
Appeal Decision

Hearing (Virtual) held on 26 May 2022

Site visit made on 27 May 2022

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref: APP/E5330/W/21/3280911

148-156 Plumstead High Street, Plumstead SE18 1JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Danish Hanif, Greenside Services Limited against the decision of Royal Borough of Greenwich.
 - The application Ref: 19/1920/F, dated 29 September 2020, was refused by notice dated 18 February 2021.
 - The development proposed is redevelopment of the rear side of the site to form 16 new-built residential units, together with the alteration of 3 of the 6 existing maisonette units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address and description in the banner heading above is taken from the appeal form and decision notice, in the interests of precision.
3. A new version of the London Plan (LP) was published in March 2021 and a new version of the National Planning Policy Framework (the Framework) was published in July 2021. The parties have had opportunity to comment on the engagement of these new policy documents in relation to the appeal, and so will not be disadvantaged by my consideration of them.
4. Since the Council's decision, a draft agreement under Section 106 of the Town and Country Planning Act 1990, has been submitted. This covers affordable housing, transport and travel, construction, energy and sustainability, public realm improvement, employment training and waste management.

Main Issues

5. While not cited in the reasons for refusal, the matter of whether the proposed development would result in an unneighbourly sense of enclosure is a concern that has been raised by some local residents. Given this, and the relevance of the matter judging by what I saw during my site visit, I include it within the first main issue.
6. The main issues in this case are:

- The effect of the proposed development on the living conditions of neighbouring residents, with particular regard to privacy and whether the proposal would result in an unneighbourly sense of enclosure; and
- The effect of the proposed development on the living conditions of future occupants, with particular regard to pedestrian safety and vehicle fumes.

Reasons

Living conditions of neighbouring residents

7. Policy H(c) of the Royal Greenwich Local Plan Core Strategy with Detailed Policies (CS) sets out criteria for residential development on backland and infill sites to meet, in order to help ensure an acceptable form of development within Royal Greenwich's tight urban fabric¹. Among these, criterion ii requires that there is no unreasonable loss of privacy from overlooking adjacent houses (and/or their) back gardens. Also, CS Policy DH(b) of the CS requires that development does not cause an unacceptable loss of amenity to adjacent occupiers by, among other things, reducing privacy or resulting in an unneighbourly sense of enclosure.
8. The supporting text for Privacy Standard 28 of the Greater London Authority's Housing Supplementary Planning Guidance sets out that, among other things, privacy is an important consideration in the design of private open space, and designers should consider the position and aspect of gardens and balconies. Standard 28's supporting text also indicates that a minimum distance of 18 to 21m between habitable rooms of facing homes (as opposed to between habitable rooms and balconies/terraces, for example) can be a useful yardstick for visual privacy. The supporting text also allows for the possibility of a less rigid approach to separation distances, in the interests of variety of urban spaces and housing types, and maximising housing density in London.
9. The above together articulates the importance of assessing privacy effects of development, through an approach that has regard to site-specific and contextual factors, and both the yardstick of a 18 to 21m separation distance between habitable rooms, and the possibility of some flexibility of separation distances between habitable rooms, balconies and gardens.
10. Within this context, several existing maisonettes towards the northern end of the appeal site would be separated from a proposed third floor apartment's northern facade by around 21m, and from a proposed second floor apartment's northern elevation by around 17.5m. The distance and in some cases obliqueness of these views would limit the potential for overlooking. Also, I anticipate that future occupants' own need for privacy and consequent unlikelihood of their lingering at the proposed taller facing window, together with possible privacy measures such as blinds at the taller window, would limit the likelihood of overlooking from it. Proposed louvre windows at the maisonette flats would further contribute to their occupants' privacy. Given the above, the proposed development would not result in unacceptable loss of privacy for occupants of the maisonettes.
11. A first floor bedroom window in the front elevation of a neighbouring dwelling at No 2 Strandfield Close would be separated from a third floor balcony on the eastern elevation of the proposed block by a distance of around 17m. The

¹ As set out in supporting text paragraph 4.1.45 of the CS.

obliqueness and distance of view from this one balcony towards the neighbouring property would limit potential for overlooking. Also, there is a relative diversity of urban fabric in the vicinity of the eastern elevation of the proposed block, in the form of the public footpath corridor between the properties and various building profiles. I anticipate that this would help draw the attention of occupants away from the facing properties described.

