



Appeal Decision

Site visit made on 18 October 2022

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/A5270/W/22/3301128

Land to the rear of 31 South Ealing Road, Ealing W5 4QT

- 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 Michael Alfandari on behalf of Cloisters Limited against the decision of London Borough of Ealing.
 - The application Ref 220723FUL, dated 16 February 2022, was refused by notice dated 29 April 2022.
 - The development proposed is described as 'Erection of 2 x semi-detached 3-bedroom dwellinghouses (Class C3) arranged over ground and first floors together with associated landscaping and related facilities'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has submitted a Unilateral Undertaking ('UU') in order to restrict the ability of future residents to apply for parking permits. The UU is signed and dated, and I have taken it into account in reaching my decision.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on living conditions of occupiers of the ground and first floor flats at 31 South Ealing Road (No 31), having particular regard to privacy; and
 - whether the proposal would provide satisfactory living conditions for future occupiers, having particular regard to privacy.

Reasons

Character and appearance

4. The appeal site lies to the rear of 31 South Ealing Road (No 31) between it and the residential properties to the rear and includes a car park. There is a mix of commercial and residential development in the immediate area. The built form on this side of the road includes semi-detached and terraced dwellings of a range of styles, leading to larger scale flatted development such as that at No 31 and the adjoining plot and the commercial site beyond.

5. The buildings are generally positioned towards the front of the plots with long gardens behind, or in the case of the appeal site, a communal garden and car park, to the rear. The appeal site, including the space to the rear of the building, contributes to the varied form of the area. It reflects others in the vicinity of the site, with the setting of the buildings in the main in generous plots, which is an important component in the general spacious and open character of the area. Even with the presence of a number of small scale ancillary outbuildings within rear gardens, this arrangement contributes positively to a pleasant sense of openness to the rear of the buildings.
6. The proposed pair of semi-detached dwellings would be subordinate in scale to the adjoining flatted developments and would more closely reflect the scale of the neighbouring 2 storey residential properties. Given the broad range of residential development in the area, the design of the proposal would not be at odds with the appearance of the surrounding residential development.
7. The extent of the building footprint in relation to the plot allows it to be set in from the side boundary with 29D South Ealing Road and the neighbouring properties to the rear. However, separation between it and the rear elevation of No 31 is limited. It is also positioned in close proximity to the side boundary of the site adjoining 33 South Ealing Road. The introduction of a building of the scale proposed would encompass a significant proportion of the current open space, albeit used for the parking of cars. As a result of the siting of the building and limited space around it, the proposed development would fail to reflect the more spacious plots in the vicinity. Whilst the proposed development would not be readily visible in the street scene of South Ealing Road, it would give rise to a loss of spaciousness that would be apparent in views from the rear of the surrounding residential properties.
8. I note that the footprint of the proposed building is smaller than that of the building considered in appeal decision APP/A5270/W/20/3253950 (the previous appeal decision). The proposed scale and layout would also more closely reflect the neighbouring residential development which is of a domestic scale. However, as a result of the proposed siting and form, the proposal would nevertheless erode the current sense of openness to the rear of the No 31. As such, my findings with regards to the proposal are consistent with the previous decision.
9. The proposal would therefore be an anomalous feature that would fail to reflect the prevailing layout of the surrounding development on this side of South Ealing Road, which encompasses both larger scale buildings and smaller scale residential development set in larger plots which extend to the rear of the properties. This would in turn diminish the sense of spaciousness and open character to the rear of these properties.
10. For the above reasons, the appeal scheme would be harmful to the character and appearance of the area. As such it would conflict with Policy D3 of the London Plan 2021 (the LP), which among other things requires development to enhance the local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation and scale and to respond to the existing character of a place. The proposal would also fail to accord with Policy 7.4 of the Ealing Development Management Development Plan Document 2013 (the DPD) which requires new development to

complement local character having regard to matters including street sequence, building pattern and scale.

11. The Council's refusal reason also refers to Policy D4 of the LP. However, I do not find conflict with Policy D4, which focuses principally upon processes which assist in ensuring the delivery of design quality. The content of this policy is not directly relevant to the specific harm I have identified.

Living conditions

12. The proposal would maintain, according to the parties, a separation distance of around 10-11m between the rear facing habitable room windows in the ground and first floor flats at No 31 and the direct facing ground and first floor bedroom windows in the proposed dwellings.
13. The appellant suggests that the retention of the existing boundary fence between the properties would provide screening to the ground floor windows. I see no reason to disagree, and such provision could be secured through a condition. However, with regards to first floor windows, even with the retention of the existing trees and proposed planting, this would only provide a degree of screening when the trees are in leaf and partial screening at other times of the year. Furthermore, the proposed tree planting would be likely to take a significant amount of time to mature, and the longevity of the trees is not guaranteed and cannot therefore be relied upon in perpetuity.
14. The Mayor of London's Housing Supplementary Planning Guidance 2016 acknowledges that the minimum separation distance of 18m-21m between facing homes used previously can still be useful yardsticks for visual privacy but suggests that adhering rigidly to these measures can limit the variety of urban spaces and housing types and can sometimes unnecessarily restrict density. Whilst this suggests a flexible approach, the proposal represents a very significant shortfall in that separation distance. This would allow direct intervisibility between habitable room windows at close quarters which would significantly undermine the privacy of the existing occupiers of the first floor flats at No 31. The privacy of future occupiers of the development would also be severely compromised. As such the proposed separation distance has not been shown to be acceptable in this case.
15. I note the appellant's willingness to replace the first floor windows in the front elevations of the dwellings with either oriel windows or fully or partially glazed openings. However, the use of an oriel window would still allow for direct intervisibility between the existing and proposed windows. Furthermore, whilst fully or partially obscure glazed openings may prevent direct overlooking, they may fail to provide a satisfactory outlook for future occupiers given that the bedrooms would only then be served by rooflights.
16. The fact that the first floor windows in the proposed development are smaller than the equivalent windows in No 31 and serve smaller second and third bedrooms does not alter my findings with regards to harm, given that these habitable room windows would still allow a direct outlook towards the neighbouring first floor windows at No 31.
17. In light of the above, given the very close relationship between the first floor windows, the proposal would result in a significant and unacceptable loss of privacy of the existing occupiers of the first floor flats at No 31, as well as the

future occupiers of the proposed dwellings. Moreover, whilst the gap between the proposed dwellings and the rear of No 31 has been increased by 1.5m compared to the previous appeal scheme, this would not overcome the harm I have identified above.

18. I therefore conclude that the proposed development would cause harm to the living conditions of the existing occupiers of the first floor flats at No 31 and future occupiers of the proposed dwellings, with particular regard to privacy. Accordingly, the proposal would be contrary to Policy D6 of the LP, in so far as it relates to the qualitative design aspects of development and requires that site layout, orientation and design of individual dwellings should provide privacy and Policy 7B of the DPD, which requires new development to achieve a high standard of amenity for users and adjacent users by ensuring, among other things, good levels of privacy.

Other Matters

19. The proposal would make use of a previously developed site in an existing built-up area to provide additional dwellings which would contribute to the Council's housing supply targets, which the Framework indicates should be given substantial weight. Indeed, the previous appeal decision demonstrates that a small residential infill development on the appeal site would be considered acceptable in land-use terms.
20. I understand the appeal proposal is a resubmission, taking into account issues previously raised by the Council and the previous appeal decision, as well as pre-application advice provided by the Council. However, I can only assess the current proposal on the basis of the information before me and for the reasons given above, despite the changes, the proposal is not acceptable.
21. My attention is drawn to a development to the rear of 9 South Ealing Road. However, this was the result of the redevelopment of a site which contained an existing structure, as such the circumstances are different. The appellant has also drawn my attention to similar residential development on land to the rear of 58-64 Darwin Road. This site differs from the appeal site in that it was previously occupied by the remains of greenhouses. Moreover, given the site context, including other examples of similar backland development nearby, it was considered to be compatible with the established character and appearance of the area. It is also some distance away from the appeal site and has no visual inter-relationship with it.

Conclusion and Planning Balance

22. For the reasons set out above, I conclude that the development would significantly harm the character and appearance of the area, and the living conditions of both neighbouring and future occupiers with regard to privacy. It would be contrary to the development plan in these respects.
23. Set against this, the development would provide new family-sized housing in an accessible location, and on a previously developed site. It would attract support from Policy H2 of the London Plan in this regard. It would also generate economic benefits during the construction phase and would incorporate sustainable design and construction measures.
24. However, in the circumstances of this appeal, I consider that these benefits do not outweigh the harm I have identified. Accordingly, the material

considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.

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

Emma Worley

INSPECTOR