



Appeal Decision

Site Visit made on 27 October 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09/12/2021

Appeal Ref: APP/C5690/W/21/3270881

Land to rear of 237-265 Bromley Road, London SE6 2RA

- 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 Eden Park Property Ltd against the decision of London Borough of Lewisham.
 - The application Ref DC/20/118947, dated 23 October 2020, was refused by notice dated 22 December 2020.
 - The development proposed is construction of 7 residential units (3 x one bed and 4 x two bed), together with ground floor front extensions, first floor extension and second floor extension, elevational alterations, access, cycle and refuse storage, and boundary treatment.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have removed the words 'retrospective application' from the description of the proposal as they are not a description of development.
3. In the period since the appeal was submitted the Government has published the revised National Planning Policy Framework (the Framework) July 2021 which is being brought into immediate effect for the purposes of decision-making. The parties have been given an opportunity to provide comments as to whether this has relevance to the appeal and I have taken any comments received into account as part of my assessment.
4. The London Plan (March 2021) (LP 2021) has also been published since the Council made its decision. The main parties have referred to this document within their statement of cases. Policies D3 and D4 of the LP 2021 replace the respective policies of the Intend to Publish version and the policies in the 2016 London Plan, both of which are referred to in the Council's decision.

Main Issues

5. The main issues are:
 - (i) The effect of the proposal on the character and appearance of the area including the setting of the Grade II Listed buildings of the Passfields Estate;
 - (ii) Whether the proposal would provide suitable living conditions for future occupiers with particular regard to outlook and privacy;

- (iii) The effect of the proposal on the living conditions of occupiers of No 4 Bellingham Road and the Passfields Estate with particular regard to privacy; and
- (iv) Whether safe and suitable access arrangements would be provided for future occupants of the development.

Reasons

Character and appearance

6. The appeal site relates to a narrow parcel of land containing a two-storey flat roofed rectangular building. The site is situated to the rear of a three-storey commercial parade at Nos 237 – 265 Bromley Road which also incorporates residential uses to its upper floors. No 4 Bellingham Road sits to the west of the site and relates to a flat roofed three-storey apartment building which was under construction at the time of my site visit. The flat roofed three-storey and five-storey Grade II Listed Buildings of the Passfields Estate and their shared landscaped grounds neighbour the remainder of the appeal site boundaries. Due to its simple design and its position amongst these neighbouring developments, set away from the nearest street frontages, the appeal building currently has a relatively understated presence within the public realm.
7. The listed buildings of the Passfields Estate are evidently part of a comprehensive development with each block incorporating similar architecture in term of their flat roofed profiles and their elevational treatment and facing materials. There is a strong symmetry to the design and layout of the three-storey blocks of flats which are located side-on to Bromley Road. The five-storey block, which is set further back from Bromley Road, is recognised as being an inventive example of box frame construction and being one of the earliest developments to include maisonettes. All these factors contribute to the significance of the Passfields Estate's listed buildings. Given their position within the street and the relative position of surrounding developments, the listed buildings form part of a high-density urban setting of mixed scale and varied architecture.
8. The stepped roofline on the proposal would provide an appropriate transition between the scale of surrounding built form. The complementary palette of facing materials and architectural features including decorative projecting brickwork, repeated angled first floor projections and biodiverse roof would combine to give the building a more contemporary appearance. There would be some variation to the size of the second-floor windows serving units 5 to 7. Even so, the shape and positioning of these windows would provide a suitable degree of consistency to the architecture. Together with the position of the building set away from the nearest road frontages and substantially screened from Bromley Road by the neighbouring frontage development, these factors would ensure that the proposal would successfully assimilate into the varied built context of its immediate surroundings.
9. Overall and taking all the above matters into consideration, the development would add visual interest to the building without appearing dominant within the street scene. For the same reasons it would also preserve the setting of the listed buildings.

10. I conclude the development would positively respond to the character and appearance of the area. In that regard it would comply with the high quality design, local character and conservation requirements of Core Strategy Policy 15 (High quality design for Lewisham) of the Lewisham Core Strategy (2011) (CS); DM Policies 30 (Urban design and local character), 31 (Alterations and extensions to existing buildings including residential extensions), 32 (Housing design, layout and space standards) and 33 (Infill, backland, back garden and amenity area development) of the Lewisham Development Management Local Plan (2014) (DMLP), Policy D4 (Delivering good design) of the LP 2021 and the Framework.
11. The Council's decision also refers to the Alterations and Extensions Supplementary Planning Document (April 2019). I have not been provided with a copy of this document. In any case, whether or not the proposal accords with the guidance in the SPD would not override my conclusion that the development would comply with the adopted policies of the development plan in respect of this main issue.

Living conditions for future occupiers of the proposed development

12. The northerly facing windows serving the proposed first floor bedrooms would provide long views across the building frontage. The oriel windows serving the second-floor bedroom windows in units 5, 6 and 7 would give narrower, two-way views across the building's front facade. The limited depth of the oriel windows and the spacing between them would limit the potential for views to be obtained into neighbouring living spaces within the development. Furthermore, the adjoining sections of privacy glass on all these windows would assist in providing further light into these rooms. Consequently, whilst the window widths and orientations would not provide optimum levels of outlook, I am satisfied that the overall living environment within these bedrooms would not be overly oppressive and would therefore be within the margins of acceptability.
13. The Council suggests that the bedroom of 'Unit 1' would be overlooked from the neighbouring properties and balconies on the Passfields Estate. However, given the intervening distance and oblique angles between the two, I am satisfied that satisfactory levels of privacy would be provided for future occupiers of this unit.
14. I have given regard to the distance and line of sight from the rear windows serving Nos 237 – 265 Bromley Road to the outdoor amenity areas serving each unit. In combination with the limited depth of the outdoor amenity areas and the 'living screen fencing' proposed to their boundary, I am satisfied that these factors would ensure that there would be no significant overlooking impacts on these external areas. The 'living screen fencing' would also adequately mitigate the potential for views into these areas from pedestrians using the shared access area. The size and relative angle of the upper floor neighbouring windows within the development would further ensure that adequate levels of privacy would be provided for users of the individual private outdoor spaces.
15. Notwithstanding the above, the ground floor of the building would provide the 'kitchen/living/dining space' for each of the respective units. The windows serving this floor would consist of glazed bi-fold doors to the front elevation and a high-level window to the rear elevation. However, in each case the open

plan part of the ground floor would narrow towards the bi-fold doors due to the positioning of a toilet and hallway towards the front of each unit. The 'living screen fencing' would also sit in close proximity to the bi-fold windows. These factors would combine to severely compromise the quality of outlook from the main habitable living areas of each unit.

16. I conclude that the proposal would not provide acceptable means of outlook from the ground floor living spaces. In that particular regard the development would conflict with the requirements to respond to local context and to provide satisfactory levels of outlook for future residents in Core Policy 15 (High quality design for Lewisham) of the CS and DM Policy 32 (Housing design, layout and space standards) of the DMLP. The proposal would also conflict with Paragraph 130 of the Framework which amongst other things requires that developments function well and create places with a high standard of amenity for future users.
17. The Council's decision notice also refers to conflict with the Housing SPG of the London Plan (2016). I have not been provided with a copy of this document. Even so, this does not diminish the conflict I have identified with the development plan under this main issue.

Living conditions for occupiers of No 4 Bellingham Road and the Passfields Estate

18. The Council's concerns in respect of this main issue specifically relate to potential overlooking impacts from the first-floor corner window serving proposed 'Unit 1'.
19. The window would overlook the shared landscaped grounds within the Passfields Estate. However, this neighbouring land is publicly accessible. Furthermore, given the distance and oblique angle between the corner window and the windows and balconies on the nearest residential block on the Passfields Estate there would be no material harm to the privacy of its occupiers.
20. No 4 Bellingham Road is a three-storey apartment building which was under construction at the time of my site visit. The evidence before me indicates that the nearest window on the side elevation of this neighbouring building would serve a staircase. Secondary windows would also be provided to this neighbouring side elevation, although the oblique angle and distance to these windows would be sufficient to prevent any harmful overlooking impact into these rooms. The narrow strip of land within the curtilage of this neighbouring building, which sits close to the boundary with the appeal site would be unlikely to be used as a main area for sitting out. Consequently, I am satisfied that there would be no material harm to the privacy of occupiers of No 4.
21. I conclude that the proposal would not be harmful to the living conditions of occupiers of No 4 Bellingham Road and the Passfields Estate with particular regard to privacy. In this specific regard the proposal would comply with the requirements to respond to local context and to provide satisfactory levels of privacy for neighbouring residents in Core Policy 15 (High Quality Design for Lewisham) of the CS, DM Policy 30 (Urban Design and Local Character), DM Policy 31 (Alterations and Extensions to Existing Buildings including Residential Extensions), DM Policy 32 (Housing design, layout and space standards) and DM Policy 33 (Development on infill sites, backland sites, back gardens and amenity areas) of the DMLP and Paragraph 130 of the Framework.

Safe and suitable access

22. Access to the appeal site is taken from Bellingham Road. I observed on site that the access point is particularly narrow where it meets the boundary with Bellingham Road. Between this access point and the appeal building there are four car ports associated with an MOT Centre. Given the narrow depth of the site, manoeuvring space for vehicles is already constrained.
23. The survey data provided within the appellant's Transport Note (March 2021) indicates that on the day the survey was undertaken one vehicle per hour accessed the site between the hours of 8am and 6pm and that these were all cars. One pedestrian per hour was also recorded between these hours. However, the data provided appears to relate to a single day during February 2021. No information has been provided as to what day of the week the survey was undertaken, whether the activity recorded was commercial or residential in nature or whether the vehicles carried out single or two-way movements. This somewhat diminishes the weight I am able to attach to this data.
24. Even if I were to accept the data provided as being the worst-case scenario, there would still be the potential that, on occasion, pedestrians associated with the residential use and vehicles may be using the access drive at the same time. I acknowledge that the proposal includes automatic rising bollards to segregate vehicles and pedestrians. However, even accounting for the tracking plans provided, it is clear that these bollards would reduce the already limited space available for vehicular access and turning. At times when the bollards would be retracted to facilitate the movement of larger vehicles, this would increase the risk of conflict between vehicles and pedestrians at the access point or further along the access drive. Therefore, I am not persuaded that the proposals would provide a functional, safe or suitable access for residents of the development or other users.
25. The appellant suggests that the proposal would result in a net reduction in vehicular movements when compared with the historical garage use or permitted warehouse use of the site and that there have been no recorded incidents in recent times. However, the historical or permitted uses are not comparable to the proposed mixed-use of the driveway including use as a primary residential access point. Furthermore, from the evidence before me residential occupation of the site has itself only occurred in recent times. Therefore, these matters do not persuade me that the proposal would be acceptable in the longer term.
26. Whether or not the width of the proposed defensible footway at 900mm would comply with the requirements of the 'Department for Transport (DfT) 'Inclusive Mobility' document', I concur with the Council that this width would not allow for users of the pedestrian route travelling in opposing directions to comfortably pass each other, particularly when in use by wheelchair or pushchair users. The appellant's Transport note also concedes that the width of the access would be narrower than the 1,000mm 'typically allowed' for cyclists wheeling their bike. These matters further add to my concerns in respect of the functionality of the proposed access arrangements.
27. I noted on my site visit that a gate has been provided within the boundary fence onto the Passfields Estate. However, there is nothing before me to suggest that the appellant has legal right of way to and from the site through

this neighbouring land. Therefore, I am not in a position to consider whether this would provide a suitable alternative means of pedestrian access.

28. Furthermore, the proposed automatic retractable bollards would need to be privately maintained. The use of a planning condition would not be appropriate in respect of establishing long-term responsibilities for the future maintenance and operation of the bollards and funding thereof. It is unclear whether these responsibilities would fall to the appellants, a management company or future occupiers of the residential building. Such arrangements could only be secured with precision and enforceability as part of a planning obligation. Given no such obligation is before me, this further weighs against the proposal.
29. I conclude, it has not been demonstrated that the proposal would provide safe and suitable access arrangements for future occupiers of the development or, in the event that it would, that the long-term future maintenance provision of the proposed access arrangements would be secured. In that regard it would conflict with the requirements for developments to be served by functional, convenient and safe access in Policy D3 (Optimising site capacity through the design-led approach) of the LP 2021, Core Policy 14 (Sustainable movement and transport) of the CS and DM Policies 30 (Urban Design and Local Character), 32 (Housing Design, Layout and Space Standards), and 33 (Development on infill sites, backland sites, back gardens and amenity areas) of the DMLP. The proposal would therefore be contrary to the requirements in the Framework for developments to provide safe and suitable access for all users and for developments to function well and add to the overall quality of the area, not just for the short term but for the lifetime of the development.

Conclusion

30. The proposal would not provide acceptable means of outlook for future occupiers from the ground floor living spaces. Furthermore, it has not been demonstrated that safe and suitable access arrangements would be provided for future occupiers of the development or that the long-term responsibilities for the maintenance and operation of a defensible pedestrian route could reasonably be secured. For these reasons the development would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

M Russell

INSPECTOR