character of the buildings themselves, and the size and proportions of adjacent buildings.

47. It would also conflict with Spatial Policy 5 and Policy 15 of the Lewisham Local Development Framework Core Strategy Development Plan Document 2011 (CS) which state that the Council will ensure that any new development protects or enhances the quality of Lewisham's character and historic significance and that all development will need to ensure the highest quality design and the protection or enhancement of the historic environment.

48. There would also be conflict with Policy 7.6 of the London Plan[1] which states that buildings should be of the highest architectural quality, be of a proportion, composition, scale and orientation that enhances, activates and appropriate defines the public realm and comprises details and materials that complement, not necessarily replicate, local architectural character.

49. Furthermore, it would conflict with the aims of paragraph 124 of the Framework which states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve as well as paragraph 127 which is clear that developments should function well and add to the overall quality of the area, be visually attractive, be sympathetic to the local character and establish or maintain a strong sense of place.

Living Conditions

50. DMLP Policy DM32 states that new housing development should meet the minimum space standards set out in the London Plan. Policy 3.5 of the London Plan sets out, within Table 3.3, minimum space standards for new dwellings. Policy 3.5 is consistent with the Technical Housing Standards - Nationally Described Space Standard 2015 (NDSS) in respect of internal space requirements for new dwellings which came into effect on 1 October 2015.

51. Table 3.3 identifies that a three bedroom, six person, three storey dwelling should provide a minimum floor area of 108m² with 2.5m² of built-in storage. The proposal puts forward the properties as three bedroom dwellings. Two of the units would have a floor space of 116m², the other two 122m². As three bedroom dwellings, they would meet the minimum floor space. Moreover, whilst at 2m² they would fall slightly short of the minimum 2.5m² storage space required, I am satisfied that the inclusion of under stair storage which has been omitted from the calculation, and the excess floor space above the

[1] The London Plan: The Spatial Development Strategy for London Consolidated with Alterations since 2011, (2016)

minimum requirements that would be provided, would ensure suitable storage space would be provided.

52. The Council argues, however, that the proposed home office on the second floor of each property would be used as a single bedroom and thus the properties should be considered as four bedroom, seven person dwellings. In such circumstances, two of the properties would fail to achieve the minimum standard of 121m² required under Policy 3.5.

53. However, the appellant has provided a revised second floor layout plan with the appeal which has removed the home office and provided a single, master bedroom on the second floor of each property. This would ensure that the dwellings would be three bedroom, six person dwellings. The plan would overcome the Council's concerns in respect of internal floor space, ensuring that each property provided more than the minimum standard of Policy 3.5.

54. I note the comments of the LPCRA at the Hearing that no consultation has been carried out on the amended plan and that interested parties would be prejudiced. However, the plan does not materially change the submitted scheme externally and it would ensure that only three bedrooms would be provided and therefore the associated activity with the use of the properties would not increase from the submitted scheme. As such I am satisfied I can accept the revised second floor plan without prejudice to the parties.

55. The Council's third reason for refusal also cites the dimensions of a proportion of the bedrooms as being inadequate. The appellant notes that, as they taper to a width of 2.2m, the rear bedrooms on the first floor would fall below the NDSS standards for a double bedroom to be at least 2.55m wide.

56. However, the below standard width would account for around 25% of the bedroom with a considerable proportion of the bedrooms exceeding the minimum width. Moreover, the bedrooms would be around 14m² in size which exceeds by around 17% the minimum NDSS standard of 11.5m² for a double bedroom.

57. As a result, subject to a condition requiring compliance with the revised second floor plan, I am satisfied the proposal would ensure an adequate standard of internal space for future occupiers.

58. Each dwelling would have a rear garden, ranging in size from 20m² to 24m². Paragraph 3.10 of the Lewisham Local Development Framework Residential Standards Supplementary Planning Document 2006 (SPD) states that gardens should be a minimum of 9m in depth. The proposed depth here would vary from 4.3m to 5.3m. Thus the development would fail to meet the guidance set out in the SPD.

59. The development would nevertheless achieve significantly higher space standards than the minimum 9m² set out in the 2016 Mayor of London Housing Supplementary Planning Guidance (SPG).

60. Moreover, whilst there is considerable variation in the topography of the land, the proposed plans show that the rear gardens would be terraced. That is not an unusual situation, indeed I saw that several gardens of Lewisham Park are not of uniform level. I am satisfied that the proposed slope of the gardens would not be so severe as to render the space unusable. It would be a relatively gentle gradient. In addition, the space provided would be sufficient

to perform everyday tasks such as sitting out, drying washing or children's play. To that end, the outdoor space would be of an adequate standard for future occupiers.

61. I conclude, therefore, that the proposal would provide a satisfactory standard of living conditions for future occupiers with particular regard to internal and external space. It would, as such, comply with DMLP Policy DM32 which states that all new residential development should provide a satisfactory level of amenity for future residents and its neighbours. It would also comply with London Plan Policy 3.5.

Other Matters

62. I have had regard to all I have read, heard and seen in respect of the effect of the proposal on the living conditions of neighbouring residents, in particular those who occupy properties opposite on Fordyce Road and to the rear on Lewisham Park. I have also taken into account the considerable evidence in respect of the effect of the proposal on ecology and biodiversity. In addition, I have considered the evidence before me in respect of the effect of the proposal on highway safety and contamination.

63. However, given my findings in respect of the main issues above, these matters do not lead me to any different overall conclusion.

64. An appeal decision at Calmont Road, Bromley[2] in April 2017 has been brought to my attention. Whilst I have had regard to the decision and note that the circumstances of that case have similarities, they are not directly comparable to those before me. Thus, I have considered this appeal on its own merits.

65. I note that pre-application advice was received by the appellant that was relatively positive. However, such advice is offered on a without prejudice basis. Moreover, whilst I note the decision was contrary to the professional views of the Council's officers, the Council is not bound to follow that advice, provided it can demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate its reasons if it is to take an alternative decision. I am satisfied that it has done so here.

Planning Balance and Conclusion

66. The proposal would make a modest but nevertheless important contribution towards boosting the supply of housing in the area in a relatively accessible location. It would also inevitably improve natural surveillance and safety on Fordyce Road. I also note that the dwellings would be wheelchair adaptable and meet lifetime homes standards, achieving an equivalent of level 4 of the Code for Sustainable Homes.

67. The scheme would also introduce bird and bat boxes at the site so there would be some ecological benefit. Nevertheless, this is countered by the reduction in established vegetation that would result.

68. The proposal would also result in economic benefits through increased spending in the local economy and through spending on the construction stage.

69. Consequently, overall there would be some environmental, social and economic benefits to the scheme. In addition, I have found in respect of the main issues

[2] APP/C5690/W/16/3164610

above that the proposal would provide an adequate standard of living conditions for future residents.

70. However, given the relatively modest scale of the development, and thus the extent of the benefits it would produce, I find that those factors do not, either individually or cumulatively, outweigh the environmental harm that would arise to the character and appearance of the area. That is the prevailing consideration.

71. Therefore, for the reasons given above, and having considered all matters raised, I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mary Cook of Counsel	Town Legal LLP
Richard Coutts	Baca Architects
Harry Gerard	Appellant
Ben Kelway	Lichfields
Oliver Pedley	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jan Mondrzejewski	Planning Officer
James Neill of Counsel	Landmark Chambers

INTERESTED PERSONS:

Vanessa Hughes	Local Resident
Tim Hughes	Local Resident
Gregory Jones QC	Lewisham Park (Crescent) Residents Association
David Maltby	Local Resident
Roland Mann	Lewisham Park (Crescent) Residents Association
Ros Orr	Local Resident
Marissa Renzullo	Local Resident
Dawn Rowe	Local Resident

DOCUMENTS

1 Suggested Conditions.
2 Mayor of London Housing Supplementary Planning Guidance March 2016.
3 Written Declaration of Mr Oliver Pedley that the appeal can proceed in the name of Mr Harry Gerard.
4 Lewisham Local Development Framework Residential Standards Supplementary Planning Document Adopted August 2006, Updated May 2012.
5 Chapter 4 of the Draft London Plan December 2007.
6 Policy DM 24 of the DMLP.
7 Policy 7.19 of the London Plan.