



Appeal Decision

Site visit made on 22 May 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th May 2020

Appeal Ref: APP/C5690/W/20/3244798

2A Dundalk Road, London SE4 2JL

- 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 RAA Dundalk Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/111297, dated 5 March 2019, was refused by notice dated 17 July 2019.
 - The development proposed is demolition of the existing vehicular repair and MOT centre (Class B2) and the provision of a new part 2/part 2.5 storey residential building (Use Class C3) providing 7 three bedroom units and 1 two bedroom unit, together with the provision of cycle and refuse storage and associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. Nevertheless, amended plans were submitted during the determination of the planning application. These omit an originally proposed lower ground floor level from the building and alter the development to propose 8 two-bedroom dwellings. It is clear from the Council's report and decision notice that the proposal was considered with reference to these amended plans, and I have determined the appeal on the same basis.
3. Within their statement, the Council refers to Policy E7 of the 'intention to publish' version of the emerging London Plan 2019. Although at a fairly advanced stage, the emerging London Plan is not yet adopted. The Secretary of State has also directed in a letter dated 13 March 2020 that changes are made to the Plan before it may be published. These factors limit the weight that I afford to emerging Policy E7.

Main Issues

4. The main issues in this appeal are:
 - i) the effect of the proposal on the supply of space for employment uses;
 - ii) the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with particular regard to outlook, enclosure and whether or not it would be overbearing; and
 - iii) whether or not the development would provide acceptable living

conditions for future occupiers with particular regard to outlook.

Reasons

Space for Employment Uses

5. The appeal site is located to the rear of dwellings on St Asaph Road and Dundalk Road and includes garages and workshops served by a vehicular access to the side of 2 Dundalk Road. The site is in use as a vehicular repair and MOT centre, and the main parties agree that the existing use of the site falls within Class B2 (General Industrial) of the Use Classes Order¹. I note the appellant's comments that this use is continuing for security reasons, and pending the relocation of the current occupier to alternative premises, but the proposal would nevertheless result in the loss of the existing use from the site.
6. The development plan does not formally designate the appeal site as an allocated employment site, but the existing use would be considered an 'other employment location' under Policy 5 of the Lewisham Core Strategy 2011 (CS) and DM Policy 11 of the Development Management Local Plan 2014 (DMLP). Together, these policies seek to protect employment locations, including those within residential areas. Notwithstanding this general approach, CS Policy 5 does indicate that other uses, including residential, may be supported where it is demonstrated that site specific conditions show that the site should no longer be retained in employment use. DM Policy 11 of the DMLP also offers some support for redevelopment for change to other business uses of employment sites in residential areas. However, this is subject to a site having become vacant and been actively marketed for an appropriate length of time, and evidence that it is no longer suitable and viable for its existing or an alternative business use.
7. The appellant has provided a Marketing Report dated 22 February 2019 (MR) and Property Marketing Update letter dated 27 March 2020 (MUL). These advise that the appeal site has been marketed since January 2018 and that while there have been some viewings, no expressions of interest or offers have been received. Although the main parties have also alluded to a Marketing Report dated 15 September 2019 submitted with a revised application on the appeal site, this is not part of the evidence before me.
8. The MR and MUL cover more than the 2 year period which is recommended by the Land for Industry and Transport Supplementary Planning Guidance 2012 to the London Plan - The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (LP). The MR refers to marketing methods including online advertising on various web portals, direct mailing and mail drops to local industrial estates. However, the MUL does not provide any detail to clarify the nature or extent of any marketing undertaken beyond the period covered by the MR. I cannot therefore be sure from the evidence before me that active marketing has continued over a suitable period to adequately demonstrate a lack of demand for employment use of the appeal site.
9. Furthermore, the submitted marketing evidence primarily comprises screenshots of various web portal advertisements which refer to the use of the site as B2 (General Industrial) or industrial, and a photograph of the signboard on the site which similarly refers to an industrial unit to let. These make no

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

reference to potential use of the site as Class B1 (Business) under permitted development rights. From the material before me, I am not therefore persuaded that the marketing exercise encompassed a full range of potential B1/B2 uses as suggested by the appellant.

10. With regard to the valuation of the site, the MR makes reference to comparable properties, and I note that the appeal site has been marketed at a price some way below the asking price of these examples. However, the examples appear to be located within purpose-built industrial estates, and while the extracts provided refer to warehousing, trade or industrial units, the submitted details do not reveal the Use Class or Classes that they have been marketed as. Accordingly, I can draw little direct comparison with the circumstances of the appeal site. Moreover, I do not know whether or not values achieved reflect the asking prices. I am therefore unable to ascertain with any confidence that the appeal site has been marketed at a price commensurate with market values for comparable premises.
11. I acknowledge that the design, configuration, fenestration and condition of the existing buildings on the site may limit their practicality for alternative uses. Even so, it is not clear how options to redevelop the site for alternative business use have been considered alongside reuse of these buildings, including as part of the marketing of the site as is required by DM Policy 11. In addition, the cost implications of either refurbishment or redevelopment options for the site have not been quantified. Accordingly, the weight that I can give to the assertion within the MR that other commercial uses would not be economically viable is very limited, and I am not satisfied that the evidence demonstrates that employment re-use of the site would not be viable.
12. The site is within a residential area, and space for vehicular access and deliveries to the site is fairly constrained. Although I am unclear of the basis for suggested concerns related to the security of the site referred to by the appellant, I acknowledge that these factors may affect how attractive the site would be to some businesses. However, requirements would vary according to different business needs, and it is not uncommon for commercial uses to exist alongside dwellings. The appellant refers to issues with the existing use around security, noise and parking as having been identified during community engagement, but I have not been provided with details of these concerns. Nor do I have other substantive evidence demonstrating that neighbouring living conditions have, or would be, unacceptably harmed by employment use on the site. While I acknowledge the constraints, I am not therefore persuaded that site-specific conditions indicate the site is necessarily unsuitable for continued employment use.
13. The supporting text to Policy 5 of the CS and DM Policy 11 of the DMLP notes that many smaller sites provide a valuable resource in supporting local services and the vitality and viability of the local economy, and that B class uses are vital to sustaining the local economy. The Council have also referred to, although not provided a copy of, a revised Employment Land Survey 2019 which is said to highlight a significant reduction in land for both general industry and for warehousing. While the appellant has referred to a preference among potential occupiers for alternative premises including those of larger size and within industrial estates, no substantive evidence of the demand for employment space has been provided to demonstrate that there is no need for

the space on the appeal site, or that its loss would not be detrimental to the local economy.

14. For these reasons, I am not satisfied that the evidence before me adequately demonstrates that the appeal site should no longer be retained in employment use. In this context, I conclude on this main issue that the proposal would result in unacceptable harm to the supply of space for employment uses and would conflict with CS Policy 5 and DM Policy 11 of the DMLP. These policies are broadly consistent with the National Planning Policy Framework (the Framework) which places significant weight on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Living Conditions – Neighbouring Occupiers

15. The proposed dwellings would be arranged in a terrace extending across much of the width of the site as it runs behind Dundalk Road. For the most part, the building would be 2.5-storeys in height, although heights would be reduced at both ends of the terrace. Given the scale of the building and the relationship with the closest parts of the dwellings on Dundalk Road and St Asaph Road, I agree with the Council that the proposal would not cause an unacceptable degree of enclosure or be overbearing to the windows within their rear elevations. I also note the appellant's comments that the building's height has been reduced in comparison to a previous proposal on the site².
16. However, the gardens to the neighbouring dwellings are fairly shallow. The proposal would result in a significant increase in the height and overall bulk and mass of development on the site. I accept that change from the existing situation is not in itself an indication of harm, but while unit G.1 would be of lesser height than surrounding dwellings, it would still introduce 2-storey development set very close to the rear boundary of the gardens to 78 and 80 St Asaph Road. The proposal would also result in 2.5-storey development extending across the width of the gardens to 14, 16 and 18 Dundalk Road in closer proximity than the existing buildings which are of lesser height.
17. In comparison to the existing situation, I find that the increased height of the development, and the layout and spread of built form on the site in closer proximity to the site boundary would notably reduce openness and outlook to the rear of the gardens at 78 and 80 St Asaph Road and 14, 16 and 18 Dundalk Road in particular. Taken together with the fairly shallow depth of these gardens, the development would therefore result in a significant loss of outlook and an enclosing effect and would appear as an overbearing and dominant feature. This would detract from the use and enjoyment of these spaces.
18. I note that the Council have not raised loss of light or overlooking to neighbouring dwellings as a concern. I also note proposed landscaping and replacement wall to the boundaries of the site and agree with the appellant that the appearance and materials of the proposed development would be of higher quality than the existing buildings on the site. However, these factors would not overcome the harm that I have identified would be caused to the living conditions of the occupiers of neighbouring dwellings.

² Application reference DC/18/109341

19. I therefore conclude on this main issue that the proposal would cause unacceptable harm to the living conditions of the occupiers of neighbouring dwellings. Accordingly, it would conflict with LP Policies 7.4 and 7.6, Policy 15 of the CS, and DM Policy 30, DM Policy 32 and DM Policy 33 of the DMLP. These policies together require that development relates positively to its surroundings and does not cause harm to the amenity of adjoining buildings or rear gardens. In this regard, these policies are consistent with the Framework which also requires a high standard of amenity for existing and future users.

Living Conditions – Future Occupiers

20. There is no dispute between the main parties that the proposed dwellings would meet or exceed minimum space standards referred to within LP Policy 3.5 and DM Policy 32 of the DMLP and the Council have not raised concerns in relation to privacy, private amenity space or levels of sunlight and daylight for future occupiers. However, while there can be a relationship with factors which also affect light levels, outlook is a distinct concept.
21. In most cases, first-floor bedrooms would be served by asymmetric oriel windows. I note the appellant refers to successful use of oriel windows elsewhere., although given the very limited details presented I can draw little comparison with the scheme before me. In any event, I am required to determine the appeal proposal on its own merits.
22. As proposed, grilles across the larger panes of the first-floor windows to units G.2 to G.7 would substantially obstruct outlook. The smaller panes facing towards the access to the site and towards the sky would be clear glazed, but the angle and projection of the windows mean that outlook would be largely restricted to a small part of the bedroom closest to the window, limiting the benefit for occupiers.
23. Outlook for the first-floor bedroom of unit G.8 would be less restricted given the differing orientation of this oriel window. However, outlook for the second-floor bedrooms of units G.2 to G.8 would be similarly constrained as a consequence of the 'hit and miss' brick across the fairly small windows to the front of the dwellings, and given that views from additional windows and doors onto roof terraces proposed to units G.2 to G.7 would face towards the side of the adjacent dwelling at very close proximity. Rooflights would provide for some additional light, but given their height and orientation would not afford views or outlook to compensate for the inadequate outlook for the remainder of these habitable rooms.
24. I note that the development would comply with many of the criteria listed within DM Policy 32 and DM Policy 33 of the DMLP and my concerns do not extend to the occupiers of G.1. However, given these factors, outlook for the bedrooms within units G.2 to G.7 and at second floor level in unit G.8 would be severely compromised, resulting in a significant sense of enclosure which would be oppressive and a poor standard of accommodation. Although the affected rooms are bedrooms, I see no reason this would obviate the need to provide a good standard of outlook for users of these rooms.
25. I therefore conclude on this main issue that the proposal would fail to provide acceptable living conditions for future occupiers of the proposed development as a whole. Accordingly, the proposal would conflict with Policy 3.5 of the LP and DM Policy 32 of the DMLP which sets out, amongst other things, that new

development is expected to provide a satisfactory level of outlook and natural lighting and to meet the functional requirements of future residents.

Other Matters

26. The Council do not object to the appellant's proposal that refuse and recycling would be collected from the site by a private contractor, but there is disagreement between the main parties over the appropriate mechanism for securing this arrangement. However, as I am dismissing the appeal for other reasons and it could not alter the overall outcome of the appeal, it is not necessary for me to consider this matter further.
27. I note examples of permissions granted for development of the adjacent site³ and conversion of nearby commercial buildings⁴. While these highlight changes in the local area and that development to the rear of existing dwellings may be found acceptable, given the limited details presented to me regarding these schemes, I can draw little comparison with the proposal before me.

Planning Balance

28. The proposal would make effective use of the previously developed site, and the role that backland and other small sites such as this can play in meeting significant needs for housing is recognised within the adopted and emerging development plan, as well as the Framework. The development would contribute to meeting targets for new housing delivery, providing 8 houses which could accommodate families. The site is also close to public transport links and local facilities and amenities, encouraging travel by modes other than private vehicle. These are facets which are strongly supported by the Framework. Further economic and social benefits associated with construction and occupation of the dwellings would include support for local services and businesses through construction employment and spend, expenditure by future occupiers, and contribution towards the provision of infrastructure in the area. There would also be opportunities to deliver improvements for biodiversity as part of new landscaping on the site. The extent of these benefits is tempered though by the small amount of development, and they carry moderate weight overall in the planning balance.
29. I accept that the existing buildings are not of any particular architectural merit, but given the location of the main part of the site to the rear of adjacent buildings, their visual impact on the street scene is limited. While I have no reason to find that the proposed development would cause harm to the character and appearance of the area, I am not persuaded that any enhancement would be to a degree that would weigh significantly in favour of the proposal. Neither do I have any substantive evidence detailing a history of conflict between the site and surrounding residential uses demonstrating a significant benefit through removal of the existing use.
30. I note the appellant's comments that the proposal would increase natural surveillance on the site and that along with replacement of existing boundary fences it would improve the safety and security of neighbouring gardens. However, I have not been provided with substantive evidence of a particular safety or security concern in this location that would be addressed. Insofar as council tax receipts and the new homes bonus is concerned, I am mindful that

³ Application reference DC/17/102552

⁴ Application reference DC/17/103958

the Planning Practice Guidance advises that it would not be appropriate to make a decision based on the potential for a development to make money for a local authority⁵. That the development would comply with policy requirements including in relation to energy and sustainability measures and fire safety and the absence of identified harm in relation to parking or transport are also neutral considerations in the planning balance.

31. I have found that the proposal would conflict with CS Policies 5 and 15 and DM Policy 11, DM Policy 30, DM Policy 32 and DM Policy 33 of the DMLP as well as LP Policies 3.5, 7.4 and 7.6. The CS, DMLP and LP all pre-date the current version of the Framework. However, the Framework indicates that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework, and weight should be given to them according to their degree of consistency with its policies. The appellant has not alleged that these policies are inconsistent, and from the information before me, I consider that they accord generally with the expectations of the Framework. I therefore do not find that there are grounds to reduce the weight that I afford to the conflict with these policies.
32. I also note that the Framework encourages a positive approach to proposals for alternative uses of land where this would help to meet identified development needs, including use of employment land for homes in areas of high housing demand. However, this is qualified by requirements to not undermine key economic sectors or sites, and that development is also compatible with other policies in the Framework. These include the need to support economic growth and productivity and to provide a high standard of amenity for existing and future users.
33. Drawing these matters together, even taken together, I find that the benefits of the proposal are insufficient to outweigh the harm through the loss of the existing employment use and to the living conditions of neighbouring and future occupiers, the resulting conflict with the development plan as a whole. There are therefore no material considerations to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.

Conclusion

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

J Bowyer

INSPECTOR

⁵ Paragraph: 011 Reference ID: 21b-011-20140612