



Appeal Decision

Site visit made on 18 April 2023

by **J Moore BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 JULY 2023

Appeal Ref: APP/E5330/W/22/3308423

51 Charlton Church Lane, London SE7 7AE

- 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 S Dhar, RIU Management (UK) Ltd against the decision of the Royal Borough of Greenwich.
 - The application Ref 22/1299/F, dated 14 April 2022, was refused by notice dated 9 June 2022.
 - The development proposed is subdivision of the entire site into seven (7) residential units (Use Class C3), proposed retention of all structures on site, proposed re-instatement of front lightwell, part-retrospective loft conversion incorporating installation of three (3) and rooflights to the main building [existing rear mansard extension to be replaced], excavation and lowering of floor level of rear extension building to allow for an additional storey, and other associated external alterations and landscaping works (Resubmission).
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Decision

1. The appeal is dismissed.

Preliminary Matters & Background

2. The council's reason for refusal refers to bedrooms 1 and 2 of units R2 and R3. However, the submitted plans detail two double bedrooms for each of those units both annotated as bedroom 1, with one being on the flank, and the other on the rear elevation. The appellant also refers to a master bedroom in these units, which is not annotated on the plans. Nevertheless, it is clear that the council is referring to the bedrooms located on the flank, and the appellant is referring to the bedroom located on the rear elevation. Therefore, when I refer to bedroom 1, it shall mean the bedroom 1 which is located on the flank, and when I refer to the master bedroom, it shall mean the bedroom located on the rear elevation.
3. The main parties agree that the appeal site benefits from an existing planning permission¹. A key difference between the existing permission and the appeal scheme is that part of the building that was to be demolished as part of the existing planning permission is now proposed to be retained and extended, and this is now referred to in the evidence as the middle building. An area of communal open space is now proposed to the rear of the middle building. Beyond the middle building, in the area where four new residential units were

¹ Ref:15/0321/F, approved 11 December 2015 - Demolition of the rear hall for hire, rear bar, billiard hall and refurbishment of the former clubhouse to provide one x 2-bed flat and one x 3-bed maisonette together with the erection of a new block of three x 2-bed flats, and construction of a terrace of 4 x 2-bed houses on land to the rear.

proposed under the existing permission, the submitted plans show a 'retained grass bank'.

4. During my visit, I saw that the rear hall has been demolished. The middle building remains in place, and the front building appeared to be occupied. Extensive works pursuant to the appeal scheme have commenced, including works to the middle building. Consequently, the appeal scheme includes a number of elements that have already been carried out.

Main Issues

5. The main issues are:-

- whether the proposed development would provide acceptable living conditions for future occupiers of bedrooms 1 and 2 of units R2 and R3, with particular regard to outlook and privacy; and
- the effect of the proposal upon the living conditions of neighbouring occupiers at No.47 Charlton Church Lane, with particular regard to privacy.

Reasons

Living Conditions – future occupiers

6. The appeal property has various changes in floor levels internally. The front building is accessed by steps above street level to the raised ground floor level, with a lower ground floor below, and provides access to the middle building, which originally comprised two floors.
7. Units R2 and R3 are proposed as three bedroomed flats within the middle building, with unit R3 being on the top floor, and R2 directly below. Based on the evidence before me, it is not a matter of dispute between the main parties that the units would provide adequate internal living space relative to the requirements of Policy D6 of the London Plan (LP) and its Table 3.1, and sufficient communal amenity space at the rear.
8. During my visit, I saw that the excavation of the basement of this building and the creation of three floors was substantially complete. The extent of internal works was such that internal walls and windows were in place, in keeping with the proposed plans. Thus, I was able to observe the outlook from the proposed windows within both units, as well as their relationship to surrounding properties.
9. Bedrooms 1 and 2 of both units each include one window that would face the four-storey rear outrigger of No.47 Charlton Church Lane (No.47), with a separation distance of about 3.5m. I accept that close relationships between rear outriggers are not uncommon in urbanised areas of London. However, the view from these proposed windows would be of the tall flank of the outrigger, which includes an obscurely glazed window (the neighbouring window) that directly faces the proposed windows of bedroom 1 of units R2 and R3, and an extensive array of vertical and horizontal extraction flues. Consequently, the outlook from these proposed windows would not provide an appropriate view necessary to provide suitable living conditions for future occupiers of bedrooms 1 and 2 of units R2 and R3.
10. In reaching the above findings, I have taken into account that the views from bedroom 1 of both units in particular would be highly restricted due to the size

and position of the proposed window in each unit, the proximity to the tall outrigger and rear elevation of No.47, in combination with the angle of view from the proposed windows. Whilst in contrast I find that the proposed outlook from the master bedrooms of both units toward the rear to be acceptable, the absence of harm in that respect does not justify the unsuitable living conditions arising from the unacceptable outlook from bedrooms 1 and 2 of units R2 and R3.

