



Appeal Decision

Site visit made on 5 December 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd March 2023

Appeal Ref: APP/A5840/W/22/3303309

1B, C and D Astbury Road, London, SE15 2NL

- 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 Curtis Brown and Mrs Krishnaveni Brown against the decision of London Borough of Southwark.
 - The application Ref 22/AP/1191, dated 31 March 2022, was refused by notice dated 10 June 2022.
 - The development proposed is the construction of a roof extension forming a new floor, retention of a commercial unit and conversion to provide 1 one-bedroom and 4 two-bedroom residential dwellings with rear facing balconies, and refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Curtis Brown and Mrs Krishnaveni Brown against the Council of the London Borough of Southwark. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - Whether or not the proposed development would provide acceptable living conditions for future occupiers, with particular regard the amount of living space in Flats D, F and G, and daylight and sunlight in Flats C and D;
 - The effect of the proposal on the character and appearance of the host building and the surrounding area; and
 - Whether or not the development would make an appropriate provision for affordable housing.

Reasons

4. The appeal property occupies a site at the corner of Astbury Road and Queens Road. It is in an area well-served with a variety of shops and other services on Queens Road, and it is very close to Queens Road railway station. There is a commercial unit at the front of the ground floor, with ancillary accommodation in the basement at the rear. Behind and above the commercial unit, the property is divided into three residential units. No 1B is a four-bedroom flat which extends across the ground, first and second floors; it has its own entrance from the shared yard off Astbury Road at the rear of the building.

No 1C is a two-bedroom flat on the ground and lower ground floors, while No 1D is a four-bedroom flat on the first and second floors; Nos 1C and 1D are accessed by a communal hallway from Astbury Road (although 1C also has access from the rear yard).

5. The proposed development is the construction of an additional storey at the top of the building and an extension at the rear, and the reconfiguration of the property to provide five flats. Flats C (on the lower ground and ground floors), D (on the ground and first floors), F and G (on the second and new third floors) would each have two bedrooms; Flat E (on the first floor) would have one bedroom. The commercial unit would be retained as at present.

Living conditions

Living Space

6. The space standards for residential development which are applied by Policy P15 of the 2022 Southwark Plan and Policy D6 of the 2021 London Plan reflect the Nationally Described Space Standard ("the NDSS")¹. Of particular relevance to this appeal are the minimum gross internal floor area requirements of 70m² for a two-bedroom, three-person dwelling on two storeys, and 37m² for a one-bedroom, one-person dwelling on a single storey².
7. The Council's 2015 *Technical Update to the Residential Design Standards (2011)* Supplementary Planning Document ("the SPD") provides more detailed guidance, including in respect of recommended minimum floor areas for rooms not specified in the NDSS. This includes advising that a combined kitchen/diner/living room in a two-bedroom dwelling should have a minimum area of 27m², to some separation within the room (especially between cooking and living) and to allow more space as everyone in the dwelling will be using that same one room.
8. The Council's decision notice referred to space shortfalls in respect of flats C, F and G. Flat C would be a two-bedroom, three-person dwelling with a floor area (by the appellants' calculation) of 73m²; it would comply with the NDSS total floorspace requirement, although the combined kitchen/diner/living room area of 26m² would be slightly below that advised by the SPD.
9. Flat F would also be a two-bedroom, three-person dwelling; it would have a total floor area of 61m² (again by the appellants' calculation), falling well short of the NDSS floorspace requirement. At 22m², the combined kitchen/diner/living room would be smaller than advised by the SPD.
10. Flat G would be a two-bedroom dwelling, which the appellants state would also be for three people. The Council's officer report drew attention to the space shown on the submitted drawings as a "study and storage area" which, it considered, could also be used as a single bedroom; the Council thus argued that Flat G should be assessed as a three-bedroom unit. The appellants' evidence did not address this specific point.
11. Regardless of this, however, at 13m² and 15m² both bedrooms within Flat G would, in the eyes of the NDSS, be expected to accommodate two people;

¹ *Technical housing standards – nationally described space standard*, Department for Communities and Local Government 2015

² I have taken the floorspace standard for a one bedroom, one person dwelling with a shower room rather than a bathroom, as that is what is proposed here.

indeed, both are shown as double bedrooms on the submitted drawings). Even if I accept that the study space could not or would not be used as an additional bedroom, it is nevertheless appropriate that Flat G should be assessed on the basis of it being a two-bedroom, four-person dwelling. The appellants have calculated the floor area of Flat G to be 74m²; this is some way below the NDSS requirement for a two-bedroom, four-person dwelling of 79m². At 18m², the area of the combined kitchen/diner/living room would be significantly smaller than advised by the SPD.

12. I note the appellants' comment that the national floorspace standard is "designed for houses rather than flats". However, that seems to be based on a misinterpretation of the NDSS which says that its requirements are "organised by storey height to take account of the extra circulation space needed for stairs to upper floors, and deal separately with one storey dwellings (typically flats) and two and three storey dwellings (typically houses)". There is nothing in that wording (or the related relevant development plan policies) to suggest that the standard is not intended to be applied to flats. The NDSS reflects the need for larger amounts of circulation space in multi-storey dwellings, which applies equally to houses and flats.
13. The proposed development would be a conversion rather than a new build scheme; the appellants have pointed out that "any conversion must work within the constraints of the existing building and so may not always be able to achieve the same standards as a new build scheme". Broadly speaking, and for that very reason, I recognise that when weighing a redevelopment proposal in the balance it may be pragmatic (and perhaps sometimes even desirable) to allow a scheme even when there would be some shortfall in terms of compliance with the NDSS or SPD guidance.
14. The shortfall of living space in Flat C, which would be within the existing building (albeit that it would be much altered internally as part of the appeal scheme), would be small. Had the living space shortfall been only in respect of Flat C I may well therefore have accepted the appellant's argument on this point. However, Flats F and G would have proportionately much greater shortfalls, assessed both against the total space standard of the NDSS and the room size guidance of the SPD. Those two flats would share the new third floor; while this would need to be tied into the rest of the building fabric, it would nevertheless offer an opportunity to design a scheme in compliance with the minimum space standard requirements set out in the development plan (even though this may necessitate providing fewer flats or bedrooms than the appellants' original ambition). For this reason, I do not consider that the space shortfalls in Flats F and G (and therefore the scheme as a whole) have been justified.

Daylight and sunlight

15. The appellant submitted a Daylight and Sunlight Report prepared in accordance with the Building Research Establishment's guidance in *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice* ("the BRE guidance"). The BRE guidance, with reference to BS 8206-2 *Code of practice for daylighting*, recommends an Average Daylight Factor ("ADF") of 5% for a well-daylit space and 2% for a partly-daylit space, and gives minimum values of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. It advises that with an ADF of below 2% a room will look dull, and electric lighting is likely to be

turned on. For sunlight, among other things the BRE guidance advises that the main requirement is in living rooms (rather than bedrooms or kitchens), and that these will appear reasonably sunlit provided that “at least one main window wall faces within 90° of due south” and “the centre of at least one window to a main living room can receive 25% of annual probable sunlight hours, including at least 5% of annual probable sunlight hours in the winter months between 21 September and 21 March”.

16. The Daylight and Sunlight Report concluded that “the living area of Flat D does not achieve the ADF% target for the room type and may look dull with electric lighting being likely to be turned on during the day”, that “the open plan living/kitchen space for Flat C will receive a small amount of sunlight annually but none in winter”, and that “the living space of Flat D is only likely to achieve low levels of sunlight due to the fact the main window serving the room is north facing”.
17. The combined kitchen/diner/living room in Flat C would be on the ground floor; it would be adapted from the existing room currently serving the same purpose within No 1C, although a third window would be created to augment the existing two. The three windows would face approximately north-west or north, and would therefore receive no winter sunlight; the Daylight and Sunlight Report shows that they would receive only very limited sunlight during the other half of the year.
18. The kitchen/diner/living room in Flat D would be formed by combining the existing separate kitchen and living room on the ground floor within No 1B. The kitchen has a north-facing window, while the living room has three rooflights. The proposed development would see the living room and kitchen swap places within the combined room; the existing window would be replaced with a larger window serving the living end of the room, while the existing three rooflights would be replaced with a larger single rooflight above the kitchen space. The Daylight and Sunlight Report shows that the ADF in the living area would be 1.16%, some way below the recommended level. The room would receive no winter sunlight, and only minimal sunlight during the rest of the year.
19. I return to the question of daylight and sunlight below when considering the appellants’ “fallback” argument. However, it is apparent from all the evidence before me that the level of daylight in the kitchen/diner/living room of Flat D, and the sunlight in the kitchen/diner/living rooms of Flats C and D, would fall short of the standards which an occupier might reasonably expect.

Findings – living conditions

20. Taking all of these points together, I conclude that, because of shortfalls of living space in Flats C, F and G, and because of limited daylight and sunlight in Flats C and D, the proposed development would not provide adequate living conditions for future occupiers. The proposal therefore conflicts with Policy P15 of the 2022 Southwark Plan and with Policy D6 of the London Plan 2021; as well as imposing standards for living space (as described in paragraph 6 above), these policies seek to ensure that residential development provides a high standard of accommodation for future occupiers, including providing adequate levels of daylight and sunlight.

Character and appearance

21. The appeal site is part of a short terrace of buildings extending from No 185 to 193 on the north side of Queens Road. Like the appeal property, the buildings in the terrace generally have three storeys above a basement (No 193 additionally has a flat-topped dormer extension at roof level), with single-storey flat-roofed commercial units projecting towards the Queens Road frontage. It appears from the evidence before me, including my observations during my site visit, that the appeal property was originally constructed as two separate buildings, 185 and 187 Queens Road; 185 is the end building in the terrace which now includes 1C and 1D Astbury Road, and 187 is the part which now includes 1B Astbury Road (the ground floor commercial unit extends across both 185 and 187)³.
22. No 185 has a shallow-pitched butterfly roof; No 187 forms a pair with No 189, sharing a hipped pitched roof form and, on the front elevation, matching arched recess detailing in the brickwork. No 191 also has a shallow butterfly roof. These existing rooflines of Nos 185 to 191 are largely hidden from street-level by the front parapet, giving the terrace a largely cohesive appearance in close-up and longer-range views along Queens Road. In views from the west the dormer extension to No 193 appears somewhat intrusive and incongruous in the context of the rest of the terrace.
23. The proposed rooftop extension would have what the appellant describes as a “butterfly roof design”. In fact, it appears from the submitted drawings that the butterfly profile would only really be evident when seen from the rear. From Astbury Road and Queens Road the roof would appear as a collection of irregularly-angled planes rising above the parapet; it would also lead to there being an obvious visual imbalance within the pairing of Nos 187 and 189. The roof extension would therefore give the appeal property, and the wider terrace, a discordant appearance.
24. The SPD advises that roof extensions will not be permitted where there is an unbroken run of butterfly roofs but, notwithstanding the Council’s concern about the loss of the existing roof, that is not the case here. However, the SPD also states that roof extensions will not be permitted where they would harm the integrity of a building or the unity of a group, where the varied skyline of a terrace or group of buildings is of interest and should be maintained, or where it would unbalance the proportions of the building. For the reasons I have just set out, I consider that the proposed extension does not have regard to this advice. It will also be apparent that, in my view, the dormer extension at No 193 has caused some moderate harm to the character and appearance of the terrace; I do not know the precise circumstances in which that development took place, but its presence does not amount to a justification for allowing further harm.
25. I conclude that the proposal would be harmful to the character and appearance of the area. It would therefore conflict with Policy P14 of the 2022 Southwark Plan and with Policy D4 of the London Plan 2021. Together, and among other

³ The Council’s appeal statement made some errors in respect of the building numbering on Queens Road; it referred to No 185 as No 187, No 187 as No 189, and No 189 as No 191. However, it was obvious from the context to which property particular comments were intended to refer; I have therefore used the correct building numbers throughout my decision, and the Council’s errors have had no material bearing on the case.

things, these policies seek to deliver good design which reflects a site's context.

Affordable housing

26. Policy P1 of the 2022 Southwark Plan requires that development creating nine homes or fewer must provide "the maximum amount of social rented and intermediate homes or a financial contribution towards the delivery of new council[,] social rented and intermediate homes with a minimum of 35% subject to viability...". I note the appellants' comment that this matter had not been raised when the Council provided feedback on an earlier planning application; notwithstanding this, they have stated that they "would be willing to pay an affordable housing contribution".
27. The proposed development would lead to a net increase of two dwellings. Given the shortage of social rented and intermediate homes within Southwark described in the supporting text to Policy P1, in the absence of any on-site provision, a financial contribution towards the provision of affordable housing (in the form of social rented or intermediate homes) elsewhere in the borough is necessary to make the development acceptable in planning terms.
28. The appellants suggested that this could be "dealt with via planning condition". However, in view of the advice in the Planning Practice Guidance that "no payment of money or other consideration can be positively required when granting planning permission"⁴ and that "a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate" only in "exceptional circumstances" "where there is clear evidence that the delivery of the development would otherwise be at serious risk"⁵, this is a matter which in my experience would be more appropriately dealt with by way of a planning obligation.
29. In the absence of a planning obligation to secure the appropriate contribution, the proposal fails to comply with Policy P1 of the 2022 Southwark Plan, the relevant provisions of which I have set out above.

Other Matters

30. The Council considered the principle of the proposed development to be acceptable, and that it would not be harmful to the living conditions of neighbouring residents. None of the evidence before me leads me to a different conclusion on either of these points. I note the development was described as being car-free; no mechanism such as a planning obligation which would secure this status was put before me, but as this could not change the outcome of the appeal I have not pursued the matter with the main parties.
31. As I have described, the appeal property already has three flats of varying sizes; the appellants consider that the proposed development would "greatly improve on the current situation" in respect of living space, daylight and sunlight, and that "the fallback position is to leave these buildings as they are".
32. At the time I carried out my site visit, 1C and 1D Astbury Road were empty and various building work was being carried out; it was not therefore possible for

⁴ Paragraph: 005 Reference ID: 21a-005-20190723

⁵ Paragraph: 010 Reference ID: 21a-010-20190723

me to precisely assess the living conditions which they might have offered before the appeal scheme was submitted. Nevertheless, for the reasons which I have set out in paragraph 14 above, I consider that the shortfall of living space which would be provided in proposed Flat C would be no greater than that currently within the existing 1C Astbury Road.

33. As I have explained in paragraphs 17 and 18 above, while there are rooms within proposed Flats C and D which would receive inadequate daylight or sunlight, these would essentially be adapted or refurbished rooms which have (or had) the same role within the building in its current use. In this respect the proposed accommodation would certainly be no worse – and would probably offer better living conditions – in Flats C and D than the current Nos 1B and 1C within the property.
34. However, the appeal scheme would (as I have described in paragraphs 9, 10 and 15) provide two flats in a new part of the building which would also be significantly smaller than the required standard, and so would not provide future occupiers with the quality of living conditions which they could reasonably expect. The alterations proposed at roof level would also be harmful to the character and appearance of the area. For these reasons, I consider that the shortcomings of the existing accommodation which the appellants acknowledge do not amount to a substantive justification for allowing further harm. I also therefore do not agree that refusing this particular proposal would have the effect of “sterilising” the site. Accordingly, I do not consider that the “fallback position” carries significant weight in favour of the appeal proposal.

Conclusion

35. The proposed development would provide two additional dwellings, in a location which is close to a range of shops and services including public transport connections. I also acknowledge that the scheme would result in some improvement to the quality of the existing accommodation within the building. Given the small scale of the scheme as a whole, these are benefits which carry moderate weight in its favour.
36. However, the two additional Flats F and G would not provide adequate living space for future occupiers, and the physical alterations required to accommodate the extension would be harmful to the character and appearance of the area. The development would also not make the necessary contribution to the provision of affordable housing in the borough. These are matters which carry considerable weight, and in my view the harm arising would outweigh the benefits associated with the scheme.
37. As a result, the proposal would conflict with the development plan taken as a whole, and there are no other considerations, including those of the National Planning Policy Framework, that outweigh this conflict.
38. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector