



Appeal Decision

Site visit made on 19th May 2022

by Megan Thomas Q.C. Barrister-at-Law

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 16th June 2022

Appeal Ref: APP/E5330/W/21/3285005

27A Herbert Road, Woolwich SE18 3TB

- 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 Mrs Achurch against the decision of the Royal Borough Council of Greenwich.
 - The application Ref.20/1126/F, dated 30 March 2020, was refused by notice dated 20 July 2021.
 - The development proposed is the "erection of two additional storeys to the existing single storey building comprising 1 x 2 bedroom apartment."
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for an award of costs was made by Mrs Achurch against the Royal Borough Council of Greenwich. This application is the subject of a separate decision.

Main Issue

3. The main issue in the appeal is the effect of the proposal on the living conditions of the occupants of no.29 Herbert Road in respect of outlook and daylight and sunlight.

Reasons

4. The appeal site is a single storey flat-roofed building located on the eastern side of Herbert Road. The building is in use as a hot food takeaway and is situated within the shopping frontage of the Herbert Road Local Centre. The takeaway has a kitchen extractor flue extending up the northern elevation of the adjacent building to the south, which is 29 Herbert Road, to second floor level.
5. To the south and east of the appeal site is 29 Herbert Road which comprises commercial uses and 9 residential flats (also addressed as 29A Herbert Road). This development obtained planning permission on 7 July 2017 and is a three-storey development which includes a communal roof top terrace. Flats relevant

to this appeal are at first and second floor level and also have private terraces or balconies. I shall refer to the development as the '29 Herbert Road Development'.

6. A three-storey building including residential flats has been approved at nos 25-27 Herbert Road adjoining the appeal site to the north. This planning permission is dated 11 December 2020. On my site visit there was no obvious sign of this permission being under construction but nevertheless it has a life of 3 years from its decision date and the impacts of the completed scheme are a material consideration that I take into account in determining this appeal. I refer to this development as the '25-27 Herbert Road Development'.
7. The proposal is for the erection of two additional storeys to the existing single storey building and alterations to the ground floor front façade and shopfront to facilitate the creation of one self-contained flat on the upper floors together with the construction of a new high-level commercial extractor flue.
8. The main issue in the appeal arises primarily from the relationship that the rear (east) of the proposed development would have with 4 flats in the 29 Herbert Road Development which have windows and/or a terrace or a balcony potentially affected by the proposal. The appellant has produced a Daylight and Sunlight Report as part of the appeal and that annotates windows and terraces/gardens with numbers. I refer to those numbers in this appeal decision.
9. The submitted Daylight & Sunlight Report applies the Building Research Establishment Guidelines and indicates that the proposal would impact the light reaching window 4 which is a first floor flat window facing in a broadly north north east direction to the south east of the proposed building. This flat is known as 1.5 and is a one bedroom/two person flat. Window 4 comprises patio doors leading out to a terrace annotated garden 1 and serves the sole bedroom. There are no other windows in this bedroom. The terrace is defined in part by one wall of the development rising up to roof level. It also has a small balcony above it serving the second floor flat above it (the balcony is annotated garden 5).
10. In terms of light, the proposal would reduce the amount of vertical sky component received by this window by half and BRE Guidelines indicate that would be noticeable. It is in my view a significant reduction of daylight to the room. I have borne in mind that daylight reaching this window is already constrained by the balcony above and the existing defining wall of the 29 Herbert Road Development, and I have borne in mind that it serves a bedroom which by its nature is typically used most in hours of darkness. Nevertheless, the VSC would reduce to about 3.6% which falls significantly below BRE Guidance of 27% and, even though the Guidance should be applied with some flexibility, I find that there would be an unacceptable loss of daylight for the occupants of that flat.
11. Concern is raised about sunlight to window 5 which is a first floor window (patio doors) in flat 1.1 which is a 3 bedroom/5 person flat with a terrace. The direct sunlight target stated in BRE Guidance is breached in respect of window 5. However, window 5 serves the lounge/kitchen/dining room and its main window is window 6 which also goes out to the terrace and it has two further east-facing windows. In these circumstances, I do not consider that the proposed development whether alone or with the building at 25-27 Herbert Road in place,

would result in a loss of sunlight to flat 1.1 sufficient to underpin a reason for refusal of planning permission in this case.

