



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: 23 JUNE 2023

Appeal Ref: APP/C5690/W/22/3298739

3 Mantle Road, London SE4 2DU

- 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 Tranquil Homes (Mantle) Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/21/123072, dated 9 August 2021, was refused by notice dated 15 November 2021.
 - The development proposed is the construction of a five-storey building comprising a ground floor commercial unit and 9 self-contained flats, together with the provision of refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development used in the banner heading above has been taken from the appeal form, although I have omitted details of the site address. I have used it in preference to the wording from the planning application form ("redevelopment of the site to provide a high-quality, 5 storey development comprising 9 residential units and ground floor commercial unit") as it provides a more accurate description of the proposal and reflects the scheme as it was considered by the Council.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether or not the proposed development would provide acceptable living conditions for future occupiers, with particular regard to outlook and amenity space;
 - Whether or not the development would include adequate cycle parking facilities for the proposed commercial unit;
 - Whether or not the development would promote the use of sustainable modes of transport and prevent an unacceptable increase in demand for on-street car parking; and

- The effect of the development on nearby Sites of Importance for Nature Conservation.

Reasons

Character and appearance

4. The appeal site is a yard, containing several containers either used for storage or adapted to form offices and amenities, occupied by a groundworks contractor. It sits on the western side of Mantle Road, between Maypole Court (a five-storey block of flats with a commercial unit on the ground floor) to the north, and John Stainer Community Primary School to the south. To the west is Reynard Close, a short cul-de-sac of flats and houses, while to the east a five-storey block of flats with commercial premises on the ground floor (Jude Court) and an industrial yard separate Mantle Road from Brockley station and its associated railway lines.
5. The appeal site is a slightly awkward shape, with an angled southern boundary towards the primary school, and is somewhat hemmed in by its neighbours. It marks a point of transition between the small cluster of taller (mainly five-storey) modern buildings around Brockley Station and the lower buildings to the south. The site is separated from the main building of the primary school to the south-west, which is an older building of similar height to the five-storey blocks, by two lower buildings within the school grounds; the "schoolmaster's house" (a two-storey Victorian dwelling) and a modern single-storey block.
6. The proposed development is the construction of a block of flats, ranging from two storeys (to the south and west of the site towards the primary school and Reynard Close) to five storeys in height. There would be a 55m² commercial unit on the ground floor, along with communal cycle and bin storage for the flats. The tallest, five-storey part of the proposed block would be essentially rectangular in plan and perpendicular to Mantle Road, though the third and fourth floors would be stepped back from the street frontage. The building would step down from three storeys to two along the angled southern edge of the site.
7. The Council accepts that the height of the proposed development would be appropriate given the context of the blocks to the north and north-east of the site, though having regard to the lower height of the buildings to the south and west it particularly draws attention to guidance in its 2014 *Small Sites* Supplementary Planning Document ("the SPD"). The SPD advises that "where new development is proposed within a street with varying character, new development that is taller than neighbouring properties may be acceptable, providing that it is of considerable quality", and that "new development which is significantly taller¹ than its neighbours will need to be of *exceptional* [my emphasis] design quality".
8. The appellant considers that the building has been designed to make "the most efficient use of the site given its constraints". The submitted drawings show that this would result in the southern side flank of the building having an array of walls of varying heights, and a disjointed selection of window and door openings and glazed balconies. The appellant suggests that the shape and design of this part of the building would reduce the bulk and massing of the

¹ The SPD defines "significantly taller" as being half a storey or more.

- proposal (as well as any potential overlooking), but in my view both its form and detailed design would make it an unsympathetic and visually disruptive feature in the street scene, which would be readily seen by anyone approaching the site from the south along Mantle Road.
9. The building would feature a variety of materials including grey brick, coloured metal panelling, ceramic tiles, reconstituted stone and large glazed screens and balustrades. I acknowledge that these could, in themselves, be considered reasonably high-quality materials, and the use of tiles and double height glazing to give emphasis to the main residential entrance would be a broadly positive feature. Beyond this though, the use of extensive areas of grey brick (in contrast to the prevailing use of buff or yellow brick, with orange brick detailing in the area) and metal cladding panels in a variety of colours (white, greys and numerous shades of jade green) would draw the eye, giving the building a considerable degree of prominence in the street scene. However, neither the materials nor the form of the building would be especially sympathetic to the context of the wider area, and it would fall some way short of displaying the exceptional design quality sought by the SPD; this prominence would therefore be a negative feature rather than a positive one.
 10. The appellant highlights the granting of planning permission for Maypole Court in 2011² as indicating that the scale of development proposed is acceptable. In fact, as I have set out in paragraph 7 above, the Council considered that the height of the proposed development would be acceptable (as do I), though it does not follow from this that the form and details proposed would be. I also recognise that both the Maypole Court and Jude Court developments cover large proportions of their plots. However, in this case harm to the character and appearance of the area would not arise from a dense development *per se*, but from the way the form and details of this scheme have sought to maximise the plot coverage while still responding to the interface with the lower buildings to the south and west of the site; it will be evident from my comments in the preceding paragraphs that I do not think this has been done successfully.
 11. The appellant also takes issue with the quality of the Council's pre-application advice. However, other than in terms of height, the advice is clear that Maypole Court is not considered to be a well-designed building and the appellant's scheme "should not try to replicate it". The Council has pointed out that both local and national planning policy put far greater emphasis on high quality design and "beautiful" buildings than when Maypole Court was permitted, and on my reading of the evidence there is nothing to suggest that the Council's position had shifted significantly from its initial advice.
 12. For the reasons I have set out above, I conclude that the proposed development would be harmful to the character and appearance of the area. It would therefore conflict with Policy 15 of the 2011 Lewisham Core Strategy ("the LCS"), with DM Policies 30, 32 and 33 of the 2014 Lewisham Development Management Local Plan ("the DMLP"), and with Policy D3 of the London Plan 2021. Together, and among other things, these policies seek to ensure that new development is attractive and achieves a high standard of design, and creates a positive relationship with the existing townscape. For the same reason, the development would conflict with the provisions of Chapter 12

² LPA Ref: DC/10/075723/X

of the National Planning Policy Framework ("the Framework") which seek to achieve well-designed places, in particular paragraphs 126, 130 and 134.

Living conditions

13. All nine proposed flats would be dual-aspect, and all would comply with the standards for the amount of internal space and private outside space set out in Policy D6 of the London Plan 2021. However, Flats 1 and 2 (on the ground floor) would have very narrow yards set up against boundary walls; that of Flat 1 would be bounded by the wall to Reynard Close, while that of Flat 2 would be bounded by the high fence-topped wall at between the appeal site and the schoolmaster's house to the south. This would lead to an overbearing sense of enclosure which in my view would limit the spaces' usefulness resulting in both flats having very poor-quality amenity spaces (notwithstanding that they would exceed the development plan's space requirement); they would also have very constrained and oppressive outlooks from their principal living rooms.
14. Flats 4 and 5 (on the first floor) and 6 and 7 (on the second floor) would have south facing balconies which, in order to prevent harmful overlooking towards the schoolmaster's house, would have 1.7m high glazed screens. While this would not have as oppressive an effect on the amenity space as the walls would have on those of the ground floor flats, the screens would nevertheless severely constrain the outlook from the main living rooms (Flats 4, 5 and 7) and bedroom (Flat 6) in those flats.
15. The habitable rooms within the proposed development would have acceptable levels of daylight, although the consideration of daylight, sunlight and overshadowing is not the same as the consideration of outlook. The appeal site is a previously-developed site in an urban area and I recognise that, as the Council acknowledges, a constrained outlook is likely to be more acceptable in such cases than it might be elsewhere. However, six of the nine flats in the proposed development would not have a satisfactory outlook; this is not a marginal failing, and in my view stems (at least in part) from the shortcomings of the form of the proposed building which I have addressed in the previous section. There would also be some shared space provided for future occupiers, including a communal roof garden but, while this could provide a high-quality space for residents it would not perform the same role as private spaces.
16. I conclude that, because of the very poor outlook and poor quality of amenity space for Flats 1 and 2, and the poor outlook from Flats 4, 5, 6 and 7, the proposed development would not provide acceptable living conditions for future occupiers. It would therefore conflict with Policy 15 of the LCS, DM Policy 32 of the DMLP, and with Policy D6 of the London Plan 2021; together, and among other things, these policies seek to ensure that development is of a high quality design, with usable amenity space and satisfactory levels of outlook. For the same reason it conflicts with the requirements of paragraph 130 of the Framework, which seek a high standard of amenity for existing and future users.

Cycle parking

17. The submitted drawings do not show dedicated cycle parking for the proposed commercial unit, which would have a net retail floorspace of around 45.2m² within a total unit of around 55.0m². The appellant considers that the submitted drawings show that "the layout of the ground floor commercial unit

includes a store, which can comfortably accommodate a bike internally”, but the plans show a small storeroom of a narrow triangular shape which, were it to be used for cycle storage, would be unlikely to be of much practical use for other storage purposes.

18. However, Policy 14 of the LCS, which seeks to support sustainable movement and transport, states that “cycle parking will be required for new development and TfL guidelines will be used to assess provision”. Policy T5 of the London Plan 2021 sets the requirements for cycle parking, with the minimum level of provision set out in Table 10.2 of that plan; it states that “the minimum of two short-stay and two long-stay cycle parking spaces does not apply to A1-A5 developments of less than 100sqm”. The Use Classes Order³ was amended in 2021 by the UCO Amendment Regulations⁴, and among other things, the “shops” A1 Use Class was merged into a new “commercial, business and service” Use Class E. Notwithstanding this change, the intention of the policy is clear; that there is not a minimum cycle parking requirement for small retail units such as that proposed in this case.
19. I accept that it may be preferable for there to be a better-sized, dedicated cycle parking area which would support staff of the proposed commercial unit in using sustainable means of transport including bicycles. However, in view of the clear exception set out in Table 10.2 of the London Plan 2021, I cannot conclude that the proposed cycle parking provision would be “inadequate” in the development plan’s terms. I therefore find no conflict on this matter with Policy 14 of the LCS or with Policy T5 of the London Plan 2021, the relevant provisions of which I have described in the preceding paragraph.

Sustainable travel and car parking

20. The appeal site is close to Brockley railway station, and is also served by several nearby bus stops (including those on the east side of the railway station) offering services to a variety of destinations. It has a Public Transport Accessibility Level (“PTAL”) of 4, signifying good public transport connectivity.
21. Policy 14 of the LCS, DM Policy 29 of the DMLP seek to support the provision of car-limited or car-free development in areas with good public transport connectivity (PTAL 4 or higher), where this does not have a detrimental impact on the provision of on-street parking in the vicinity. The Council’s evidence (which was not challenged) is that around 87% of car parking capacity in the surrounding roads is used, and that it is therefore an area of “parking stress” where there would be limited capacity to accommodate an increased demand for on-street parking. The area does not yet have Controlled Parking Zone (“CPZ”) restrictions, although the Council’s officer report makes generalised references to a future CPZ (rather than indicating that there is a specific proposal to introduce a CPZ).
22. The appellant has submitted a planning obligation in the form of a Unilateral Undertaking. It includes provisions to ensure that any residential or business occupier of the proposed development would not be eligible for a permit for any future CPZ, other than if they were entitled to a Disabled Person’s Badge, and for the provision of car club membership for the first residential occupiers of the scheme for a minimum period of three years from the date of first

³ The Town and Country Planning (Use Classes) Order 1987

⁴ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

occupation. The development also includes the provision of adequate secure cycle parking for future residential occupiers.

23. I conclude that the development would make appropriate provision to promote the use of sustainable modes of transport and prevent an unacceptable increase in demand for on-street car parking. It would therefore comply with Policy 14 of the LCS, DM Policy 29 of the DMLP, and Policies T6 and T6.1 of the London Plan 2021. Among other things, these policies seek to manage and control demand for on-street parking by supporting the provision of car-free and permit-free development and encouraging the use of more sustainable means of transport.

Sites of Importance for Nature Conservation

24. There are three Sites of Importance for Nature Conservation ("SINCs") nearby. These are the Forest Hill to New Cross Gate Metropolitan SINC, the Nunhead Cutting SINC, and the Brockley to St Johns SIN, which respectively lie east, north-west, and north-east of the appeal site; the first of these is of London-wide significance, while the other two are of borough importance. All three are based on the railway lines which cut through the area, and include their cuttings and embankments, as well as other areas of railway (or former railway) lands.
25. The Forest Hill to New Cross Gate Metropolitan SINC is the closest of the three to the appeal site, though there is some disagreement between the main parties over the question of precisely how close. The Council's officer report indicated that the SINC was "within 50 metres" of the site, but by the time of preparing its appeal statement this had closed to be "within 14m"; on the other hand, while the appellant's initial statement appeared to accept that the appeal site was within 50m of the SINC, by the time final comments were submitted this position had shifted to asserting that "the site does not lie within 50m of any SINC". It appears though, based on the 2015 Lewisham Local Plan Policies Map, that the appeal site is separated from the Forest Hill to New Cross Gate Metropolitan SINC only by the width of Mantle Road, which suggests to me that the Council's evidence is more accurate on this point than the appellant's.
26. Overall, very little information in respect of the nearby SINCS has been put before me by either main party. It may well be, as the appellant has stated, that given the nature of both the appeal site and the land which makes up the closest part of the three SINCS, the proposed development would have very little impact on them (including through noise, shading, lighting or anything else). However, there is no substantive ecological or other evidence before me whatsoever which would enable me to reach such a conclusion. In the absence of such evidence, I cannot be certain that there would be no adverse effects on habitats or any protected species within the SINCS.
27. The appellant has complained that no reference was made to protecting the SINCS either in pre-application discussions or during the application process. Although the matter is not referred to in the summary of pre-application discussions which the Council sent to the appellant, a subsequent e-mail shows that the issue of the SINCS (and the Council's request for an Ecological Impact Assessment report) was brought to the appellant's attention no later than 13 October 2021, just over a month before the planning application was determined. I note that the proposed development would incorporate measures such as green roofs and other sustainability features but, while these would be

positive features, their presence would not do away with the need to demonstrate that there would be no unacceptable harm caused to the nearby SINC.

28. For the reasons I have just given, it is not possible for me to ascertain the potential effects of the proposed development on nearby SINC. The proposal therefore conflicts with Policy 12 of the LCS, DM Policy 24 of the DMLP and Policy G6 of the London Plan 2021. Together, and among other things, these policies seek to ensure that SINC are protected, and that the impact of development proposals on biodiversity are properly managed. I have also had regard to the provisions of Paragraph 180 of the Framework, which says that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused

Planning Balance and Conclusion

29. Section 38(6) of the Planning & Compulsory Purchase Act 1990 and the Framework state that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the proposed development would be acceptable in terms of cycle parking provision, and sustainable travel and car parking. However, it would be harmful to the character and appearance of the area, would have significant shortcomings in terms of future residents' living conditions, and it has not been demonstrated that it would not have unacceptable impacts on nearby sites of importance for nature conservation. It would therefore conflict with the development plan as a whole.
30. Paragraph 11(d) and Footnote 8 of the Framework state that, where the policies which are most important for determining the application are out-of-date (including where the Housing Delivery Test ("HDT") indicates that the delivery of housing was substantially below the housing requirement over the previous three years, or where the local planning authority cannot demonstrate a five year supply of deliverable housing sites) planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. The appellant states that the 2021 HDT showed that Lewisham achieved delivery of 87% of its housing requirement over the previous three years, but Footnote 8 of the Framework defines "substantially below" to be less than 75%. The appellant also noted that the Council's Annual Monitoring Report for 2019-20 (published in January 2021) identified that the borough had a 5.06 year supply of housing land (including buffer), but that in the light of revised targets in the London Plan 2021 "it would appear highly unlikely that the Council is able to demonstrate a 5 year supply of housing land". I note that the point was not addressed in the Council's evidence, but at the same time the appellant's assertion was not backed by any more substantive evidence. It does not therefore amount to a justification for making a decision other than in accordance with the development plan.
32. The proposed development would provide nine new residential units on a site well-located for access to shops, other services and transport links, as well as a modern commercial/retail unit which may well provide increased total

employment compared to the existing use on the site. Overall, given the size of the scheme, these social and economic benefits would be moderate, and I weight them accordingly. However, the proposed development's shortcomings in respect of character and appearance, the amenity of future occupiers, and biodiversity, mean that it would conflict with the specific requirements of Paragraphs 126, 130, 134 and 180 of the Framework. This carries substantial weight in the overall balance.

33. Had it therefore been demonstrated that either the Council's HDT performance or its housing land supply position meant that the provisions of Paragraph 11(d) of the Framework were engaged, I consider that the harm which would arise from the development would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal would not therefore amount to sustainable development in the terms set out in the Framework.
34. In any event therefore, my overall decision would be the same. For the reasons set out above, I conclude that the appeal should be dismissed.

M Cryan

Inspector