
Appeal Decision

Site visit made on 18 August 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2020

Appeal Ref: APP/N5660/W/19/3241103

Land to the rear of 72 Lewin Road, London SW16 6JU

- 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 Lewis against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/03876/FUL, dated 15 August 2018, was refused by notice dated 14 May 2019.
 - The development proposed is the demolition of 3no. existing derelict garages and construction of a 3-bedroom single family dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the proposal has been altered from the application form to the decision notice. The original description adequately describes the proposals and I have determined the appeal on that basis.

Main Issues

3. The main issues are:
 - i) whether the proposal would effectively safeguard an existing mature oak tree on the boundary of the site;
 - ii) whether the proposal should provide a contribution towards off site affordable housing provision;
 - iii) the effect of the proposal on the character and appearance of the area; and
 - iv) the effect of the proposal on the living conditions of the occupiers of 70 Lewin Road in relation to potential overlooking and whether the proposal would prejudice future development potential of land at that site.

Reasons

Safeguarding of existing oak tree

4. An early mature Oak Tree is located on the boundary of the appeal site with 70 Lewin Road. It is a well sized category B tree that is visible from Eucalyptus Mews and surrounding gardens, which along with other prominent and mature trees within the rear gardens affords the area a pleasant verdant character which is notable in an otherwise urban setting.

5. It is clearly of local value and held in esteem by third parties. The evidence also indicates that it is highly valued by the appellant and it is stated that the proposal is specifically designed and engineered with the tree in mind. The tree, and its retention, therefore, is an integral part of the proposal.
6. BS 5837¹ states that Construction within the RPA (Root Protection Area) should accord to the principle that the tree and soil structure take priority, noting that the most reliable way to ensure this is to preserve the RPA completely undisturbed. There would be significant intrusion into the RPA as a result of this proposal. Notwithstanding this, I accept that it is possible for construction to take place successfully within the RPA.
7. The evidence indicates that the dwelling has been designed to sit on micro piles so as to avoid conflict with the root system of the tree. However, the details supplied as to how this method would exactly be applied at the site are limited. The appellant's Tree Survey notes that in relation to development within root protection areas, the practical and technical feasibility of the suggested special construction techniques would require a full technical appraisal by a structural engineer prior to a more detailed design being drawn up.
8. In relation to the same matter, BS 5837 states that in order to demonstrate that the proposals are technically feasible, details of design proposals should be included within planning applications. Given that the tree appears to be integral to the scheme, without site specific detailed plans supporting the construction methods proposed, I cannot be sure that the methods suggested are feasible at this site and therefore on the basis of the evidence I cannot be sure that the proposal would be conducive to the retention of the tree. This is an integral issue to the proposal and as such, it would not be appropriate for the matter to be dealt with by condition.
9. The tree would be subject to further works including the lateral and vertical pruning and raising of a number of limbs and branches along with a crown reduction in order to accommodate the dwelling beneath it. These works would place further stress on the tree, when considered in addition to the extensive works proposed within the RPA.
10. I accept that to some degree the trees roots may be restricted where the existing garages incur into the RPA. However significant additional incursions are proposed. Issues surrounding shading and leaf litter are likely to be an expected and acceptable consequence of the close proximity of the dwelling and the tree. I have considered the examples of other developments in close proximity to trees that have been brought to my attention. However, I have not identified the exact same circumstances within those examples as in the proposal before me and I therefore afford them limited weight.
11. I therefore conclude on this issue that the proposal would fail to accord with Policy Q10 of the Lambeth Local Plan (2015) (LLP) which states, amongst other things that development will not be permitted that gives rise to a threat, immediate or long term, to the continued wellbeing of trees of significant amenity value.

¹ BS 5837:2012 BSI Standards Publication Trees in relation to design, demolition and construction – Recommendations

Affordable housing provision

12. Policy H2 of the LLP seeks to ensure the provision of affordable housing to address housing need and requires that sites providing fewer than 10 units make a financial contribution towards the delivery of off-site affordable housing. There is no dispute between the parties that the proposal would be liable for such a contribution. However, the appellant states that the proposal would not be viable should such a contribution be made.
13. The disagreement largely centres around the build cost of the proposal. There is a difference of approximately £200,000 between both parties figures. When considering the proposal against the RICS BCIS² £/m2 study for 'one off' detached housing on a small scheme the Council figure appears low.
14. The appellants build costs figures are much higher, between the median and upper quartiles. However, justification has been provided for the higher figure which is reflective of the situation on the ground. The dwelling is clearly a bespoke property of good design quality which would utilise high quality materials. Its green roof, the need for appropriate and safe demolition of the garages and the suggested complex foundation design in respect of the Oak tree are combined factors relating to this particular site which I consider could reasonably account for the higher construction cost.
15. In this context, I am therefore satisfied that on the basis of the evidence, there would appear limited scope for this proposal to make an affordable housing contribution. I therefore conclude on this issue that the proposal would not conflict with Policy H2 of the LLP which states amongst other things that in relation to affordable housing the council will seek the maximum reasonable amount of affordable housing on schemes.

Character and appearance of area

16. Policy Q14 of the LLP relates to development in gardens and on backland sites. Parts c) and d) respectively relate to development in rear gardens and development on return frontages. Regardless of whether the proposal should be considered under part c) or d) both parts contain the same stipulation that a significant proportion (no less than 70percent) of the existing garden is retained with the host building.
17. However, the evidence indicates that the appeal site is not part of a rear garden. At some point in the past it may have formed part of the garden of 72 Lewin Road. However, as I observed on my site visit, the land is clearly separated by robust fencing and is in such a condition which suggests that it does not appear to have formed garden land in recent times.
18. The proposal is therefore more comfortably considered against part e) of the policy which relates to previously developed backland sites. There is an existing Mews style dwelling within the street and as such the proposal would not be out of keeping with the character of the area. Further, the garages which would be demolished have a somewhat unkempt appearance and in that sense their removal would have some visual benefit.

² Royal Institute of Chartered Surveyors Building Cost Information Service

19. Consequently, within this context, I conclude on this issue that the appeal proposal would be acceptable in terms of its effect on the character and appearance of the area and would therefore accord with Policy Q14 of the LLP.

Living conditions/future development potential

20. The Council are concerned that the proposal, by reason of its habitable window that looks towards the bottom the garden of 70 Lewin Road immediately to the north would prejudice future development within this location.
21. The window which would serve the bedroom would not be set directly on the boundary of the site with the garden of 70 Lewin Road. As a result, outlook from the window would not be restricted to that across the bottom end of the garden of that property, but also out across the vehicular access serving Eucalyptus Mews. Outlook from the window would not therefore solely be 'borrowed'.
22. Furthermore, I am unaware of any proposals to develop this land and in any event, expected separation distances within such an urban backland location are generally less than other circumstances where the environment has a more spacious character.
23. There is nothing to indicate that the bottom end of the garden at 70 Lewin Road is used as a primary area where residents would enjoy the garden. The garden is long and it is more likely that sitting out and other such activities would occur closer to the dwelling. Views towards this garden from the bedroom window would also be further restricted by the presence of robust boundary fencing.
24. Taking this into account, on the basis of the evidence before me, I am unable to conclude that the proposal would harm the living conditions of the occupiers of 70 Lewin Road or prejudice development opportunity at this site.
25. I conclude on this matter therefore, that I cannot identify conflict with Policy Q2 of the LLP which amongst other things states that development will be supported if adequate outlooks are provided avoiding wherever possible any undue sense of enclosure or unacceptable levels of overlooking.

Conclusion

26. The existing garages on the site which have a derelict appearance would be removed and the proposal would offer some visual benefits in that respect. I acknowledge I have not identified harm in relation to matters relating to affordable housing provision, the effect of the building itself on the character and appearance of the area and the living conditions of adjoining occupiers and the effect of the proposal on future development potential.
27. However, there is no assurance that the Oak Tree which forms an integral part of the proposal and which makes a significant positive contribution to the visual amenity of the area could be retained as part of the proposal.
28. For the reason above, having considered all relevant matters, I conclude that the appeal should be dismissed.

T J Burnham INSPECTOR