



Appeal Decision

Site visit made on 18 October 2022

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03/11/2022

Appeal Ref: APP/C5690/W/21/3287681

358 Old Mill Site, London SE6 3AB

- 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 Joseph Mann and Shenol Osman against the decision of the Council for the London Borough of Lewisham.
 - The application Ref DC/21/122777, dated 16 July 2021, was refused by notice dated 11 October 2021.
 - The development proposed is described as "Construction of three apartment dwellings, including shared gardens and private amenity space. Development consisting of 2 x two bed dwellings and one 1 x one bed dwelling."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are the effects of the proposed development on i) the living conditions of neighbouring occupiers at Nos 3-5 Southend Lane and No 7 Southend Lane having particular regard to matters of outlook; ii) the living conditions for future occupiers, with particular reference to internal space; and iii) flood risk.

Reasons

3. The appeal site is located on the south side of Bromley Road, a busy throughfare close to the junction with Southend Lane. The surrounding area has a mixed use feel with commercial premises and residential properties located in close proximity to one another. There are several large multi storey flatted developments on Bromley Road, while Southend Lane has a lower residential density, consisting of mainly semi-detached and terrace dwellinghouses. The appeal site consists of an irregular shaped overgrown vacant plot, behind 3-5 Southend Lane and can be accessed via either Bromley Road or Southend Lane.

Living conditions of neighbours

4. The upper floor flats at No 3-5 Southend Lane are located in close proximity to the flank elevation of the appeal proposal with the rear windows overlooking the site. From the information before me, there is no definitive evidence in respect to the use of these rooms in this property, and whether or not these windows serve habitable rooms. As such, I have adopted a precautionary approach.

5. It is unlikely the rear rooms at Nos 3-5 would receive additional light or outlook from a separate room or window, given that they are not dual aspect units as there are no upper floor windows in the flank elevations. It is acknowledged that the proposal has been set back and angled away from these properties, however any increase in height and mass in this location would have a significant impact on the outlook, with particular reference to No 5 by enclosing their views. Furthermore, despite this set back at first floor, the proposal provides an enclosed terrace serving Flat 3, with an opaque screen along this flank elevation at 1.6m in height. Despite being lightweight in appearance, the screen would provide a further structure adding to the enclosure, and obscuring views to the detriment of existing occupiers given its proximity to their rear rooms.
6. The two-storey rear elevation of the proposal sits back in the site, adjoining the boundary and rear garden with 7 Southend Lane, providing a substantial increase in height and mass along the boundary. There is an existing boundary fence which is high and already provides a sense of enclosure, however the significant increase in height of the proposal would provide an oppressive presence, looming over the fence, resulting in a poor outlook. It is acknowledged that the proposal has been angled away from this property, to reduce views to oblique ones only. Nevertheless, due to its bulk and closeness to the rear elevation and garden at No 7, the presence of the first floor in close proximity to this property would be oppressive and overpowering, and these occupants would feel hemmed in due to a heightened sense of enclosure, harming their living conditions.
7. For the reasons above, the proposal would unacceptably harm the living conditions of the adjoining occupiers at Nos 3-5 Southend Lane and 7 Southend Lane, due to the sense of enclosure and the impact on outlook. Therefore, the proposal would conflict with the objectives of Policy 15 of the Lewisham Local Development Framework: Core Strategy Development Plan Document, adopted June 2011 (LCS) and Policy 32 of the Lewisham Local Development Framework: Development Management Local Plan, adopted November 2014 (LDMLP) which seek, among other things, for developments to respect local context and to protect the amenity of neighbours from unneighbourly development. It would also be contrary to Paragraph 130(f) of the National Planning Policy Framework 2021 (the Framework) which, amongst other things, also seeks a good standard of amenity for all existing occupants of buildings.

