



Appeal Decision

Site visit made on 2 September 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th September 2019

Appeal Ref: APP/C5690/W/19/3228983

Hoser Avenue, London SE12 0UY

- 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 Hoser Avenue Freehold Limited against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/18/109778, dated 16 November 2018, was refused by notice dated 14 February 2019.
 - The development proposed is demolition of garages to the rear of 234A/236 Baring Road London, SE12 and the construction of a 3 storey house together with associated cycle storage, landscaping, refuse storage and amenity space on land to the side of 2 Hoser Avenue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my banner heading I have used the site address and description of development which are on the appeal form because they are more accurate than those on the application form.
3. The site has recent appeal history¹. However, it appears that the scheme has undergone significant amendments since the previous appeal and is therefore a different development to that which the previous Inspector assessed. Therefore, whilst I have had regard to the previous appeal decision, I have considered this appeal on its own individual merits, based on the evidence before me and my own observations during my site visit.
4. As part of the appeal the appellant has included revised drawings. The revised drawings change the smaller first floor bedroom to a walk in dressing room², thereby changing the scheme to a 2-bed dwelling, and also include a street elevation³ showing the outline of the previously dismissed appeal scheme for comparison purposes. Although Government Guidance⁴ advises against using the appeal process to evolve a scheme, I am satisfied that as the only change is an internal one, no party would be prejudiced by my consideration of the amended plans, and I have determined the appeal on that basis.

¹ APP/C5690/W/18/3200472

² 0276 – P02A

³ 0276-P06

⁴ Annex M.2.1 of *Planning appeals – England: Procedural Guide*

Main Issues

5. The main issues are:

- i) the effect of the development on the character and appearance of the area;
- ii) the effect of the development on the living conditions of the occupants of residential properties on Baring Road, with particular regard to overbearing and privacy;
- iii) whether the development would provide its future occupants with acceptable living conditions; and
- iv) the effect of the development on pedestrian safety.

Reasons

Character and appearance

- 6. There is a wide variety of housing type and appearance in the area, but they are, in the main, set proportionally within reasonably sized plots with front and rear gardens, or communal gardens, which gives the area a pleasant established residential character.
- 7. The proposed building would be markedly different in roof form, front fenestration design and materials to the gambrel-roofed, terraced townhouses of Hoser Avenue. Nevertheless, in an architecturally diverse area, and given the building would still be broadly consistent in width and height, this would not in itself represent poor design to warrant refusing planning permission.
- 8. However, whilst I understand the reasons for its single aspect design, this would result in a tall rear elevation without any fenestration. This would be clearly visible from Palace View where it would appear stark and incongruous with the adjacent housing. Furthermore, the manner in which the building would occupy the entire plot without any garden space would be at odds with the layout and character of housing in the area. Taken together, these factors would result in an incongruous form of development.
- 9. For these reasons, I conclude that the development would cause harm to the character and appearance of the area. In this regard, there is conflict with the requirements of Policy 3.5 of the London Plan 2016 (LP), Policy 15 of the Lewisham Core Strategy Development Plan Document 2011 (CS), Policies 30 and 33 of the Lewisham Development Management Local Plan 2014 (DMLP), and the Lewisham Residential Standards Supplementary Planning Document (2006, updated 2012) (SPD). These require high quality development, which is sensitive to local context and compliments the character of the surrounding area.

Living conditions of neighbouring occupants

- 10. The building would have a pitched roof sloping away from the properties in Baring Road, whereas the previously dismissed scheme had a taller gable. Consequently, it would have a lower eaves height compared to the previous scheme. Nevertheless, this would still result in a wall of considerable height along the whole of the rear boundary of 234a Baring Road and part of the boundary of 236 Baring Road. This would be substantially greater in height

than the existing single storey garages and closer than the gable of 2 Hoser Avenue. Both Nos 234a and 236 have extensions at ground floor and I observed outdoor furniture right up to the end of No 234a's garden. The proximity and height of the building would therefore be imposing and dominant over the gardens and outlook of both properties. As such, the building would have a significant and unacceptable overbearing effect, which would be harmful to the living conditions of the occupants of Nos 234a and 236.

11. In coming to this conclusion, I have noted that the drawings indicate the building would not break a 25 degree line from the ground floor windows of Baring Road, but that is a measure of daylight impact, not overbearing, and does not take into account the effect on the garden. I have also had regard to the proposed trellis and climbing plants on the side wall facing the properties on Baring Road. However, the drawings indicate this would be beyond the boundary of the site, overhanging the garden of No 234a, which brings its implementation and possible future retention in serious doubt. In any event, such superficial measures would not overcome the overbearing effect of the building.
12. The drawings indicate that the two external balconies would have privacy louvres facing the properties in Baring Road. I note the previous Inspector found the fixed timber cladding on a balcony to be a contrived arrangement adding to the visual intrusion of that scheme. In this scheme the louvres would not be associated with further glazing, but they would be even closer to a neighbouring garden, being immediately against the rear boundary of No 234a. The appellant states the outlook through the louvres would be onto Hoser Avenue, but that is not clear from the application details, which shows large gaps between the louvres. Based on the evidence before me, I cannot be sure that the privacy of No 234a would not be compromised by the balconies. Moreover, I agree with the previous Inspector that such an arrangement so close to a neighbouring garden would be visually intrusive regardless of actual views, particularly given that the louvres would be directly facing the garden and rear windows of No 234a.
13. The absence of objections from neighbours is not determinative and does not justify the harm that would occur. There can be many reasons why neighbours do not object to an application, and the harmful effects of the development would be likely to exist long after the existing occupiers have moved on. One of the important objectives in paragraph 127(f) of the National Planning Policy Framework (the Framework) is to secure a high standard of amenity for all existing and future users.
14. For all these reasons, I conclude that the development would have an unacceptable impact on the living conditions of the occupants of 234a and 236 Baring Road in terms of the overbearing effect on their gardens and outlook, as well as loss of privacy arising from the proximity of the balconies to the neighbouring garden. In this regard, there would be conflict with the requirements of CS Policy 15, DMLP Policies 32 and 33, and the SPD. These require development to be designed and laid out to avoid adverse impact on the living conditions of neighbours.
15. The Council has referenced conflict with DMLP Policy 31 in these respects, but as the policy concerns extensions to existing buildings, it is not relevant to this appeal.

Living conditions for future occupants

16. The previous appeal scheme was for two one-bedroom flats, whereas this scheme is a four person, two-bedroom (amended) house with a single aspect facing mostly north.
17. LP Policy 3.5 requires high quality housing that is functional and fit for purpose. The Mayor's Housing SPG and DMLP Policy 32 seek to minimise north facing single aspect dwellings. Where single aspect dwellings are proposed, DMLP Policy 32 requires detailed justification why dual aspect is not possible and demonstration that adequate lighting and ventilation can be achieved. Main habitable rooms are required to receive direct sunlight and daylight, and adequate privacy.
18. The justification for north facing single aspect in this case is to protect the privacy of neighbours. However, despite the use of large windows to the front, the only habitable rooms that would receive direct sunlight would be the upper floor kitchen and living room, via a rooflight. Neither of the bedrooms would receive direct sunlight. Moreover, the window of bedroom 2 would be recessed into the building thereby further limiting the amount of daylight to the bedroom. The bathroom window in the west elevation would not percolate light into the bedroom. Based on my observations and in the absence of any technical submissions addressing the availability of light, there would not be a sufficient level of natural light available to the whole accommodation.
19. At ground floor, bedroom 1 would face directly onto a shared forecourt used to access the garages at the rear of 234 Baring Road, which are in separate ownership and therefore outside the appellant's control. I return to this point later. As long as there are access requirements to the garages, vehicles would be driving directly towards the windows and people would come and go, or could even stand and carry out activities in that area. Accordingly, in the absence of any private defensible space in front of the window, this bedroom would suffer from a poor outlook and level of privacy. The appellant suggests the lower half of the windows could be obscure glazed, but that too would result in a poor outlook. I give very little weight to any suggestions that substandard living conditions should be accepted because the bedroom would be used primarily for sleeping, particularly as the living spaces would be on the top floor.
20. With particular regard to amenity space, CS Policy 15 requires provision of garden and amenity space, while DMLP Policy 32 requires new housing to, among other things, provide readily accessible, private and useable external space, including children's play space. The house would be capable of accommodating a family with children, but the only amenity space provided by the development would be in the form of the terraces on the first and second floors. As the largest terrace would be up two flights of stairs on the top floor of the house it would not be suitable for children's play, or any person with restricted mobility. The living space would have similar problems. The first floor terrace would have to be accessed through a bedroom, which would further restrict its ability to be accessed readily by the rest of the household. Moreover, it would be small, dark and facing the street and therefore not a particularly attractive amenity or play space. The layout and type of amenity space provided would therefore not be readily accessible or suitable for all future occupiers.

21. The proposed waste storage area on the forecourt still suffers from the same problem identified in the previous appeal in that it is on land that falls outside of the red line plan. It has been put to me that there is an agreement for the ownership of the land to be transferred to the appellant if and when planning permission is granted. However, in the absence of any completed agreement before me I cannot give these claims any weight. Consequently, there has not been any significant change in this respect to lead me to conclude differently to the previous Inspector on this issue. The lack of suitable waste storage increases the probability that provision would need to be made within the house itself, thus diminishing the living environment within it.
22. For all these reasons I conclude that the development would not provide acceptable living conditions for all its future occupants in terms of light, outlook, privacy, accessible and suitable amenity spaces, and waste storage. In these regards, there is conflict with LP Policy 3.5, CS Policy 15 and DMLP Policy 32, which collectively require, among other things, high design standards that meet the functional requirements of future occupants.
23. The Council has referenced conflict with DMLP Policy 30 in these respects, however this policy is not directly relevant to the issue of living conditions of future occupants.

Pedestrian safety

24. The front entrance of the house would open directly onto the shared garage forecourt. The drawings depict a footpath across this land to Hoser Avenue, but there is no detail of its design and surfacing to indicate whether it would be clearly demarcated from the rest of the forecourt.
25. As I have already alluded to above, the forecourt is not in the appellant's ownership. Accordingly, on the basis of the evidence before me I cannot be certain that the pedestrian footpath would be constructed.
26. I am mindful that the swept path diagram provided by the appellant indicates that a vehicle would not have to manoeuvre across the line of the doorway of the house to enter the end garage, but in the absence of any clear physical and visual demarcation this would not be evident to a driver of the vehicle who may seek to take a wider route into the garage. Furthermore, in my view, a driver reversing from the garage is more likely to move directly backwards to enable forward exit, rather than to reverse out along the route shown on the swept path diagram. Consequently, notwithstanding the differences to the previous appeal scheme, there remains an unacceptable risk of collision between pedestrians and vehicles. This risk would be greater than that which currently exists at the site.
27. For these reasons, I conclude that the development would lead to an unacceptable risk of harm to pedestrian safety. In this regard, there is conflict with DMLP Policies 30 and 32, which require adequate response to layout and access arrangements, and to ensure new housing has a high quality pedestrian environment, designed to be safe.
28. The Council has referenced conflict with DMLP Policies 29 and 33 in these respects, however these policies are not directly relevant to the issue of pedestrian safety.

Other Matters

29. The development would not make any provision for parking and there is no evidence that the appellant has acquired some land at the end of Hoser Avenue for a parking space. Nevertheless, as this did not form part of the Council's refusal reasons and I am dismissing the appeal, I will not explore this any further.
30. Whilst there would be some benefits to tidying up the appearance of the site and the development would provide one new residential unit, these limited benefits would not significantly and demonstrably outweigh the harmful impacts of the development and consequent conflict with the policies of the development plan and the Framework, and so does not alter my decision.

Conclusion

31. For the reasons given above, I conclude that the appeal should be dismissed.

Adrian Caines

INSPECTOR