11. The harmful outlook I have identified would not be largely the same as that approved by the existing permission. The approved plans of the existing permission detail a new two storey block (the block) in place of the middle building, to a taller height and separated from the front building by a patio area. The block would be sited further away from the outrigger at No.47 than the existing middle building, with a separation distance of some 5.37m². There would be no proposed windows that would directly face the outrigger at No.47, nor its obscure glazed window, nor the extraction flues. The nearest proposed windows to the outrigger would also serve bedrooms, but they are positioned in line with the rear elevation of the outrigger, thus providing a much more open view.
12. While the relationship between the middle building and the neighbouring outrigger is an existing one, the relationship between pre-existing windows and the spaces they serve is not. The submitted pre-existing plans show that the middle building included much smaller windows that faced the outrigger and its window, and these pre-existing windows served a storeroom and stairwell rather than habitable rooms comprising bedrooms of units R2 and R3 as proposed.
13. Although the policies referenced in the refusal reasons do not explicitly refer to 'outlook', this is a common planning term. By any common dictionary definition, outlook is a place from which a view is possible. Consequently, the view from within rooms forms part of an assessment of high quality design, which is clearly referenced by the policies upon which the council rely. Furthermore, the supporting text to Policy D6 of the LP includes table 3.2 which details the qualitative design aspects to be addressed in housing developments, and this clearly references matters pertaining to visual interest and views from individual dwellings.
14. Due to the position and size of the neighbouring window, and its relationship to the proposed development, there would be a line of sight towards the windows of bedrooms 1 and 2 to both units. I accept that the obscure glazed nature of the neighbouring window would prevent overlooking when closed or if it were non-opening. However, the main parties are in dispute as to whether this is an opening window.
15. There is no compelling evidence before me that this window is non-opening, nor that it has any form of limiter that would restrict its opening. Moreover, there is no evidence before me that the room is served by any other window, and from my visit, it appears unlikely. Consequently, it is highly likely that the window is an opening one, opening from the bottom, and hinged at the mid-point. From the photographic evidence before me and my visit, the area immediately behind the neighbouring window appears to include a kitchen sink

² Council's Appeal Statement, page 10

area, but it is by no means certain that the room it serves is exclusively a kitchen.

16. When opened, there would be a view into bedrooms 1 and 2 of both units, the degree of which would vary depending on the angle of view to each of the proposed windows, and the extent to which the neighbouring window could be opened. Consequently, given the lack of certainty about the nature of this window and the space it serves, I cannot be certain that the privacy of future occupiers would not be compromised. As I have already found that the outlook from bedrooms 1 and 2 of units R2 and R3 would not provide suitable living conditions for future residents, the potential lack of privacy only exacerbates those concerns.
17. In reaching the above view, I have taken into account that the appellant draws my attention to case law³, where the use of net curtains (or blinds) was considered to be reasonable to reduce the impact upon privacy. While such measures may reduce privacy impacts in window to window relationships, they can also result in a reduction in outlook and/or levels of light and therefore, are not an appropriate solution in circumstances where I have already found the outlook from bedrooms 1 and 2 of units R2 and R3 to be substandard. Furthermore, the cited case is not directly comparable to the situation before me. For example, the relationship in the cited case is between residential flats and a viewing gallery open to the public.
18. I therefore conclude that the proposed development would result in unacceptable living conditions for future occupiers of bedrooms 1 and 2 of units R2 and R3, with particular regard to outlook and privacy. It would conflict with Policy D6 of the LP; Policies H5 and DH1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies 2014 (RGLP); and the Mayor of London Housing Supplementary Planning Guidance 2016 (SPG). Taken together, these policies and guidance seek to ensure (among other things) that development is of high quality design with comfortable and functional layouts which are fit for purpose. These policy requirements align with the SPG, whereby standard 28 requires that habitable rooms benefit from an adequate level of privacy.

Living Conditions - neighbouring occupiers

19. As referenced in my reasoning above, the neighbouring window of the rear outrigger of No.47 is close to the proposed windows of bedrooms 1 and 2 of units R2 and R3. I have concluded that it is highly likely that the window is an opening one, hinged at the midpoint, and there is no compelling evidence that the window is fitted with any limiter. Thus, when open, a degree of view would be available from the proposed windows of bedrooms 1 and 2 of both units, which would vary in scope, depending on the angle of view from each of the proposed windows, and the extent to which the neighbouring window could be opened.
20. Consequently, in terms of reciprocity, there would be an adverse impact upon the privacy of the neighbouring occupiers at No.47. Thus, without certainty as to the nature of the neighbouring window and the space it serves, I cannot be certain that the privacy of neighbouring occupiers at No.47 would not be compromised.

³ Fearn & Ors v The Board of Trustees of the Tate Gallery [2020] EWCA Civ 104 (12 February 2020)

21. I therefore conclude that the proposed development would unacceptably harm the living conditions of neighbouring occupiers at No.47 Charlton Church Lane, with particular regard to privacy. It would conflict with Policy DH(b) of the RGLP, which seeks to ensure that development does not cause an unacceptable loss of amenity to adjacent occupiers by reducing the amount of privacy they would enjoy.

Other Matters

22. The main parties agree that the existing permission has commenced, but it is not fully implemented, and that the lawful use of the site is now residential (Class C3) following partial implementation of the permission. The appellant states⁴ that the lawful use was confirmed in a pre-application advice letter by the council. However, from the limited evidence before me, the rear hall has been demolished; and the council states⁵ that internal works have commenced, albeit in their view unlawfully as condition No.4 has not been discharged.
23. Therefore, I cannot be certain that the lawful use of the appeal site is residential, or that the existing permission has lawfully commenced. Moreover, it is not the role of an inspector dealing with a s78 appeal to determine whether a development is lawful. Such matters can only be determined by an application for a certificate of lawfulness.
24. Nevertheless, the existing permission represents a fallback, and the appellant would be free to fully implement the existing permission if this appeal were to fail. However, it would be less harmful than the appeal scheme, in so far as it would relate to the main issues in this appeal. The block proposed under the existing permission has no proposed windows that would directly face the outrigger at No.47, nor its obscure glazed window, nor the extraction flues; and the proposed windows in the block would offer a much more open view than those in the appeal scheme, as referenced in my reasoning above.
25. While I note that there is little substantive evidence before me to demonstrate conclusively that the full implementation of the existing permission would not be feasible and/or financially viable, the appellant has stated that they no longer intend to implement the existing permission as a result of technical difficulties and expense associated with demolition works (including removal of waste material) due to the constrained access to the rear of the site.
26. Given my observations on site regarding the steep change in land levels to the rear, and the nature of access that would be available for construction activity to be carried out, I find no reason to dispute the appellant's position. Thus, I am satisfied that based on the appellant's stated intentions and the circumstances of the site that there would be no realistic prospect of the existing permission being fully implemented in any case. Consequently, the fallback position is afforded only limited weight in this appeal.
27. As I am dismissing the appeal, it is not necessary for me to consider whether a legal agreement is required to prevent the full implementation of the existing permission.
28. The application was accompanied by a Fire Safety Statement which demonstrates that fire risk issues could be suitably addressed as part of the

⁴ Appellant's Planning Design and Access Statement, paragraph 6.1

⁵ Development Management Delegated Report, in the section entitled 'Loss of Existing Use'

development. I am also satisfied that the use of the communal rear amenity area would not result in unacceptable impacts in terms of noise and disturbance to the surrounding area, when taking account of the previous use of the site as a private members club with dance hall towards the rear. There is also no substantive evidence that the proposed development would have an unacceptable impact in terms of local highway conditions or traffic. However, the absence of concern in each of those respects are a neutral factor.

29. Paragraph 134 of the National Planning Policy Framework (the Framework) requires me to give significant weight to outstanding or innovative designs which promote high levels of sustainability. While the appellant suggests that the proposed development is a highly sustainable conversion, there is little evidence before me to demonstrate the sustainability credentials of the proposal, and thus the significant weight afforded by the Framework is not justified in this case. Nonetheless, the front building does make a positive contribution to the character and appearance of the area, for example in terms of its architectural features and detailing. As such whilst its retention is commendable in terms of maintaining the character and appearance of the area and the proposed development is otherwise acceptable in that context, the absence of harm to character and appearance is a neutral factor. Given the existing building already exists, the proposal would involve its re-use, and thus could assist in meeting the challenge of climate change.
30. Set against the harm I have identified are the benefits of the proposed development. The proposal would support the government's objective to significantly boost the supply of homes, and it would provide 7 units of accommodation with a mix that would provide housing choice. As a small site it could be built out relatively quickly and assist in meeting the housing needs of the borough and across London. Such benefits would be of limited weight. It would result in the development of underutilised land and buildings, particularly for housing and thus make effective use of land, and this benefit would be of substantial weight in accordance with the Framework.

Planning Balance

31. Paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. In this regard, the policies seeking to ensure that developments provide a high standard of amenity for existing and future occupiers are well supported by the Framework. Therefore, the conflict between the proposal and the development plan should be given considerable weight in this appeal, given the proposed development would fail to provide a high standard of amenity for future users as required by the Framework which also is clear that development that is not well designed should be refused.
32. The proposed development conflicts with the development plan as a whole, for the above reasons. The main parties agree that the council is unable to demonstrate a five-year supply of land for housing, with a supply of some 3.1 years. Consequently, paragraph 11 d) of the Framework is engaged, whereby the policies which are most important for determining the application should be considered out of date.
33. There are no relevant Framework policies that protect areas or assets of particular importance that provide a clear reason for refusal. Therefore, in accordance with paragraph 11 d) ii of the Framework, 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.

34. The benefits of the proposal, as referenced in my reasoning above weigh in favour of the scheme. The adverse impacts I have identified are the unacceptable harm to the living conditions of both future occupiers and neighbouring occupiers to which are given considerable and overriding weight.
35. Drawing together the above, I consider that the adverse impacts of the development significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The development therefore does not benefit from the presumption in favour of sustainable development as set out in paragraph 11 d) ii of the Framework.

Conclusion

36. For the reasons given, I conclude that the development conflicts with the development plan, read as a whole. No material considerations, including the Framework have been shown to outweigh the harm that I have found. Therefore, the appeal is dismissed.

J Moore

INSPECTOR