



Appeal Decision

Site visit made on 18 May 2021

by David Cliff BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/N5660/W/20/3263138

64 Knight's Hill, London, SE27 0JD

- 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 Ian Cadzow (Rosebery Properties Ltd) against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 20/00774/FUL, dated 25 February 2020, was refused by notice dated 13 May 2020.
 - The development proposed is erection of two storey extension and change of use of part of the ground floor of the building from Use Class A1 to create a three storey dwelling house (Use Class C3) and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal, the appellant has submitted revised drawings providing for a recessed ground floor of the proposed development adjacent to Wolfington Road. This change, whilst only affecting the ground floor of the proposal, would alter the appearance of the scheme in the streetscene and the Council has raised concerns regarding the proposed change in its appeal statement. Adopting the Wheatcroft Principles, it is possible that accepting the proposed change might prejudice the interests of other interested parties as they might not be aware of the change and would not have had the opportunity to comment. Therefore, having considered the representations made by both main parties on this matter, I have decided not to accept the proposed change and have considered the proposed development on the basis of the plans that were before the Council when it determined the application¹.
3. A planning obligation, dated 12th March 2021, has been submitted by the appellant seeking to resolve the Council's fifth reason for refusal regarding car parking permits and car club membership. I return to this later my decision.

Main Issues

4. The main issues are (i) whether the proposed development would provide a satisfactory standard of residential living accommodation for future occupiers, (ii) the effect upon the character and appearance of the area, (iii) the effect

¹ The Procedural Guide – Planning Appeals- England advises that if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application.

upon the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and (iv) whether the scheme should provide a financial contribution towards the delivery of affordable housing.

Reasons

Residential accommodation for future occupiers

5. The main ground floor living room window would directly adjoin the pavement of Wolfington Road. With no defensible intervening space, this window would offer direct views from the pavement of the living room. Notwithstanding the submitted daylight and sunlight assessment, whilst curtains or blinds could be used to increase privacy, these would create an oppressive living environment for the occupiers with a limited outlook.
6. Whilst there are examples of houses or flats directly fronting the pavement elsewhere, each case must be considered on its merits and against the relevant planning policies. The presence of similar situations elsewhere does not mean that similar development should be permitted where adverse effects would result. Also, in this case, the window facing the street is a primary window with only other limited fenestration proposed at ground floor level. This heightens its importance in terms of contributing towards the provision of suitable residential accommodation. Furthermore, the pavement appears to be a well-used one providing access to local shops, services and public transport, thereby exacerbating my concerns of unacceptable overlooking.
7. Although the lower floor level means that residents would not be at the same eye level as pedestrians, taking account of the considerable size of the proposed window and its relationship with the room it serves, it is likely that clear views would still be possible of the occupants. Furthermore, whilst a further window is proposed in the west elevation, this would directly face the flank wall of the adjacent property and would be obscure glazed, therefore making a minimal contribution to outlook.
8. Some more limited overlooking of the proposed kitchen/dining room would result from occupants of the existing upper floor residential accommodation using the external staircase and adjacent area for access. Whilst the space outside of the windows appears unlikely to be used as an amenity area, passing residents would be able to see through the windows. However, the adverse effect upon privacy would only be limited given the modest amount of activity likely to occur in terms of passing residents.
9. Although the proposed accommodation would exceed minimum floor space standards, this would not outweigh the harm I have found would result as set out above.
10. Overall and primarily due to the location of the living room window immediately adjacent to the pavement, the proposal would not provide an acceptable standard of residential living accommodation, contrary to the relevant design aims of Policies H5 and Q2 of the Lambeth Local Plan 2015 ('the Local Plan').

Character and appearance

11. The existing building at 64 Knight's Hill is three storeys in height (containing additional accommodation within the roof space) and has a two storey rear projection along with a further flat roofed single storey element which adjoins

the side and rear boundaries. Beyond the rear boundary is the first of a more modestly sized terrace of residential properties which are set back from the Wolfington Road frontage.

12. Although the existing building adjoins the side boundary with Wolfington Road, including the main three storey part on the corner, the existing two storey rear projecting element is set back from this boundary and appears subordinate to the main part of the building. The proposal would effectively create a part two storey/part three storey building adjacent to the rear boundary. The second floor element would rise above both the eaves and ridge level of the existing two storey rear projection. Although this part of the proposal would be set back from the side boundary, it would appear as a jarring and incongruous element within the streetscene. The screening wall adjacent to the front second floor external amenity area would add to the inappropriate massing of the proposal in views from the west approaching down Wolfington Road.
13. Although the site is on the corner of Knight's Hill and Wolfington Road, the design and massing of the proposal, significantly forward of the adjacent terraced properties and with a substantial second floor element including a prominent screening wall, does not represent a satisfactory transition between the existing corner building and the existing Wolfington Road streetscene. The rear element of the existing building on the site already adjoins Wolfington Road, but it is single storey and therefore has a much more limited effect on the streetscene than the proposed development.
14. Whilst the ground level of the site is lower than the adjacent residential property, this is not of such a degree to alleviate the significant harm that would result from the considerable bulk and massing of the proposal.
15. The proposal would therefore be significantly harmful to the character and appearance of the area, contrary to the design aims of Policies Q2, Q5, Q7 and Q11 of the Local Plan.

Neighbouring living conditions

16. The side wall, including the screen to the outdoor amenity area, would be prominent when viewed from the main front windows of 2 Wolfington Road. However, positioned to the side, it would not be so dominant or obtrusive so as to result in unacceptable harm for the occupiers of the flats within this neighbouring property.
17. 62 Knight's Hill has a first floor rear window. The appellant states that this is not a habitable room and the planning statement says that it serves a bathroom. At my site visit it was not possible to ascertain whether or not this is the case. However, there is no conclusive evidence, including from the Council that this window serves a habitable room. On this basis, whilst the proposed development would be close to this window, no unacceptable impacts would result upon the outlook of the respective residential property.
18. The proposal would therefore be unlikely to result in any unacceptable harm to the living conditions of the occupiers of any neighbouring residential properties. It would accord with the relevant amenity aims of Policy Q2 of the Local Plan.

Affordable housing

19. Both main parties refer to appeal decisions which have come to differing conclusions on whether proposals should provide affordable housing contributions with regard to Policy H2 of the Local Plan.
20. Paragraph 63 of the National Planning Policy Framework ('the Framework') states that provision of affordable housing should not be sought for residential developments that are not major developments (other than in designated rural areas). Policy 2 of the current Local Plan is therefore not consistent with the Framework, in this regard which would reduce the weight to be given to any conflict with it, unless there are strong arguments to suggest otherwise.
21. In January 2021 the examining Inspector, following hearings into the emerging Revised Lambeth Local Plan, proposed a Main Modification to delete policy H2 (a) (iv) which sought a financial contribution towards the delivery of off-site affordable housing for sites of up to 10 units. While this Main Modification is the subject of further consultation, it can be given considerable weight bearing in mind the consistency of the modified wording with the Framework. Consequently, this Main Modification reduces the weight to be given to the existing policy in this respect.
22. Although the Council refers to a number of appeal decisions which support its position, these are all for appeals in 2018 and 2019. Whilst post-dating the revised Framework, they pre-date the examining Inspector's recent Main Modifications which were made following his examination of the relevant evidence. I also note the recent appeal decision² for a non-major residential scheme in the Borough that concluded that an affordable housing contribution would not be necessary.
23. Whilst there is clearly a substantial need for the provision of new affordable housing in the Borough as set out in the Council's evidence, the Government has clearly set out its intention through the Framework that provision does not need to be made for non-major residential development. It is not clear that the situation in the Borough, including the contribution that smaller sites can make towards affordable housing provision is particularly different to several other areas where there is also a substantial need for affordable housing. Taking account of the evidence before me and the examining Inspector's recent proposed Main Modification to policy H2 (a) (iv) of the emerging Local Plan, I do not consider the circumstances in this case to be exceptional so as to digress from paragraph 63 of the Framework.
24. Therefore, for the purposes of this appeal and notwithstanding the viability information before me, the harm arising from a failure to accord with Policy H2 of the Local Plan would not be significant due to the inconsistency with the Framework. It has consequently not been necessary to come to a further view on the viability information for this appeal, as it would not alter my overall conclusions in my determination of the appeal.

Other Matters

25. The Council states that as the appellant has now agreed to enter into a legal agreement to secure the development as car parking permit free for the residential unit and provide car club membership, its reason for refusal should

² APP/N5660/W/20/3245148

be removed subject to securing these obligations. A s106 unilateral undertaking has been submitted by the appellant on this basis. Given my overall conclusions on the main issues of the appeal, it has not been necessary to consider the submitted undertaking in any further detail as its acceptability would not have any significant bearing on the appeal decision.

26. As outlined above, the emerging Revised Lambeth Local Plan has been subject to recent proposed Main Modifications by the examining Inspector. Policy H2 of the emerging plan has been considered above with regard to affordable housing. Otherwise, whilst considerable weight can be ascribed to the other relevant emerging policies, they do not yet form part of the development plan and, from the evidence provided, these policies do not alter my conclusions on the other main issues of the appeal.
27. The New London Plan was published on 2 March 2021. Both the Council in its statement of case and the appellant in final comments have had the opportunity to comment on any implications of this newly adopted plan. No matters have been raised which alter my conclusions on the appeal.
28. Despite the inconsistency of Policy H2 of the Local Plan with the Framework, there is no evidence to suggest that the basket of policies which are most important for determining the application are, when considered as a whole, out of date. The tilted balance in paragraph 11 of the Framework is therefore not applicable in this case.

Conclusion

29. Given the significant harm identified above in respect of the unsatisfactory living accommodation for future occupants and the effect upon the character and appearance of the area, the proposal would not accord with the development plan.
30. One new dwelling would be provided making a small but not unimportant contribution towards boosting the supply of housing, as sought by both local and national planning policies. It would make a modest contribution towards the creation of sustainable, inclusive and mixed communities. It would also provide an opportunity for home ownership though its eventual tenure cannot be guaranteed. It would also seek to make more efficient use of previously developed land in an accessible location, promoting development above existing buildings, albeit I find the design of this scheme to be inappropriate for the site and its context. Some modest economic benefits would also be likely to arise including from the construction phase, New Homes Bonus and other payments. These benefits, however, when considered individually or cumulatively, would be outweighed by the significant harm I have found would result.
31. The proposed development would conflict with the development plan considered as a whole. I do not consider that there are material considerations of such weight to suggest that the decision should be taken otherwise than in accordance with the development plan. Therefore, having had regard to all other matters, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR