



Appeal Decision

Site visit made on 8 August 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2023

Appeal Ref: APP/C5690/W/22/3313722

Flat rear of 242 Brownhill Road, Lewisham, London SE6 1AU

- 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 Terence Reeves against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/22/126741, dated 12 May 2022, was refused by notice dated 4 August 2022.
- The development proposed is the demolition of existing building and erection of new building to provide one 2-bed live/work unit.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Terrance Reeves against the Council of the London Borough of Lewisham. This application is the subject of a separate decision.

Preliminary Matters

3. The current use of the building as part residential and part workshop has been established by the Council granting a Lawful Development Certificate¹ (LDC) in on 16 August 2022. This decision was made after the determination of this application. During my site visit, I observed that the residential part is currently occupied and the workshop part of the building in use for storage.
4. My attention has been drawn to two previous appeal decisions² at the site. Whilst there are some similarities between these schemes, the previous applications differ in that they sought a greater number of residential units. The appeal decisions are a material consideration in the determination of this appeal. However, I have considered the appeal proposal on its own individual merits.

Main Issues

5. The main issues of the appeal are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposed development would provide adequate living conditions for future occupiers of the residential accommodation with particular regard to outlook and privacy;

¹ Application Ref: DC/22/127483

² Appeal Ref: APP/C5690/W/18/3218755 and APP/C5690/W/20/3263746

- The effect of the proposed development on the living conditions of the existing occupiers of the neighbouring properties with particular regard to outlook and privacy;
- The effect of the proposed development on highway safety, with particular regard to access, parking provision and traffic generation; and
- Whether the appeal site is a suitable location for development, having regard to local and national policy.

Reasons

Character and Appearance

6. The appeal site is located to the rear of No. 242 Brownhill Road and comprises a part one storey, part two storey building. The older, two-storey part of the appeal site is of a similar appearance to others along the terrace. Attached to this is a single-storey workshop building, which extends towards the rear boundary of the appeal site. The existing building has a simple, functional appearance which reflects its workshop use.
7. At the end of the terrace, at the rear of No. 244 Brownhill Road, a modern two storey building which contains residential accommodation. This building was separated from the appeal site by a tall, timber boundary fence. On the opposite side of the appeal site at the rear of No.238 Brownhill Road is a workshop building, which appeared to still be in use. To the south of the appeal site are the rear gardens of the residential properties in Arngask Road, whilst to the north, are the rear yards and gardens of the Brownhill Road properties. These properties along Brownhill Road are mostly occupied for commercial purposes at ground level, with residential above.
8. The site is accessed along a shared driveway which passes from the main road below an archway between 228 and 232 Brownhill Road. Most of the original parts of the workshop buildings appear to date from the 19th century and whilst some are still used as workshops, some of these buildings have been granted approval for residential use as live/work units.
9. The design of the proposed building takes a modern design approach which incorporates some design features found in the existing building and surrounding area. However, the proposed design includes a high ratio of glazing to solid wall, particularly to its front elevation which contains wide patio doors in the ground floor opening out onto the front patio area which would be created. This is repeated at first floor level where the living room opens onto the balcony. The main bedroom to the rear also has glazed doors providing access onto the terrace.
10. The roof would be finished in a grey single-ply membrane covering, much of it overlaid with terrace decking, planting and photo-voltaic panels. The predominant walling material is brick, with aluminium-framed windows. The enclosures in the front garden are close-boarded timber and the rear screening of obscure glass.
11. The proposed building would have a part flat, part pitched roof profile and would be slightly taller than the two adjacent buildings. The ground floor footprint of the building would be reduced to provide a yard area between the rear elevation of the workshop and No. 242 Brownhill Road. However, the first-

floor accommodation would be extended above the single storey workshop accommodation, increasing the bulk and mass of the building which would not in keeping with the scale and character of the surrounding properties.