Living conditions for future occupiers

8. The Government's nationally described space standard, March 2015 (NDSS) contains the minimum internal space requirements for new dwellings. These requirements are also applied in a local context within Policy D6 and Table 3.1 of the London Plan, March 2021 (LP) and LDMLP Policy 32. Under these requirements dwellings with double bedrooms should achieve a floor area of at least 11.5m², whilst single bedrooms must provide at least 7.5m². From the evidence before me, all the bedrooms in Flats 2 and 3 would be below these standards, with bedroom 1 of Flat 1 also short of the 11.5m² required for a double room. Given that these figures are minimum standards which are intended to act as a benchmark for high design quality, the shortfall in floorspace is not appropriate, and the proposal conflicts with the NDSS, the LP and the LDMLP in this regard.

9. The appellant considers that a condition could be applied to any permission prior to the development being occupied, requiring an additional plan that shows the NDSS can be met in terms of bedroom sizes. The appellant draws my attention to another Inspector's decision¹, who in allowing the appeal, was satisfied a condition could be attached ensuring compliance with the optional M4(2) Building Regulations prior to occupation. These requirements relate to separate regulations and thus are not directly comparable. Nevertheless, even if an alternative internal solution could be achieved, in the absence of plans to highlight its compliance with the NDSS requirements, I am not satisfied that a satisfactory living environment for future occupiers would be achieved. The lack of certainty in this context leads me to conclude that it would be inappropriate for this issue to be dealt with by condition.
10. Consequently, the living conditions of future occupiers would be unsuitable due to inadequate internal space. As such, because the minimum internal qualities of housing would not be provided, the proposal would not comply with LP Policy D6. Furthermore, the development would not respond to LDMLP Policy 32 which amongst other things, seeks to achieve high quality housing, along with Paragraph 130 of the Framework, which amongst other things, seeks high quality design and a good standard of amenity for all existing and future occupants of buildings.

Flooding

11. From the evidence before me, it would appear that neither the Flood Risk Assessment (FRA) nor the Sustainable Drainage System (SuDS) strategy satisfies all the matters identified by the Council, with specific regard to a Flood Evacuation Plan, blockage scenarios for the existing culvert, and flood compensation for surface water displaced by the development. As such I must adopt a precautionary approach and given that insufficient information has been presented, I find that it has not been demonstrated that the development could proceed without harm from flooding. As a result, I am not satisfied that the scheme would comply with Paragraph 167 of the Framework and Policy 10 of the LCS, which seek to reduce the risk from flooding and ensure that flood risk is not increased elsewhere.

Other Matters

12. The appellant draws my attention to the principle of the development being acceptable and that the development optimises the potential of the site providing an effective and efficient use. Nevertheless, neither of these matters are in dispute, and it is the impacts of the proposed development on the living conditions of existing and potential occupants that results in the above conclusions on the main issues.
13. I have had regard to the above and other benefits of the appeal scheme, in that the proposal would provide three additional units with a contemporary design, in an accessible transport location and thus reducing the reliance on the need for a car. As such, I am in no doubt as to the positive value of some of these matters and I recognise that the appeal proposal may well accord with various other development plan policies. However, neither the benefits of the scheme nor these other matters provide clear and convincing justification to outweigh the harm identified above.

¹ Appeal Ref: APP/E5330/W/21/3268311

14. I understand that the appellant sought pre-application advice from the Council and attempted to address concerns raised on previous refused schemes². However, whether or not the scheme is an improvement on those proposals, the Council ultimately refused the application for the reasons stated. I must determine the appeal in this context and on the basis of the proposal and evidence before me now.
15. An interested party made reference to a land dispute and subsequent tribunal in respect to the ownership of a shared boundary, and whether this would have an effect on the red line boundary at the appeal site. Given that I have dismissed the case on other grounds, it has not been necessary for me to consider this matter any further in this case.
16. Consequently, none of these other matters outweigh or overcome my conclusion on the main issue or negate the development's overall conflict with the Framework and development plan as a whole.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR

² London Borough of Lewisham Planning Refs: DC/20/116527 & DC/20/118979