12. Garden 3 is the terrace to second floor flat 2.1, a 2 bedroom/4 person flat. The terrace is accessed from the lounge/kitchen/dining area. The sunlight availability to garden 3 will be reduced to less than 0.8 times its former value after the proposed development takes place. However, this is because the existing sunlight availability is already extremely low (i.e. only 0.7 sqm achieves 2 hours sunlight on 21 March). Since the level of overshadowing is small in absolute area terms, I take the view that the proposed development will not have an unduly harmful impact and the terrace would continue to provide a valuable amenity area for the occupants of the flat, notwithstanding the proposal or the proposal in conjunction with the 25-27 Herbert Road Development.
13. Turning to the consideration of outlook for occupants in the 29 Herbert Road Development, there is both the outlook from inside the flats to consider and the outlook from the terraces/balcony. In respect of inside flat 1.5 looking out of window 4 and being present on the terrace (garden 4), the proximity, height and depth of the proposal's rear elevation would cause it to be seriously overbearing for an occupant of flat 1.5. This would be the case whether or not the building at 25-27 Herbert Road was constructed. For similar reasons, there would be an unacceptable sense of enclosure when using the outside space (garden 2/terrace outside window 5) for the occupants of flat 1.1 on the first floor. Enjoyment of the terrace outside window 6 would be particularly diminished by the cumulative impact of the proposal and the 25-27 Herbert Road Development.
14. On the second floor, flat 1.5 is the one bedroom/two person flat with a balcony from the bedroom referred to above. Again, given the height, proximity and length of the proposal's rear elevation, I consider that when inside the bedroom or on the balcony there would be a serious loss of outlook for the occupants of that flat. This would be the case whether the 25-27 Herbert Road Development was constructed or not. I have borne in mind that the proposal would be situated outside an angle of 45 degrees in plan to the centre of windows 4 and 9 but nevertheless an occupier would habitually have an awareness of the proximity of the proposal when inside those rooms and it would be in plain close sight from the terrace and balcony.
15. I have noted that the semi-internal terrace serving flat 1.4 on the first floor does not give a particularly sympathetic outlook and I acknowledge that particularly efficient use of land is an important design objective for development on urban sites. Nevertheless, these factors do not alter my conclusion on the loss of outlook caused by the proposal before me. The appellant suggests that in respect of gardens 1 and 5, any potential sense of enclosure as a result of the proposal can be discounted because they do not currently provide good amenity and so breach policy and consequently the requirement for private open space is satisfied by the communal roof terrace. I do not give anything other than minimal weight to that argument because each garden provides some private amenity space and the proposal adds to the sense of enclosure of each area to an unacceptable extent in my view.

- 16.I conclude that the proposal would unacceptably harm the living conditions of occupants of four flats in the 29 Herbert Road Development owing to loss of daylight and/or outlook. It would be contrary to policy DH(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (Adopted July 2014).
- 17.The appellant has suggested that the planning permission for the 29 Herbert Road Development is unlawful because it approved the removal of an existing ground floor lightwell over which 27A Herbert Road had a right to light and ventilation. It is stated that the owners of 27A are “currently seeking legal remedy”, however there is no indication that the planning permission has been quashed in the High Court or revoked by the Council. In the circumstances therefore I must treat it as a lawful planning permission. I have noted that the planning application case officer at one point in time supported the application and I have noted the criticisms made by the appellant of the procedural handling of the planning application, however, those factors do not affect my assessment of the harm caused by the proposal in this case.

Planning Balance and Conclusion

- 18.There would be benefits to the housing stock and to the economy from the construction of the proposal and its subsequent use and occupation, but these do not carry sufficient weight to outweigh the serious harm I have identified above to the living conditions of occupants of flats in the 29 Herbert Road Development. Having taken into account all representations made, for the reasons given above, I dismiss the appeal.

Megan Thomas Q.C.

INSPECTOR