



Appeal Decision

Site visits made on 11 and 18 February 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2020

Appeal Ref: APP/C5690/W/19/3240617

60 Lowther Hill, London SE23 1PY

- 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 & Mrs Matthew & Claire Rose against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/113219, dated 24 July 2019, was refused by notice dated 1 October 2019.
 - The development proposed is described as: 'Demolition of the existing dwelling at 60 Lowther Hill SE23 & the construction of a 4 storey building including roof terrace, comprising 2 x one bedroom, 4 x two bedroom & 1 x three bedroom self contained flats, together with provision of cycle & bin storage, 2 parking spaces & associated landscaping'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For clarity and precision, I have taken the appellants names and the description of development in the banner heading above from the appeal form as they are more accurate.
3. The Council have cited Policy 15 of the Council's Core Strategy Development Plan Document 2011 (CS) and DM Policies 30 and 31 of the Council's Development Management Local Plan 2014 (LP) in refusal reason no.4 on its decision notice. Whilst protection of neighbour amenity and living conditions are referenced in terms of household extensions, I still find the above policies relevant in the context and determination of this appeal.
4. Additionally, I find DM Policy 32 of the LP to be relevant in the context of refusal reason no. 4. This policy has been cited with regard to refusal reason no. 2 and is therefore familiar to the main parties. As this policy has been provided and referenced within the appeal submissions, I will not prejudice any party in taking DM Policy 32 into account for the purpose of refusal reason no. 4 and in the overall determination of this appeal.

Main Issues

5. The main issues of this appeal are:
 - the delivery of housing choice in Lewisham;

- whether the proposed development would provide adequate living conditions for future occupiers, with particular regard to internal habitable space and daylight;
- the effect of the proposed development on the living conditions of the occupiers of No's 58 and 62 Lowther Hill, with particular regard to dominance and daylight; and,
- the effect of the proposed development on the character and appearance of the appeal site and surrounding area, particularly through the proposed roof terrace.

Reasons

Housing choice

6. The appeal dwelling is located on a site of 0.06ha and constitutes a detached house that has previously been extended, including a single storey rear extension, amongst other alterations. The appeal proposal is to demolish the existing house and to replace it with a 4no. storey block, comprising 7no. residential units. Currently accommodation at No 60 comprises a hall, lounge, family room/dining room/kitchen and a WC/shower at ground floor. At first floor there is currently 3no bedrooms and a bathroom. The property also has an attached garage. The proposed scheme would see 2no. one-bedroom flats located on the lower ground floor, both with a private patio, 4no. two-bedroom flats on the ground and first floor, and a three-bedroom flat with a balcony on the second floor.
7. The development plan for the area includes the London Plan (March 2016) (LonP), the CS and LP. The Council is seeking to manage the loss of family homes. Family housing is seen as a valuable resource which should be retained in order to meet an identified housing need and provide housing choice. CS Policy 1 requires housing across the borough to be in accordance with spatial strategies, seeking an appropriate mix of dwellings within a development, amongst other things.
8. DM Policy 2 of the LP is a restrictive policy that resists the loss of existing housing, subject to certain criteria. On the evidence before me the list of criteria does not apply to the scheme before me. DM Policy 2 of the LP implements the Lewisham Local Development Framework required in the CS, which deliver the approach in LonP Policy 3.8. This states that Londoners should have a genuine choice of homes that they can afford, and which meet their requirements for different sizes and types of dwellings.
9. Reference is made to emerging Policy H2 of the Draft London Plan (eLonP) which relates to small sites. This policy states that it should be recognised that local character evolves over time and will need to change in appropriate locations to accommodate additional housing on small sites. The Panel's report and recommendations were published on 21 October 2019 and the Mayor of London issued his response to those recommendations and the plan he intended to publish on 9 December 2019.
10. The Secretary of State wrote to the Mayor on 13 March 2020 and issued an Annex containing directions. Whilst eLonP Policy H2 is listed within the Annex, the suggested alterations do not undermine the aim of the policy in the context

of this appeal. Although, eLonP has not yet been adopted, given the stage of preparation, and the degree of consistency with the National Planning Policy Framework (the Framework), I attach significant weight to emerging eLonP Policy H2 in accordance with paragraph 48 of the Framework.

11. My attention has been drawn to the size of one of the bedrooms in the existing house and the requirements of the Technical housing standards – nationally described space standard 2015 (THS). However, the THS is clear that the requirements for bedrooms, storage and internal areas are relevant only in determining compliance with this standard in new dwellings and have no other statutory meaning or use. On the evidence before me, I still consider No 60 to form a 3no. bedroom house. However, whilst comprehensive studies indicate the main need for housing in Lewisham is for family housing, which is defined as having three or more bedrooms, this would still be provided, albeit in the form of a flat and subject to the acceptability of the proposed private amenity space that I will consider later in this Decision. Furthermore, the development delivers a number of additional residential units.
12. The appellant has referred to examples of similar schemes¹ to support their case, which I note. Additionally, the appellant has referred to planning applications² to extend No 60 that were refused. However, in all instances, relatively little detail has been provided regarding the particular planning backgrounds to these schemes. Consequently, I can only attribute limited weight to these schemes in the determination of this appeal.
13. For the reasons given above, I conclude that the development would not harm the objectives relating to housing choice in Lewisham. In reaching that conclusion, I have taken into account that I have found conflict with DM Policy 2 of the LP. However, I find the conflict with DM Policy 2 of the LP is clearly outweighed with the compliance of the proposed development with emerging eLonP Policy H2. For the reasons previously given and in the particular circumstance of this case, there would be no conflict or harm to the overall development strategy in CS Policy 1, LonP Policy 3.8 or the requirements of the Framework.

Living conditions of future occupiers

14. Concerns have been raised by the Council in relation to the provision of internal storage space within the proposed dwellings, particularly the 2no. and 3no. bedroom units. All of the proposed units would meet the requirements of the THS with regard to minimum gross internal floor area. It is common ground between the main parties that the proposed one-bedroom units would provide sufficient areas for internal storage. The appellant has provided clarification and figures regarding the size of the storage areas³ in the remaining proposed flats.
15. Additionally, the quality of internal accommodation that would be provided for future occupiers of the proposed development has been questioned by the Council, particularly surrounding the bedrooms on the eastern side of the rear elevation and whether or not, they would comply with BRE guidelines. An

¹ DC/15/091285 and DC/08/070573/X

² DC/17/103895 and DC/18/106394

³ 2.0m² of storage for the 2no. bedroom flats and 2.6m² for the 3no. bedroom flat

additional daylight analysis⁴ (DA) has been provided by the appellant to support their submission. The room on the lower ground floor of the proposed development is considered to be the most obstructed in terms of daylight, as it is situated between the rear projection of the proposal and No 62. Therefore, it is expected that if this room meets the BRE criteria, the higher floor rooms will also achieve the appropriate levels of daylight. The DA concludes that the results of their detailed technical analysis demonstrate that the room on the lower ground floor of the proposed development would receive levels of daylight commensurate with those outlined in the BRE guide and BS 8206-2.

16. Given that the DA appears to have been produced by a suitably qualified authority and in the absence of an equivalent report on the part of the Council, I have given it significant weight. Whilst the Council consider there would be deficiencies in the provision of internal storage and to the amount of daylight that the proposed rear rooms on the eastern side of the rear elevation would receive, in the absence of any evidence to the contrary, I find that the proposed development would provide sufficient areas of internal storage within all of the units in accordance with the requirements of the THS, and adequate levels of daylight for its future occupiers.
17. For the reasons given above, I conclude that the proposed development would provide satisfactory living conditions for future occupiers of the proposed development, with particular regard to internal habitable space and daylight. Therefore, the proposal accords with the design and living conditions aims of CS Policy 1, DM Policy 32 of the LP, LonP Policy 3.5, the LonP Housing Supplementary Planning Guidance 2016, the THS and the Framework.

Living conditions of neighbouring occupiers

18. When viewing the site from Lowther Hill, No 58 is located to the right of No 60 and No 62 is located to the left. Additionally, the topography of Lowther Hill notably falls away towards Brockley Rise. No 58 is a detached house that has 3no. windows located in its side elevation facing the site, all of which are obscure glazed. No 62 has 2no. windows located in its side elevation facing the site, located at the lower ground floor and on the second floor.
19. The appellant submitted a daylight and shadow assessment⁵ (DSA) with the application to which I have had regard. As well as viewing the site from within the existing rear garden, I also viewed the site from the rear garden of No 62 and viewed its lower ground floor side window from within the building. I am satisfied that I saw everything I need to assess the impact of the development. However, I am unable to share all of the main findings of the appellants detailed DSA. I acknowledge that the proposal is unlikely to have a significant impact on the daylight received to both the front and rear elevations of No 58 and No 62. Additionally, I note that the proposed development would still allow for a reasonable amount of daylight to penetrate the side windows of No 58 and the second floor window at No 62 that face the site, due to the siting and articulation of the proposed development.
20. Whilst noting the comments of the Council's Urban Design Officer, I find that the proposed development would have a significant harmful effect on the

⁴ 60 Lowther Hill, London SE23 1PY Daylight Provision in the Proposed Development -undertaken by Hollis dated 31 October 2019.

⁵ Daylighting and Shadowing Assessment July 2019.revA

occupiers of the lower ground floor flat at No 62, with particular regard to a loss of daylight to their side window. I note that the DSA considers this bedroom to be primarily lit from the window facing Lowther Hill, referring to the side window as small and not contributing any significant daylight to the bedroom due to it facing the flank wall of the garage at No 60. However, whilst this bedroom may benefit from 2no. windows, it was evident during my visit that due to its lower ground floor position, the daylight received from the front facing window is hampered through its lower level when compared to Lowther Hill.

21. Paragraph 127 of the Framework requires decisions to ensure a high standard of amenity for existing and future users, amongst other things. The side window in the lower ground floor at No 62 may face the flank wall of the existing garage at No 60. Nonetheless, it still provides a valuable source of daylight to the room it serves for its occupiers. The proposed development would be sited closer to the shared boundary with No 62 than the existing garage and would be considerably taller than the existing structure, which is single storey with a flat roof. It is therefore inevitable that the proposed development would significantly reduce the amount of daylight received by the occupiers in the lower ground floor flat at No 62, to the detriment of their living conditions.
22. An appeal decision⁶ has been brought to my attention. However, I do not know what evidence was before the Inspector at the time of his decision. Consequently, I cannot be sure that this Decision is entirely representative of the circumstances in the appeal before me. Although, I can ascertain from his Decision that the previous scheme would have been no closer to No 62 than the existing garage. Additionally, I am not certain that the previous Inspector had the benefit of viewing the window from within the lower ground floor flat at No 62 as I did.
23. The proposed development would extend markedly into the existing rear garden, beyond its existing rear building line and that of its immediate neighbours. I acknowledge that the rear elevation of the proposed development is staggered and the element that extends furthest into the rear garden of the site would be set further away from the shared boundaries with both No 58 and No 62 than the main building. Additionally, the second floor 3no. bedroom unit would be set away further still. However, whilst the proposed development would not compromise the outlook from the rear windows of both No 58 and No 62 through the preservation of 45 degree lines from closest neighbouring windows, I'm not satisfied that the proposed development would not be unduly over dominant with regards to the private amenity areas, immediately outside the rear elevations of both No 58 and No 62. I have little doubt that these areas are used regularly by their occupiers, given the domestic items that were present at the time of my visit.
24. For the reasons given above, I conclude that the proposed development would significantly harm the living conditions of neighbouring occupiers, in particular those present at No 58 and No 62. Therefore, the proposal fails to accord with the living conditions aims of CS Policy 15, DM Policy 30, DM Policy 31 and DM Policy 32 of the LP, and the Framework.

⁶ APP/C5690/W/18/3214961

Character and appearance

25. The proposed development would have a roof terrace located on the top floor, which would serve the 3no. bedroom unit and provide its private amenity space. The Council considers this element of the proposal would form an incongruous and discordant addition, failing to respect the character and appearance of the wider street scene. No other aspect of the proposed design has been cited within the reason for refusal. I have determined the appeal on this basis.
26. The appellants have provided information surrounding the overall visibility of the roof terrace from Lowther Hill, making particular reference to drawing 1707-AP319. I too found during my visit that it is highly unlikely that the roof terrace would be clearly visible from public land. There would be additional physical restrictions due to existing buildings, the topography and changes in levels, especially towards Brockley Rise.
27. My attention has been drawn to a number of dwellings that benefit from roof terraces in the locality of the site. Whilst noting the presence of these roof terraces, relatively little detail has been provided regarding the particular planning backgrounds to those schemes. Without such information a full and detailed comparison between those developments and the case before me cannot be drawn except insofar as I was able to observe and assess the sites at either end of Lowther Hill during my visit. In any event, the roof terrace would have a limited visual impact on the proposed development and wider street scene, due to its siting and location. Thus, I do not consider that it would have a detrimental effect on the character and appearance of the appeal site or surrounding area.
28. For the reasons given above, I conclude that the proposed development would not harm the character and appearance of the appeal site and surrounding area. Therefore, the proposal accords with the design, character and appearance aims of CS Policy 15, DM Policy 30 and DM Policy 31 of the LP and the Framework.

Other Matters

29. Representations from local residents have also expressed a range of concerns on the application including, but not limited to the following: highways safety, parking, general design, over development, noise and disturbance, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. Whilst I can understand these concerns, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
30. I have had regard to various other matters raised by the appellants, including no objections from the Local Highway Authority. However, I have considered the development on its own merits and concluded there would be harm to the living conditions of the occupiers of No 58 and No 62. A lack of harm associated with highways is a neutral factor that weighs neither for nor against the development.

Planning Balance and Conclusion

31. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
32. As set out above, the development would significantly harm the living conditions of neighbouring occupiers. The proposal would not have a detrimental impact on housing choice, would not lead to the creation of poor accommodation for future residents and would not adversely affect the character and appearance of the site and surrounding area, these are matters of neutral consequence in the overall planning balance.
33. The proposal would lead to some social and economic benefits, and would involve the creation of additional residential units through the redevelopment of a small site for housing, as encouraged in the eLonP. However, on balance, and taking all matters into consideration, I conclude that the harm caused by the development would outweigh its benefits. Accordingly, the material considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.
34. For the reasons given above I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR