
Appeal Decisions

Site visit made on 19 October 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal A - Ref: APP/A5840/W/21/3282061

45 Esmeralda Road, London SE1 5RJ

- 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 R Benedetti against the decision of the Council of the London Borough of Southwark.
 - The application Ref 21/AP/2225, dated 25 June 2021, was refused by notice dated 19 August 2021.
 - The development proposed is described as: 'demolition of existing end of terrace dwelling and construction of 3 dwellings comprising 2x 3-bed, 1x studio with associated private amenity space, cycle and refuse stores'.
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Appeal B - Ref: APP/A5840/W/21/3273502

45 Esmeralda Road, London SE1 5RJ

- 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 R Benedetti against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/3015, dated 15 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is described as: 'demolition of existing end of terrace dwelling and construction of 3 dwellings comprising 2x 3-bed, 1x studio with associated private amenity space, cycle and refuse stores'.
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Decisions

1. Appeal A – The appeal is allowed, and planning permission is granted for demolition of existing end of terrace dwelling and construction of 3 dwellings comprising 2x 3-bed, 1x studio with associated private amenity space, cycle and refuse stores at 45 Esmeralda Road, London SE1 5RJ in accordance with the terms of the application, Ref 21/AP/2225, dated 25 June 2021, and the plans with it, subject to the conditions in the attached schedule.
2. Appeal B – The appeal is dismissed.

Procedural Matters

3. These decisions relate to 2no. separate applications for the same site. However, to reduce repetition and for the avoidance of doubt, I have dealt with the 2no. appeals together.
4. In respect of Appeal B, the Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of the appeals. The main parties have had an opportunity to comment on the significance of the changes.

5. Whilst not cited on the Council's decision notice, the appellant has drawn my attention to Policy D6 of the London Plan 2021 (LonP) in his submission. The Council has had the opportunity to comment on this policy, therefore, I will not prejudice any party in taking LonP Policy D6 into consideration in reaching my decision on both appeals.
6. No suggested conditions have been provided in respect of Appeal B. Additionally, there are subtle differences in the consultee responses and the production of relevant development plan policies. Nonetheless, I am satisfied that overall, the evidence in Appeals A and B facilitate a comprehensive approach. As the schemes are linked, similar in nature and for the same site, I do not envisage any reason why the consultee responses, policies and suggested conditions cannot be referenced in the determination of both Appeals A and B. Therefore, for clarity and precision, I have dealt with both appeals on this basis.
7. Whilst not cited as a reason for refusal on the Council's decision notices, there is a dispute between the main parties in respect of vehicular parking and the respective suggested condition proposed by the Council. Therefore, I have included this matter as a main issue on both appeals.

Main Issues

8. The main issues are the effect of the proposed development on:
 - i. the living conditions of neighbouring occupiers, with particular regard to the studio unit on both Appeals A and B;
 - ii. the living conditions of future occupiers, with particular regard to private amenity space on both Appeals A and B, and outlook in respect of Appeal B;
 - iii. the character and appearance of the appeal site and surrounding area in respect of Appeal B, with particular regard to the proposed gable end; and,
 - iv. whether the development in Appeals A and B would be acceptable in terms of its transport and highways impacts, with particular regard to vehicular parking.

Reasons

Living conditions of neighbouring occupiers

9. The element of the proposed development that comprises the Council's concern is the studio that would be located to the rear of the site. This feature is proposed on both schemes and in similar locations of the site for both Appeal A and Appeal B, albeit the approach to the design differs.
10. In both instances the proposed studio would occupy similar footprints, in proximity to the shared boundaries with neighbouring occupiers, particularly 43 Esmeralda Road, which adjoins the site. The approach to design in Appeal A seeks to incorporate a pitched roof, which results in a lower, albeit marginally height than what is proposed through Appeal B through its flat roof design. Additionally, the pitched roof will also remove a notable amount of the bulk and massing away from the shared boundaries, as it will slope away, unlike the scheme proposed under Appeal B.

Conclusions

11. Appeal A - For the reasons given above, I therefore conclude that the proposed development in Appeal A would not significantly harm the living conditions of neighbouring occupiers, particularly those present at No 43 through an unacceptable sense of enclosure. This would accord with the amenity aims of Saved Policy 3.2 of the Southwark Plan (SP), 2015 Technical Update to the Residential Design Standards 2011 (the SPD) and the requirements of the Framework.
12. Appeal B - For the reasons given above, I therefore conclude that the proposed development in Appeal B would significantly harm the living conditions of neighbouring occupiers, particularly those present at No 43 through an unacceptable sense of enclosure. This would fail to accord with the amenity aims of Saved SP Policy 3.2, the SPD and the requirements of the Framework.

Living conditions of future occupiers

13. Both schemes as proposed would fail to achieve the required level of private amenity space set out in the SPD. Additionally, in respect of Appeal B, concerns have been raised surrounding outlook. There is little explanation surrounding the concerns raised regarding outlook in Appeal B or why this is no longer an issue on Appeal A. The submitted drawings indicate that the outside areas directly in front of the windows facing both Monnow Road and the rear access road are now included within the site edged red on Appeal A. The external areas to the proposed studio on Appeal B were not included within the site edged red, which is a misgiving on the scheme and could raise issues regarding the outlook of future residents within the proposed studio.
14. It is common ground that both schemes would not provide the required amount of private amenity space required for each development. The appellant has drawn my attention to a recent appeal¹ that has been undertaken in the Council area, which I consider represents a material consideration on this main issue. LonP Policy D6 requires a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings and an extra 1m² for each additional occupant and it must achieve a minimum depth and width of 1.5m, which the 3no. proposed units would all satisfy.
15. Whilst I accept that the proposed development in both Appeals A and B would not be fully compliant with the guidance contained in the SPD, the scheme would provide private amenity space in excess of the requirements stipulated in LonP Policy D6. Despite technical breaches of the SPD, the site specific circumstances of the host dwelling means that the scheme would still accord with the overall amenity aims of the SPD.

Conclusions

16. Appeal A - For the reasons given above, I therefore conclude that the proposed development in Appeal A would provide satisfactory living conditions for future occupiers. This would accord with the amenity aims of LonP Policy D6; Saved SP Policies 3.2, 4.2; the SPD and the requirements of the Framework.
17. Appeal B - For the reasons given above, whilst I find no harm in respect of the amount of private amenity space proposed on Appeal B, I conclude that the

¹ APP/A5840/W/20/3261317

proposed development in Appeals B would not provide satisfactory living conditions for future occupiers through poor outlook. This would fail to accord with the amenity aims of LonP Policy D6; Saved SP Policies 3.2, 4.2; the SPD and the requirements of the Framework.

Character and appearance

18. This main issue is only in respect of Appeal B as the design of the proposed development in Appeal A is accepted by the Council. Furthermore, the concerns raised on Appeal B, relate primarily to the proposed gable end and no other element of the scheme.
19. The existing gable end at the host property is relatively unassuming within the street scene, due to it being fairly plain in appearance, with no openings or significant detailing. This is a common feature in the immediate locality on surrounding neighbouring properties. However, whilst a gable end is proposed on the proposed development, the fenestration details are visually at odds with the character and appearance of the surrounding area. The introduction of oriel styled windows at first and second floor, particularly through their size and location would create a strident feature, which would be further emphasised by the high-level windows that would be sited beneath and the overhanging roof profile and soffit arrangement.
20. For the reasons given above, I therefore conclude that the proposed development in Appeal B would significantly harm the character and appearance of the appeal site and surrounding area. This would fail to accord with the design, character and appearance aims of Strategic Policy 12 of the Council's Core Strategy 2011 (CS); Saved SP Policies 3.12, 3.13 and the requirements of the Framework.

Vehicular parking

21. In its suggested conditions the Council have put forward a condition surrounding a restriction on future occupiers of the proposed development obtaining a parking permit. Notwithstanding, the comments from the Transport section, as a consultee, regarding car parking/vehicular parking at the site, including the submission of a parking stress survey, there is little information provided by both main parties on this matter.
22. I accept that the Council has provided little justification in its submission to support the imposition of its related suggested condition, which is a misgiving on the appeal schemes. However, little information has been provided by the appellant to demonstrate that such a condition is not required either. What remains is that the site is located within a Control Parking Zone (CPZ). This is matter which cannot be ignored.
23. In this instance, the appellant has confirmed that No 45 already has access to a single parking permit and in the absence of evidence to the contrary, I consider this to be highly likely. Thus, as there is little doubt that the site is located within a CPZ and acknowledging the limitations of the evidence on this matter, I consider that an amended condition, restricting 2no. properties of the proposed development from obtaining parking permits is necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The imposition of such a suitably worded

planning condition would allow otherwise unacceptable development to be made acceptable.

24. For the reasons given above, and in conjunction with a suitably worded related condition, I conclude that the proposed development in Appeals A and B when occupied, would not have a significantly detrimental impact on highways, with particular regard to vehicular parking in the CPZ. Consequently, the proposed development in Appeals A and B accord with the highways and transport aims of LonP Policy T6; CS Policy 2; Saved SP Policy 5.2 and the requirements of the Framework.

Other Matters

25. In addition to those matters considered above, neighbouring occupiers have raised concerns, regarding, daylight/natural light, loss of privacy, access, noise, traffic, lack of affordable/social housing, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal on both Appeals A and B, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
26. Additionally, I have had regard to the concerns of neighbouring occupiers, regarding potential damage to property, the Party Wall Act and land purchased from the Council. However, these are not matters for my consideration in these appeals, and these issues are a private matter between the relevant parties and not within my jurisdiction.

Conditions for Appeal A

27. The Council has suggested conditions which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the PPG.
28. A condition relating to the time limit for implementation is required. For reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans is necessary.
29. A condition for the submission of facing materials is necessary in the interests of the character and appearance of the surrounding area. A condition requiring the storage of waste in accordance with the details provided and retained / maintained is reasonable and necessary, to ensure that adequate, accessible waste storage areas are provided in the interests of the occupants living conditions and character and appearance. It is also reasonable and necessary to ensure that a secure cycle store is on site, to provide residents with a genuine alternative and sustainable method of transport.
30. A pre-commencement condition for details of the submission of the proposed development from eligibility to exclude 2no. properties as approved from the list of those eligible for residents' parking permits is both reasonable and necessary as the site is located within a CPZ where little evidence has been provided to demonstrate that there is little or no parking stress to accommodate the additional 2no dwellings and their likely associated vehicles. I have noted the comments from the appellant with regard to the

pre-commencement nature of this condition, but I consider that such matters require addressing before any part of the development is implemented, which is sufficient justification for its imposition.

31. Despite a lack of clarity in the Officer Report and not being detailed in the Council's suggested conditions there is an apparent requirement from a number of consultee responses for pre-commencement conditions for details to be first submitted to and approved by the Council in relation to the street tree in proximity of the site and a Construction Method Statement, given the surrounding CPZ, amongst other things. The imposition of such conditions are reasonable and necessary in the interest of character and appearance, the CPZ and living conditions, respectively.

Conclusion

32. For the reasons given above, I conclude that Appeal A should be allowed, and Appeal B should be dismissed.

W Johnson

INSPECTOR

Schedule of Conditions for Appeal A

- 1) The development hereby permitted shall be begun before the end of three years from the date of this permission.
- 2) The development hereby approved shall be fully implemented in accordance with the approved plan, which is referenced as follows: 365.PL.100 Plant (Rev: REV P1); 365.PL.101 Plans - Proposed (Rev: REV P1); 365.PL.102 Plans - Proposed (Rev: REV P1); 365.PL.103 Plans - Proposed (Rev: REV P1); 365.PL.104 Plans - Proposed (Rev: REV P1); 365.PL.105 Plans - Proposed (Rev: REV P1); 365.PL.106 Plans - Proposed (Rev: REV P1); 365.PL.200 Plans - Proposed (Rev: REV P1); 365.PL.201 Plans - Proposed (Rev: REV P1); 365.PL.202 Plans - Proposed (Rev: REV P1); 365.PL.300 Plans - Proposed (Rev: REV P1); 365.PL.301 Plans - Proposed (Rev: REV P1); 365.PL.302 Plans - Proposed (Rev: REV P1); 365.PL.303 Plans - Proposed (Rev: REV P1) and 365.PL.500 Plans - Proposed (Rev: REV P1).
- 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) Before the first occupation of the building hereby permitted, the refuse storage arrangements shall be provided as detailed on the drawings hereby approved and shall be made available for use by the occupiers of the dwellings/premises. The facilities provided shall thereafter be retained and shall not be used or the space used for any other purpose.
- 5) Before the first occupation of the building/extension, the cycle storage facilities as shown on the drawings hereby approved shall be provided and made available to the users of the development.

- 6) Prior to commencement of the development hereby permitted the local planning authority shall be provided with the full postal address of each proposed property to allow the Council to exclude two of the proposed three properties as approved, from the list of those eligible for residents' parking permits.
- 7) No site clearance, preparatory work or development shall take place until a scheme for the protection of the adjacent street tree (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained street tree shall be carried out as approved.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials;
 - ii. storage of plant and materials used in constructing the development;
 - iii. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - iv. wheel washing facilities;
 - v. measures to control the emission of dust and dirt during construction;
 - vi. a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii. delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

****End of schedule****