
Appeal Decision

Site visit made on 25 February 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/C5690/W/19/3233626

Land West of Jutland Road (to the rear of 64 Brownhill Road), London SE6 2DQ

- 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 Alistair Mugford against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/18/110158, dated 14 December 2018, was refused by notice dated 6 March 2019.
 - The development proposed is to construct a 1 bedroom detached single-storey dwelling-house with a basement.
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Decision

1. The appeal is allowed and planning permission is granted to construct a 1 bedroom detached single-storey dwelling-house with a basement at Land West of Jutland Road (to the rear of 64 Brownhill Road), London SE6 2DQ in accordance with the terms of the application, Ref DC/18/110158, dated 14 December 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The address of the site is set out in slightly different ways on the application form, appeal form and the Council's decision notice. I have used the address from the application form and included the Council's reference to the 'land to the rear of 64 Brownhill Road' as this helps to identify the exact location of the site.
3. At application stage the appellant did not provide a daylight assessment but submitted one as part of the appeal. I am satisfied that the Council has been given the opportunity to comment on this report. I have had regard to it in making my decision.
4. My attention has been drawn to a recent planning permission granted by the Council¹. Both main parties have had the opportunity to comment on it. Consequently, no party is prejudiced by my taking it into account.
5. The Lewisham Local Plan Alterations and Extensions Supplementary Planning Document 2019 (AESPD) was adopted by the Council subsequent to the determination of the planning application. However, both parties have referred

¹ London Borough of Lewisham DC/19/114882

to this document within their evidence and I am satisfied that no party is prejudiced by my taking it into account.

Main Issues

6. The main issues are (i) the effect of the proposed development on the character and appearance of the area and (ii) whether the proposal would provide adequate living conditions for future occupiers with regard to outlook, daylight and sunlight.

Reasons

Character and appearance

7. The site is a vacant plot of land, located on the western side of Jutland Road between 1 Jutland Road (No 1) and 64 Brownhill Road (No 64). The parties agree the site was formally part of the rear garden of No 64 but has been separated from it for a considerable period of time. The Council considers that the site falls within the definition of an infill site and that the principle of developing it for housing is therefore acceptable.
8. The surrounding area is predominantly residential, largely comprised of two storey terraced buildings, with some consistency in terms of architectural character. The terrace housing along Jutland Road is set back from the pavement by small front gardens some of which accommodate parking spaces. Between No 1 and the appeal site there is a single storey domestic outbuilding associated with 62 Brownhill Road (No 62). It sits forward of the building line of No 1 and the wider terrace but is stepped back from the pavement edge. Directly opposite the site is a commercial storage yard. Its boundary with Jutland Road comprises a brick wall and two pairs of metal, mesh covered gates located against the back edge of the pavement. A single storey building also fronts the street at the southern corner of the yard.
9. The proposal would see the erection of a dwelling that would have the appearance of a single storey flat roof building. It would, however, comprise of two storeys, one of which would be below ground level. The basement level would contain a bedroom, storage area and bathroom with an external courtyard. The roof line would appear staggered whereby the southern section of the proposal would be lower. This section would contain the bin and cycle storage, and outdoor amenity spaces/lightwell.
10. Although the building would sit flush with the rear edge of the pavement and therefore forward of the predominant building line of the terrace dwellings on Jutland Road, its position, separate from this terrace, would allow it to be read as a stand-alone building. The design, whereby no windows are proposed in the front (Jutland Road) elevation, along with its single storey height above ground level and the flat roof style, would result in the building resembling a domestic outbuilding commonly located within rear gardens.
11. Whilst the proposed dwelling would be slightly taller than domestic outbuildings that could be erected under permitted development allowances, it would, nonetheless, not appear out of keeping with its surroundings. The front elevation would be in line with the existing boundary fence of No 64. Directly opposite the site the boundary wall of the commercial storage yard is positioned hard up against the rear edge of the pavement, as is the front elevation of a single storey ancillary building. Therefore, the position of the

proposed dwelling, although forward of the building line of the terrace properties on Jutland Road, would not be inconsistent with the established pattern of development such as to cause unacceptable harm to the street scene. The proposed materials would be similar to those of the surrounding properties. This would further ensure that the dwelling would blend with its surroundings.

12. Whilst the plot size and shape differs from others in the vicinity, the design of the proposed dwelling is, to my mind, a creative response to the constraints of the underutilised space. Overall, the design, height and massing of the proposed development would not appear cramped nor constricted and would not be out of keeping with the mixed street scene.
13. Accordingly, I conclude that the development constitutes an acceptable form of development and would not be harmful to the character and appearance of the area. Consequently, it does not conflict with Policies 7.4 and 7.6 of the London Plan 2016 (LonP), Policy 30 of the Lewisham Development Management Local Plan 2014 (DM) and Policy 15 of the Lewisham Core Strategy 2011 (CS). Together and consistent with the National Planning Policy Framework (the Framework) these policies seek to ensure good quality design, including that which is sensitive to local context.

Living conditions

14. The appeal scheme proposes the bedroom, bathroom and a storage area at basement level. The Council, within their officer report raise concerns in respect of the adequacy of daylight/sunlight reaching the bedroom and the outlook that would be available from it. However, the submitted daylight assessment demonstrates that the bedroom would receive daylight at a level above that recommended by the Building Research Establishment. This is not disputed by the Council. Although sunlight levels have not been assessed, I am satisfied from the evidence provided that the bedroom, which would generally be expected to be used mostly at night, would receive adequate levels of natural light to serve the needs of future occupiers.
15. Turning to the matter of outlook. Despite being below ground level, the bedroom would have full height, south facing glazing, which would open out into a modest private courtyard area. The outlook from this room would include views of the sky and of the proposed ground floor 'garden' area. Taking all these factors into account, I consider that a reasonable degree of outlook would be provided. The distance between the bedroom and the boundary wall would not result in an oppressive living environment. Further, as alluded to above, future occupiers, apart from sleeping, are unlikely to spend a significant amount of time in the bedroom. Further, the Council has not raised any other concerns with regard to the appropriateness of the living conditions in other rooms.
16. I conclude that the proposal would provide adequate living conditions for future occupiers with regard to outlook, daylight and sunlight. Consequently, the proposal complies with CS Policy 15, DM Policies 30 and 32, LonP Policies 3.5, 7.4 and 7.6, the London Plan Housing Supplementary Planning Guidance 2016, the Lewisham Residential Design Standards Supplementary Planning Document 2012 and the EASPD, which together seek, amongst other things, to ensure that development is of the highest quality both internally and externally and meets the functional requirements of future residents.

Other Matters

17. The appellant referred me to a recent planning permission granted by the Council which he considers offers support to the acceptability of the appeal scheme. The circumstances of that case, although similar in terms of position of the plot within the street scene and the incorporation of basement level accommodation, also differ in many respects to the appeal proposal. As such, the information provided has had limited bearing on my findings in relation to the main issues.
18. The appellant submitted a revised proposal with the appeal documents. This scheme proposed an alternative internal layout. However, as I have found the original scheme to be acceptable, I have not had regard to the revised scheme.
19. The Council considers that because the appeal site has a Public Transport Accessibility Rating of 4 (good), future residents should be restricted from obtaining parking permits within the area's controlled parking zone. However, no planning obligation has been entered into in order to secure this requirement. Although the Council has suggested a condition to be imposed should permission be granted, such a condition would encumber the right of an individual to undertake an act rather than be a restriction that would be associated with the land/building that was the subject of the permission. It would not therefore be reasonable or relevant to planning and would fail the tests for conditions in the Planning Practice Guidance (PPG).
20. Despite the lack of appropriate means by which to secure parking permit free development, no specific evidence has been provided to demonstrate that, were future occupiers to be allowed to apply for a car parking permit, there would not be sufficient capacity within walking distance to meet this demand without significantly increasing parking stress. The scale of development proposed would restrict the possible future increase in parking pressure. I do not consider the potential increase would be of a scale likely to cause significant harm to highway safety or inconvenience to other road users. As such, I am satisfied that the proposed development is acceptable without a preventative control on parking permits.
21. The Council considers that the proposed development would not cause harm to the living conditions of the occupiers of neighbouring properties. From the evidence before me and what I saw on my site visit, I see no reason to disagree. Where windows are proposed to face neighbouring land, they are at high level and would not therefore introduce overlooking.
22. My attention has been drawn to concerns related to the fence bordering the appeal site that is in the ownership of No 62. However, the proposal does not encroach the garden of this neighbouring dwelling nor does it seek to incorporate the fence as part of the proposed development. Planning permission would not override any legal rights in respect of the fence.
23. Moreover, a condition could be attached to any permission resulting from this appeal requiring details of a construction structural management plan to be agreed with the Council prior to the commencement of development. Such a condition could safeguard the structural stability of adjoining land and property and mitigate noise disturbance during the construction phase, which has also been raised as a concern.

24. Connection to the sewer system is a matter which would be addressed separate to the planning process.
25. I also note the concerns raised in respect of the provision of a "green" roof. A condition could require precise details to be agreed with the Council to ensure this element is of satisfactory standard.
26. In the absence of any substantive evidence to dismiss the appeal on any of the above grounds or complaints, the concerns raised do not override or affect my conclusions on the main issues.

Conditions

27. I have had regard to the conditions suggested by the Council and the advice in the PPG. As a result, I have amended, consolidated or omitted some of the conditions so that they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. With regard to Section 100ZA (5) of the Town and Country Planning Act 1990, the appellant has given their written agreement to the pre-commencement condition attached to this decision.
28. In addition to the standard time limit for commencement [1], I have imposed a condition specifying the relevant drawings [2] as this provides certainty. To protect the character and appearance of the area it is necessary to attach conditions relating to materials and the details of the proposed living roof [3 and 5]. To protect the stability of adjacent land and the living conditions of occupiers of neighbouring properties during the construction phase it is necessary to include a condition in respect of a construction structural management plan [4].
29. Conditions have been attached to secure adequate cycle parking [7] and refuse storage [6], to ensure proper provision of these facilities. I have omitted the Council's suggested condition relating to parking permits for the reasons discussed earlier in this decision.
30. I have, however, omitted the suggested requirement pertaining to preventing the roof being used as an amenity space. This part of the Council's suggested condition is vague. It is also unreasonable as there is no direct access to the roof proposed that would encourage future occupiers to use it in such a manner.

Conclusion

31. For the reasons given above the appeal is allowed.

S Tudhope

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (dated 07 Sep 2018); Existing Site Plan Drawing No 614 - 01; Existing Elevations Drawing Nos 614 - 02 and 614 - 03; Proposed Floor Plans Drawing No 614 - 04; Proposed Roof Plan Drawing No 614 - 05; Proposed Elevations Drawing Nos 614 - 06 and 614 - 07 and Block Plan Drawing No 614 - 08.
- 3) No development above ground level of any part of the development hereby permitted shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall take place until a Construction Structural Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - (i) Measures to mitigate noise and vibration arising out of the construction process.
 - (ii) A structural method statement prepared by a suitably qualified civil or structural engineer, demonstrating how the excavation, demolition and construction work (including temporary propping or other temporary works) are to be carried out whilst safeguarding the structural stability of the adjoining footpath on Jutland Road and of neighbouring properties.

The approved Construction Structural Management Plan shall be adhered to throughout the construction period for the development.

- 5) (a) Details of the living roof shall be submitted to and approved in writing by the local planning authority prior to the commencement of above ground level works. A 1:20 scale plan of the living roof that includes contoured information depicting the extensive substrate build up and a cross section showing the living roof components shall be submitted for approval. The living roof shall be:
 - (i) biodiversity based with extensive substrate base (depth shall vary between 80-150mm with peaks and troughs but shall average at least 100mm);
 - (ii) will include details of how the roof has been designed to accommodate any management arrangements; and
 - (iii) plug planted with sedum species & seeded with an agreed wildflower mix of species within the first planting season following the practical completion of the building works.
- (b) Evidence that the roof has been installed in accordance with (a) shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development hereby approved.

- 6) The dwelling shall not be occupied until refuse and recycling facilities have been provided in accordance with details which have been submitted to and approved in writing by the local planning authority.
- 7) The dwelling shall not be occupied until cycle parking facilities have been provided in accordance with details which have been submitted to and approved in writing by the local planning authority.