12. Whilst I acknowledge that the appeal site is located to the rear of Brownhill Road and therefore does not occupy a prominent position, it is viewed from a large number of buildings in the surrounding area. In its more immediate setting, the appeal site is viewed in the context of neighbouring buildings which form a row of similar workshop buildings and display a simple functional design. The complicated form of the replacement building would appear as an incongruous addition in this street scene, that would fail to respect the simple, functional character and appearance of the existing buildings within the immediate surrounding area. Therefore, the proposed development would fail to make a positive and high-quality contribution to the area.
13. Consequently, I find that the proposed development would harm the character and appearance of the area. This would be contrary to Policy D3 of the London Plan 2021, Policy 15 of the Lewisham Local Development Framework Core Strategy Development Plan Document 2011 (CS), Policy DM30 and DM33 of the Lewisham Local Development Framework Development Management Local Plan 2014 (DMP), which seek, amongst other things, high-quality design that is sensitive to local context and responds positively to local character and the surrounding area.
14. The proposed development would also be contrary to Paragraph 130 of the National Planning Policy Framework (the Framework) which requires development to function well, to add to the overall quality of the area, be visually attractive and are sympathetic to local character.

Living Conditions – Future Occupiers

15. The appeal site is located in close proximity to a number of existing buildings, in what is a densely built area. The surrounding context is such that the existing buildings already experience a constrained outlook and a high degree of window to window overlooking. However, as the appeal site, together with neighbouring buildings, would have historically been in a commercial use, rather than a residential use, this would not give rise to the same concerns relating outlook or privacy.
16. The submitted plans show that bedrooms 1 and 2 would each be served by a single window opening overlooking a roof terrace. The proposed windows would be located approximately 3.9 metres away from a 1.7 metre high obscure glazed privacy screen which would surround the terrace. Whilst I recognise that the privacy screen has been included to minimise direct views towards the rear elevation of No. 242 Brownhill Road, it would by virtue of its proximity to the bedroom windows limit the outlook from these windows. However, whilst the outlook from the bedroom windows would be constrained, it would nonetheless provide the occupants with an adequate outdoor aspect.
17. The ground floor kitchen and dining room would have a large opening, which is south facing. Whilst the room would be single aspect, the orientation of the building and the inclusion of a large glazed opening and fanlight, would provide adequate daylight to this room.

18. In terms of privacy, Policy DM32 of the DMP states that unless it can be demonstrated that privacy can be maintained through design, there should be a minimum separation of 21 metres between directly facing habitable room windows on main rear elevations. There are currently no first-floor windows which face directly towards the rear elevation of No.242.
19. The proposed replacement building, would extend further towards this property at first floor level than is currently the case, and would provide a large first floor roof terrace. There are no first-floor windows in the appeal site which currently face towards the rear elevation of No.242 Brownhill Road. The distance between the first-floor part of the proposed building would be approximately 10 metres away from the rear elevation of No.242. Whilst the submitted plans include provision of a 1.7 metre high privacy screen to the first floor terrace, the bedroom windows in this elevation would by virtue of the proximity to the windows in the rear elevation of No. 242 fail achieve acceptable levels of privacy for the occupiers of the proposed dwelling. The proposed development would provide significantly less separation than is required by Policy DM32 of the DMP and it has not been demonstrated that adequate levels of privacy can be provided. Therefore, the proposed development would fail to provide adequate living conditions for future occupiers of the residential accommodation.
20. The proposed dwelling would exceed the minimum requirements for internal floorspace set out in Policy D6 of the London Plan and the Nationally Described Space Standards (NDSS). It would also exceed the minimum requirements for provision of external amenity space. I acknowledge that the proposed development would lead to an improvement to the existing accommodation within the building. However, these matters do not outweigh the harm I have identified in respect of privacy.
21. Whilst I have had regard to the findings of the recent appeal decisions on the site, I find that the proposed development would not provide adequate living conditions for future occupiers with regards to privacy. In any case, I have considered this appeal on its own merits.
22. Consequently, whilst I have concluded that the proposed development would provide an acceptable level of outlook, I find that the proposed development would fail to provide adequate living conditions for future occupiers with particular regard to privacy. It would therefore be contrary to Policy D6 of the London Plan (2021); Policy 15 of the Core Strategy (June 2011) and DM Policy 32 of the Development Management Local Plan (November 2014). These policies seek, amongst other things, seek to achieve an appropriate level of privacy for occupiers.

Living Conditions – Neighbours

23. I have not been provided with any details of the location, size and position of windows on the neighbouring properties. However, where habitable room windows directly face other habitable room windows, Policy DM32 requires a minimum separation distance of 21 metres. The rear elevation of No. 242 Brownhill Road contains first floor windows serving existing residential accommodation which are located just 10 metres from the rear elevation of the proposed building. As such, the proposed development fails to achieve this minimum requirement.

24. Whilst the proposed development does include a privacy screen to the rear terrace, I have not been presented with any compelling evidence that this would be sufficient to address concerns relating to privacy as a result of the proximity and direct views of these windows.
25. The proposed building by virtue of its design would increase the bulk and massing of the building at first floor level. Whilst it would not extend beyond the rear elevation of the adjoining property at the rear of No. 244 Brownhill Road. The roof terrace would extend beyond the rear elevation of the building at the rear of No. 244, but would be set in from the boundary by approximately 1.2 metres. Due to its position, proximity and height in relation to the adjoining property, it would result in an overbearing presence. Further, its use as external amenity space for the dwelling, would be likely to cause some noise and disturbance in an elevated position. The submitted plans indicate that the existing boundary treatment between the appeal site and the building to the rear of No. 244 would, if agreement with the landowner could be secured, reduced in height by approximately 0.8 metres. However, whilst this may improve the provision of day light to this property, it would reveal more of the proposed development further contributing to its dominant and overbearing presence.
26. The proposed development would adjoin a workshop unit, which is located to the rear of No. 238 Brownhill Road and is in use as a factory. This building, although commercial, contains high-level windows in the side elevation facing towards the appeal site. The proposed development would add an additional storey to part of the building which is adjacent to these windows. As such, by virtue of its proximity and height would reduce level of outlook, daylight and sunlight into to the neighbouring workshop building.
27. Whilst I recognise that these policies primarily relate to residential amenity, and this is a commercial premises. Nevertheless, I find that the proposed development would cause harm the outlook of these windows and lead to a reduction in the provision of daylight. However, as these windows do not serve habitable accommodation, I agree with the Council that this impact would not be significant.
28. Accordingly, I therefore find that the proposed development would cause harm to the living conditions of neighbouring occupiers, with particular regard to outlook and privacy. It would therefore be contrary to Policy DM33 of the DMP which states that development should not lead to a significant loss of privacy or amenity. It would also be contrary to Paragraph 130 of the Framework which requires development to provide a high standard of amenity for existing and future users.
29. In relation to this main issue, I have not found any conflict with Policy 15, which relates to the provision of high-quality design but does not set out any specific requirements in relation to residential amenity.

Highway Safety

30. Whilst there are no formal arrangements currently in place to facilitate access, parking and servicing, there is currently space at the front of the building for this to take place, as I observed at my site visit. However, the proposed development would involve the creation of a patio area at the front of the building, which would be enclosed by planting and a fence, providing only

pedestrian or cycle access to the building and to the neighbouring building at the end of the row. As a result, the available space for parking and servicing at the front of the building would be lost and it is unclear from the submissions how the workshop would continue to be accessed in relation to deliveries or parking associated with the use.

31. In this context where multiple businesses co-exist side by side, but with limited access and parking available, the changes to the access arrangements would be likely to lead to the displacement of deliveries and parking to elsewhere within the highway network to the detriment to the safety of other users of the highway. This would also be harmful particularly the occupiers of the residential unit who would only have pedestrian or cycle access to the dwelling. The absence of a dedicated footway has been raised as a reason for refusal and based on the evidence before me, I agree that the proposed development has not demonstrated that it will provide safe, secure pedestrian access.
32. Although I have not been provided with a copy of their full response, the Officer Report confirms that Transport for London (TfL) were consulted on the application and did not object subject to the imposition of a number of conditions. These included securing adequate cycle parking for both uses, a Controlled Parking Zone (CPZ) Agreement to secure car-free housing, a Construction Management Plan, a Delivery and Servicing Plan and provision of safe, secure access. The TfL response was provided prior to the current lawful use of the site being established.
33. Notwithstanding the above, the appeal site benefits from an existing lawful use as a mixed-use and includes residential accommodation. Therefore, in terms of use the proposed development would be a broadly like-for-like replacement. The access, parking and servicing arrangements that currently exist could continue regardless of the outcome of the appeal, which is a material consideration. On this basis, I find that the requirement for a CPZ agreement and delivery and servicing plan would not, in this particular case be reasonable, and a planning condition to require these to be submitted would not meet the statutory tests outlined in the National Planning Policy Framework and the advice in the Planning Practice Guidance. In the event that I am minded allowing the appeal consideration would be given to the imposition of planning conditions to require submission of a Construction Management Plan and in relation to the provision of cycle parking, which is shown on the submitted plans.
34. The use of the access road for parking and servicing appears to take place on an informal basis and whilst I observed high demand for access and parking the proposed development would not lead to an intensification of the existing use. The appellant has also confirmed that there would be no change to the existing pedestrian access arrangements. Whilst I have identified that the proposed development would result in the loss of space to the front of the building which could be used for access and parking, the existing use of the building has already been established without any detailed requirements for access, parking or service provided. Therefore, I conclude that it has not been demonstrated that it would not be reasonable to require the appellant to provide additional parking and servicing.
35. Accordingly, whilst the proposed development would not meet all of the required standards for access, parking and servicing, in light of the existing

established use and the proposed development being a replacement building, it would not result in a greater impact on highway safety than the current situation. I therefore find it would not lead to unacceptable impacts on highway safety, with particular regard to parking and traffic generation. The proposed development would not conflict with Policies T5 and Policy T6 of the London Plan, Policy 14 of the CS and DM Policy 29 of the DMP. These policies, amongst other things, promotes and prioritises the access and safety of pedestrians and cyclists throughout the borough, provide adequate cycle parking and adequate provision should be made for efficient deliveries and servicing and emergency access.

36. The proposed development would also not be contrary to Paragraphs 110 which requires that safe and suitable access to the site can be achieved for all users and Paragraph 111 of the Framework which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Suitable Location

37. The Council's first reason for refusal relates to the principle and location of the proposed development. Policy 1 of the CS states that housing developments will be expected to provide an appropriate mix of dwellings having regard to criteria such as the physical character of the building and site and location of schools, shops, open space and other infrastructure requirements (such as transport links).
38. Policy DM33 defines backland sites as landlocked sites to the rear of street frontages not historically in garden use such as builders' yards, small workshops and warehouses, and garages. The appeal site would fit within this definition. Policy DM33 of the DMP also states that the development of backland sites will only be permitted where they provide, a proper means of access and servicing which is convenient and safe, that there will be no significant loss of privacy, amenity and no loss of security for adjoining houses and rear gardens and appropriate amenity space is provided in line with the requirements of Policy DM32.
39. The Council's Officer Report found that the proposed development would be unacceptable in principle, raising issues of access and amenity which I have considered earlier in this decision. This report pre-dates the LDC for part residential, part workshop use being granted.
40. In this particular case, although the site is considered for the purposes of Policy DM33 to be a backland site, the granting of a LDC establishes the part residential use, part workshop use of the site. The proposed development would therefore involve the demolition of the existing building and the erection of a replacement building, providing a two-bedroom residential flat and a workshop building. It would not involve the creation of a new residential unit and there would be no increase in the number of residential units within the site. The proposed development would also retain a workshop building, albeit on a smaller footprint than the current space. Therefore, the development would broadly consist of a like-for like replacement in terms of its use.
41. Consequently, taking into account the established lawful use of the site, I conclude that the proposed development would be a suitable location for

development, having regard to local and national policy. I therefore find that the proposed development would not be contrary to Policy 1 of the CS in so far as the proposed development would not increase the number of residential units on the site or the amount of commercial floorspace. The proposed development would also not be contrary to Policy D4 of the London Plan, which relates to high-quality design, not the principle of development. It would also not be contrary to Policy DM33 of the DMP which relates to new development on infill sites, backland sites, back gardens and amenity areas.

Conclusion

42. Whilst I have concluded that the appeal site would be a suitable location for the proposed development having regard to the existing use of the site and that the proposed development would not be harmful to highway safety. I have concluded that the proposed development would cause an unacceptable level harm to the character and appearance of the area and to the living conditions of neighbouring occupiers. It would also fail to provide adequate living conditions for future occupiers.
43. For the reasons given, the proposal would not accord with the development plan when taken as a whole. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. The appeal is therefore dismissed.

K Lancaster

INSPECTOR