



# Appeal Decision

Site visit made on 20 September 2022

**by A Caines BSc (Hons) MSc TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> October 2022**

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**Appeal Ref: APP/H5960/W/21/3285234**

**48 Longley Road, London SW17 9LL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Ms Shaahin Ismail Malida against the Council of the London Borough of Wandsworth.
  - The application Ref 2121/3230, is dated 30 June 2021.
  - The development proposed is three 2-bed houses and one 3-bed disabled access house together with associated fences, paths, cycle stands and waste bins.
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## Decision

1. The appeal is dismissed and planning permission for “three 2-bed houses and one 3-bed disabled access house together with associated fences, paths, cycle stands and waste bins” is refused.

## Preliminary Matters

2. The appeal was made against the failure of the Council to give notice of their decision on the application within the statutory period. Subsequent to the making of the appeal the Council issued a refusal notice. Whilst jurisdiction over the application decision was taken away when the appeal was lodged, I have treated it as the decision the Council would have made if it had been empowered to do so, and I have drawn from this to inform the main issues in this appeal.
3. The appellant refers to the policies of the Wandsworth Local Plan Publication (Regulation 19) Version January 2022 (Draft LP). However, whilst the Draft LP has been submitted for examination, the hearings have yet to take place. As I do not know whether the relevant Draft LP policies will be adopted in their current form, or at all, they carry very limited weight in this appeal. Accordingly, I have considered the appeal against the development plan currently in force.

## Main Issues

4. The main issues are:
  - The effect of the development on the character and appearance of the surrounding area, including a nearby locally listed building;
  - The effect of the development on the living conditions of neighbouring residents, with regards to privacy, dominance, and shadowing;

- Whether the development would provide its occupants with suitable living conditions, with particular regard to minimum internal space standards; and
- Whether the appeal site is a suitable location for the development having regard to flood risk.

## Reasons

### *Character and appearance*

5. The appeal site lies at the rear of 48 Longley Road with some overlap into the rear garden of 46 Longley Road which is a locally listed building. The area in the vicinity of the appeal site is characterised by mostly traditional properties with generous rear gardens which continue down to the River Graveney and the railway line at the rear. Despite some nearby examples of 'backland' development, such as the dwellings at Nos 42, 50a and 52a, there is a prevailing sense of spaciousness at the rear which contributes positively and distinctively to the character and appearance of the area.
6. The scheme is for a row of 4 two-storey terraced dwellings. I note that this represents a reduced scale of development from a previously dismissed appeal scheme<sup>1</sup> at the site. Nonetheless, the development would still have a substantial footprint and size. It would run the length of the appeal site and encroach beyond the boundary line into the garden of No 46. There would be further subdivision of the open space by the clutter of boundary fencing between the individual rear gardens of each proposed dwelling.
7. The result would be a development at odds with the prevailing pattern of development and a harmful erosion of the spacious character of the site and surrounding area. The scale, proximity, and encroachment of development into the garden of No 46 would also detract from the open outlook and setting of this non-designated heritage asset, thereby causing some harm to its significance. The other 'backland' developments referred to are in the minority and were permitted before the current development plan and National Planning Policy Framework (the Framework). They do not serve to justify further erosion of the spacious character of the area and the conflict with the current development plan and Framework.
8. I therefore conclude that the development would significantly harm the character and appearance of the area, and cause harm to the significance of the locally listed building. Thus, it conflicts with Policy DMH4a of the Wandsworth Development Management Policies Document 2016 (DMP) which guards against new residential development on existing residential gardens, and the Housing Supplementary Planning Document 2016 (SPD) which demonstrates that housing targets can be met without relying on garden land and underlines the significant contribution that gardens make to the character and appearance of the built-up urban borough. There is also conflict with DMP Policies DMS1 and DMS2 where they require development to contribute positively to local spatial character and sustain the significance of a heritage asset. Furthermore, the proposal would be contrary to the Framework with regards to achieving well designed places, as well as conserving and enhancing the historic environment.

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<sup>1</sup> APP/H5960/W/19/3226535

9. The Council has also cited conflict with Policies PL1 and IS3 of the Wandsworth Local Plan Core Strategy 2016, but I have not been provided with copies of these policies so they have not been determinative in my assessment.

*Effect on neighbouring residents*

10. The proposal, including front door access, would face directly onto the garden of No 46, whilst also enclosing the majority of this garden on one side. Although it is indicated that the garden would become a communal space, it is the only garden space available to the occupiers of No 46. The extent of overlooking, comings and goings, and an undue sense of enclosure that would result from the development, would significantly diminish the privacy and enjoyment of this outdoor space for the residents at No 46. The garden is also likely to experience a significant degree of overshadowing during the first half of the day, further impacting on the quality and enjoyment of this space.
11. No 48 has a two-storey rear extension with the ground floor flat and outdoor amenity space set at a basement level in comparison to the appeal site above. Due to its height, proximity, and the variance in levels, the two-storey gable end of the proposal would be an overbearing and visually dominant feature in views from the ground floor flat and within the amenity space.
12. The proposal's rear elevations have been designed with canted windows in an attempt to minimise the potential for overlooking of the gardens and side windows of No 50a. The Council did not raise any objection in this regard, noting that any views from the upper floor windows towards the garden would be angled. However, I observed that even angled views would lead to a demonstrable reduction in the level of privacy within the garden of 50a.
13. For all these reasons, I conclude that the development would significantly harm the living conditions of neighbouring residents at 46, 48 and 50a Longley Road through loss of privacy, overshadowing and overdominance. It therefore conflicts with DMP Policy DMS1c which requires that development does not harm the amenity of occupiers of nearby properties through overshadowing, unsatisfactory privacy and by being overbearing, amongst other things. For the same reasons it conflicts with the SPD and paragraph 130f) of the Framework.

*Occupant's living conditions*

14. DMP Policy DMH6 requires residential proposals to meet the minimum space standards set out in the national technical housing standards.
15. The Council advises that although the proposed dwellings would meet the total floorspace standards, the single bedrooms would be below the minimum requirement of 7.5m<sup>2</sup>. However, this is not what is indicated on the Proposed Plan and Schedule of Accommodation, which shows all single bedrooms at 7.5m<sup>2</sup>, thereby meeting the minimum requirement.
16. The Council also refers to the absence of cross sections to demonstrate a ceiling height of 2.3m across at least 75% of Gross Internal Area. However, having regard to the nature of the development, and the absence of any roofspace accommodation being proposed, I see no reason to doubt that appropriate ceiling heights could be achieved, and clarification could have been sought had I been minded to allow the appeal.

17. I am therefore satisfied that the living conditions of the occupants of the development would not be unduly compromised by a lack of space, having regard to the minimum space standards. As such, there is no conflict with DMP Policy DMH6.

*Flood risk*

18. The appeal site lies adjacent to the River Graveney, which is designated as a Main River. While it is clear that the existing property is in Flood Zone 1, the southern part of the appeal site near the river falls partly within Flood Zone 2/3 as determined by the Environment Agency published flood risk mapping. This was also made clear in the previous appeal so it should be of no surprise to the appellant.
19. DMP Policy DMS5 explains that the Sequential Test method set out in national planning guidance will be used. The aim is to steer new development to Flood Zone 1, these being areas with a low probability of flooding. Only where there are no reasonably available sites in Flood Zone 1 should sites with a higher risk of flooding then be considered. If the Sequential Test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding the Exception Test may have to be applied.
20. The appellant refers to a Flood Risk Assessment carried out at No 46. However, that proposal involved the conversion of the existing property, which is within Flood Zone 1, so it has little bearing on the appeal scheme. There is no site-specific flood risk assessment before me to demonstrate that the appeal site would be sequentially preferable. Consequently, it has not been demonstrated that the requirements of the Sequential Test have been passed. The Sequential Test must be passed before the Exception Test can be applied. It is therefore not necessary for me to go on to consider whether the Exception Test is met, including flood resilience considerations in relation to the structural stability of the riverbank and any need to maintain a buffer zone.
21. Even if I were to accept the appellants contention that the site has not flooded previously, there is no substantive evidence provided to demonstrate that it could not flood in the future, or increase the risk of flooding elsewhere. Moreover, this would not negate the need to firstly pass the Sequential and Exception Tests set out in national and local planning policy to establish whether the proposal is acceptable in principle on flood risk grounds.
22. Therefore, it has not been demonstrated that the appeal site is a suitable location for the proposed development having regard to the risk of flooding. The proposal conflicts with the requirements of DMP Policy DMS5 and paragraphs 159, 162 and 167 of the Framework, which seek to steer new development to areas with the lowest probability of flooding and require applications to be supported by site-specific flood risk assessment.

**Other Matters**

23. The area behind No 48 is currently in a state of disuse with small amounts of building materials and other detritus littered about. It is referred to by the appellant as a builders yard, but there is no evidence that it has a planning status as such. Furthermore, Section 6 of the appellant's Statement says that *"no change is proposed to the existing use of the site. The site will continue to have residential use but will provide additional housing"*. Any benefits of tidying

the site would be negated by the harm arising from the proposed development, and in any event, could likely be achieved by alternative means such as through appropriate maintenance and management. I therefore attach minimal weight to this matter.

24. The development would not make any provision for car parking and there is no mechanism before me, such as a legal agreement, to ensure that the development would be genuinely car free, as has been claimed by the appellant. I observed that Longley Road was subject to parking restrictions and that on-street parking places were limited. In the absence of an appropriate mechanism to prevent future occupants from applying for parking permits, the development could potentially lead to parking stress. It is also unclear how suitable household waste disposal arrangements could be achieved given the distance between the development and proposed bin storage area, and having regard to the nature of the route between. However, as I am dismissing the appeal in any event, I will not explore these matters any further in my Decision as they will not alter the appeal outcome.

### **Conclusion**

25. The proposal would deliver an increase of four new dwellings, which would add to the supply and choice of housing in the area. It would also be in an accessible location, would make efficient use of land, and could be built out relatively quickly. Furthermore, I have found that the minimum internal space standards would be met. Nevertheless, these matters do not outweigh the significant harm I have found and conflicts with numerous development plan policies relating to character and appearance, heritage assets, neighbours' living conditions, and flood risk.
26. As such, the proposal would not accord with the development plan taken as a whole and there are no considerations, including the Framework, to justify making a decision otherwise than in accordance with the development plan. Accordingly, the appeal should be dismissed.

*A Caines*

INSPECTOR