12. The visual diversity of the urban fabric context to the east of the proposal, including hedging, would together with obliqueness and approximately 21m or greater distance of view, also moderate the effect of several other balconies at the proposed block's eastern elevation, on the privacy of a window of a neighbouring dwelling at No 158 Plumstead High Street. Together, these factors would moderate the effect of the proposed windows and balcony sufficiently to avoid an unacceptable loss of privacy to occupants of No 2 Strandfield Close and No 158 Plumstead High Street.
13. Proposed hallway space with several clear glazed windows at first, second and third floor levels would face towards neighbouring dwelling No 25 Tewson Road. That said, this space would comprise corridors to several flats, and not habitable rooms. This would limit the intensity of usage of this space by future occupants of the proposed block, and looking out from these hallway windows. Also, there would be a separation gap of around 17m between the windows and this neighbouring property. Together, these factors would moderate looking out from these proposed hallway corridor windows and the visual impact of the building mass sufficiently to avoid unacceptable overlooking and unneighbourly enclosure of No 25 Tewson Road.
14. The proposed development would intensify the building mass and density on the site, and I do not underestimate the strength of residents' concerns about privacy and outlook. Nevertheless, for the reasons set out above, I find that the proposal would not harm the living conditions of residents of the above neighbouring dwellings, in respect of privacy and enclosure.
15. However, the proposed development would result in views from first and second floor balconies at the southernmost gable end of the proposed block into the rear garden of neighbouring property No 29 Tewson Road, at a distance of around 16m. While these views would be oblique, as private outdoor amenity space the balconies are likely invite regular use by the flats' occupants, including looking out from the balconies. The balconies' noticeably elevated position in the proposed four storey apartment block, in relation to the garden of neighbouring two storey terraced dwelling, would amplify No 29 Tewson Road's occupants' sense of being overlooked from balconies above.
16. Also, the proximity of the proposed block to No 29's northern gable end and boundary, would in places be as close as around 9m. Together with the difference in scale and style between the properties, given the proposed block's strikingly larger mass and modern style, this would result in an uncomfortable sense of enclosure, viewed from several viewpoints at No 29 Tewson Road. This uncomfortable sense of enclosure would also further draw the attention of occupants of this neighbouring property to the presence of the proposed block, with its overlooking balconies.
17. As such, the southernmost gable end of the southern wing of the approximately L-shaped proposed block would be too close for comfort of the occupants of No 29 Tewson Road. It would entail an unacceptable loss of

garden privacy, and an overbearing building presence resulting in an unneighbourly sense of enclosure, to the detriment of the living conditions of neighbouring occupants of this property.

18. A residential scheme with planning permission² elsewhere in the borough, with separation distances between properties of 13m or more is cited by the appellant. This scheme differs from the current appeal case in that it is on a different site in another locality with its own housing density, typology and character³, and harm to privacy was not a reason for refusal of the planning application. This limits the other scheme's equivalence to the current appeal proposal. Furthermore, the appeal scheme has its own setting and circumstances, and I shall assess it on its own merits.
19. As established earlier, the living conditions of some neighbouring properties would not be harmed in terms of privacy and enclosure. However, I conclude that the proposed development would harm the living conditions of neighbouring residents of No 29 Tewson Road, through unreasonable loss of privacy of their garden, and an unneighbourly sense of enclosure. In not satisfying criterion ii of CS Policy H(c) in relation to privacy, the proposal would fail to meet the full set of criteria required by this policy, and thus would conflict with it. Furthermore, the proposal would conflict with CS Policy DH(b) through an unacceptable loss of amenity to adjacent occupiers by reducing privacy and resulting in an unneighbourly sense of enclosure.
20. The identified failure to safeguard the living conditions of some neighbouring residents would undermine the fundamental objective of achieving high quality design of development, appropriate to its context. As such, the proposal would conflict with Policy DH1 of the CS, Policy D6 of the LP and Paragraphs 126 and 130 of the Framework, which together seek to ensure that development achieves well designed buildings and places that add to the quality of the area.

Living conditions of future occupants

21. Future occupants would need to take care in relation to vehicle movements on the appeal site, particularly in the following pedestrian access scenarios. Those heading for the new on-site eastern boundary stretch of footpath would access the site via the rear vehicle gate on a short stretch of access roadway off Tewson Road that would also be used by some commercial and residents' vehicles accessing the site. Also, those accessing the bin and cycle stores would cross surfacing shared with these vehicles, including some cars reversing on the western part of the rear yard. Care taken would need to include appropriate supervision of younger children in relation to vehicles on and accessing the site.
22. That said, the appellant's transport consultants' assessment indicates that there would be a typical daily maximum of around seven commercial vehicle trips to the site, with associated vehicular movements onto, within and out of site. Also, residents' on-site carparking provision would be limited to six spaces. The vehicle gates at the site's rear entrance, together with the evident presence of residential facilities and occupation on the site are likely to have a calming effect on vehicle speeds and movements, accessing and on the appeal site. The proposed footpath provision on the site, together with a dedicated

² The Heights in Charlton, Planning Application Ref: 20/1967/F.

³ As described in paragraph 8.1 of the Council's Appeal Statement.

- pedestrian gate for some residents would provide some new pedestrian refuge space. Furthermore, an entrance surveillance system and servicing and delivery plan could be secured by planning condition to further help safeguard pedestrian safety.
23. As such, vehicle movements on and accessing the site are likely to be relatively calm and of modest volume, in road safety terms. Given the above combination of moderating factors, future risk to pedestrian safety at the site is likely to be limited.
24. While the proposed rear layout is somewhat tight, the Planning Officer's Report⁴ assessed the proposal as rationalising access to the rear and found no pedestrian safety grounds to refuse the scheme. For the reasons set out above, I agree on these points, and find that the proposal would not harm the pedestrian safety of future occupants.
25. However, habitable room windows of three single aspect, one-bedroom flats on the eastern elevation of the proposed block would face over the delivery/loading bay area on the site. These flats' rooms with windows would provide their sole bedroom and combined kitchen/living and dining room spaces. Given this, the ability to open windows in these rooms, for ventilation and the comfort of ingress of external air, would be an important element for future occupants of these flats to enjoy sufficiently comfortable living conditions.
26. While the anticipated frequency of commercial vehicle trips to this site would be relatively modest in highway safety terms, the presence of these commercial vehicles would have some regularity across the week, and be close to the block's eastern elevation which contains these single aspect, one bedroom flats. Noise from the commercial vehicles and associated loading and unloading activity is likely further draw the attention of occupants of these flats to the presence of these vehicles.
27. Within this context, the relatively close presence of commercial vehicles at the delivery/loading bay area is likely to result in the following discomfort for future occupants these single aspects flats. Occupants would experience the discomfort of either a) vehicle fumes associated with comings and goings of the commercial vehicles, when occupants' windows are open, b) feeling they have to keep windows closed to keep vehicle fumes out or c) possibly a combination of both over time, subject to air, moisture and temperature conditions inside and outside.
28. Therefore, while the proposal would not harm the pedestrian safety of future occupants, I conclude that it would harm living conditions through discomfort of future occupants of the three single aspect flats, arising from vehicle fumes. As such, the proposed development would conflict with Policy D3 of the LP which seeks to ensure that development provides comfortable living conditions for residents.
29. Furthermore, this identified failure to safeguard the living conditions of some future occupants would undermine the fundamental objective of achieving high quality design of development. As such, the proposal would conflict with Policy DH1 of the CS, Policy D6 of the LP and Paragraphs 126 and 130 of the

⁴ To Planning Board, 16 February 2021.

Framework, which together seek to ensure that development achieves well designed buildings that add to the overall quality of the area.

30. As Policies Policy E(a), H(c) and DH(b) of the CS do not explicitly focus on the type of discomfort for future occupants of the development identified under this main issue, conflict with these policies does not occur in this respect.

Other Matters

31. I appreciate that the Planning Officer's Report to Planning Committee found insufficient harm to recommend refusal, but this does not alter my reasoning. In any case, Members reached a different conclusion.
32. Local residents have expressed other concerns regarding parking, light, noise, operation of the commercial units, refuse facilities, outdoor amenity space and noise, which go beyond the reasons for refusal. As I am dismissing the appeal on other grounds, it is not necessary for me to consider these matters further in this instance.

Planning Balance and Conclusion

33. It is undisputed that the Council cannot demonstrate a five year supply of deliverable housing sites, with a shortfall of around 1.85 years. Therefore, policies which are most important for determining the application are to be considered out of date. The tilted balance, as set out within paragraph 11 of the Framework, thus applies.
34. The proposal would contribute to local housing supply in the form of 16 new dwellings. Associated socio-economic benefit during and after construction would include additional custom for the area's shops and facilities, contributing to the vitality of the District Centre. It would make more use of a brownfield site which has access to a range of transport alternatives to private car use. The proposal would rationalise pedestrian and vehicle movement on the site. Also, the enhanced site security of the gated entry system, and additional natural surveillance of footway to the east of the site would benefit community safety.
35. Furthermore, subject to finalisation of the Section 106 agreement, the development would contribute to off-site affordable housing provision. Also, cycle storage and training contribution would promote cycling, with associated health and environmental benefits. And the scheme would contribute to public realm improvements in the area.
36. Together the proposal's benefits carry significant weight. Also, I do not underestimate the complexity of trying to achieve the right design balance in this urban setting. Nevertheless, I have identified significant harm in relation to the living conditions of some neighbouring residents and future occupants, and the undermining of the objective of achieving high quality design of development.
37. Given my findings in relation to living conditions of neighbours and future occupants, I attach considerable weight to the proposal's conflict with the identified combination of development plan policies.
38. I appreciate that the Framework sets out a presumption in favour of sustainable development but even where the tilted balance is engaged, the

benefits of additional housing do not necessarily outweigh all other concerns. Moreover, case law has found that even where policies can be considered out of date, this does not mean that they carry no weight. The balancing exercise remains a matter of planning judgement.

39. Given the totality of harm identified above, I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefit, when assessed against the policies in the Framework taken as a whole.
40. The proposal would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed.

William Cooper

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Aaron Zimmerman
Sundeep Bhavra

Centro Planning Consultancy
GAA Design Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Harris

Royal Borough of Greenwich Council

INTERESTED PARTIES:

Adel Khaireh

Ward Councillor

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Draft Planning Obligation by Deed of Agreement, undated, received 5 July 2022.