



Appeal Decision

Site visit made on 24 January 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/E5330/W/23/3325240

27A Herbert Road, Plumstead, SE18 3TB

- 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 J Pinker against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref 23/0973/F, dated 20 March 2023, was refused by notice dated 7 June 2023.
 - The development proposed is erection of two additional stories to the existing single storey building comprising 1 x 2 bedroom apartment.
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Decision

1. The appeal is allowed and planning permission is granted for erection of two additional stories to the existing single storey building comprising 1 x 2 bedroom apartment at 27A Herbert Road, Plumstead, SE18 3TB in accordance with the terms of the application, Ref 23/0973/F, dated 20 March 2023, subject to the nine conditions in the attached schedule.

Applications for costs

2. An application for costs has been made by the appellant against the Council and this is the subject of a separate decision.

Preliminary Matters

3. As part of the appeal, a revised first floor plan has been submitted showing that the double bedroom would have a floor area of 11.5 sq m. This modest internal change would cause no procedural unfairness. The appeal will proceed on this basis and as confirmed by the Council, relevant development plan policies and the *Technical Housing Standards – Nationally Described Space Standard* (DCLG, 2015) would be complied with. As such, the second reason for refusal has been overcome.
4. An appeal for a development of the same description was dismissed in 2022 (Ref: APP/E5530/W/21/3285005). The proposal has been amended by, amongst other things, pulling the rear elevation back by between 1m and 3m, re-positioning the terrace area and reducing the height of the development at the rear. The Inspector's decision is a material consideration but this scheme should be judged afresh and in its own right.

Main Issue

5. This is the effect of the proposed development on the living conditions of the occupiers of the flats at 29 Herbert Road with particular reference to daylight, outlook and visual impact.

Reasons

6. The appeal site comprises a flat roofed single storey building in use as a hot food takeaway within the shopping frontage of the Herbert Road Local Centre. An extension above it on two floors is proposed to create a two-bedroom flat. As part of the proposal the existing extractor flue would be re-located. The residential accommodation at 29 Herbert Road comprises 9 flats and includes a building to the rear that wraps around the appeal site.
7. Planning permission was given for a 3-storey building at 25/27 Herbert Road in 2020. The flank wall would run directly along the boundary with the appeal site. However, whilst all details pursuant to that permission have been discharged, there is no evidence that it was implemented prior to the expiry date of 11 December 2023. In view of this, the permitted scheme cannot proceed. There is nevertheless potential for re-development of the adjoining land which should be borne in mind.
8. The appellant has provided a Daylight and Sunlight Report (DSR). This is based on the tests and guidance in the Building Research Establishment (BRE) publication of 2022 on *Site Layout Planning for Daylight and Sunlight: a guide to good practice*. The windows and external areas affected by the proposal will be referred to using the references taken from that report. The calculations in the DSR are not disputed by the Council.
9. Window 4 comprises patio doors serving a first-floor bedroom in Flat 1.5 at 29 Herbert Road. It faces north-east. The vertical sky component received by this window would reduce from 6.7% to 5.4% as a result of the proposed development. However, as this would be slightly more than 0.8 times its existing value, the BRE guidance indicates that diffuse daylight would not be adversely affected. Whilst a value of 5.4% would be well below the recommended figure of 27%, this is already a room where daylight is inadequate. In short, a gloomy internal area would become very slightly gloomier. There is no objection on this count.
10. The view out of Window 4 is directly towards the rear block of 29 Herbert Road and it is also overhung by the balcony of Flat 2.5 above. Because of the orientation of these glazed bedroom doors and the juxtaposition between them and the proposed extension, outlook would not be compromised. This is because the proposal would only be seen obliquely from within the flat and would not be within the immediate 'line of sight' of anyone looking out. Similarly, the extra two storeys would be sufficiently separated to avoid an overwhelming sense of enclosure. These considerations also apply to Window 9 at second floor level which serves a bedroom within Flat 2.5.
11. As well as the balcony for Flat 2.5 (Garden 5) there is a larger external area for Flat 1.5 (Garden 1) which is accessed via the bedroom. These are north-facing and enclosed by the walls of 29 Herbert Road. Although not especially attractive they are nonetheless both of reasonable size and are part of the accommodation at the flats. There is no first-hand evidence that they are not

used by the occupiers and currently have an unhindered aspect over the existing flat roof of No 27A.

12. The proximity and height of the proposed upward extension would make these outside spaces less pleasant as they would be hemmed in and closely surrounded on a third side. Nevertheless, it is stretching it to claim that they would be unusable. Comparison is made with the outlook achieved from the rear gardens of other terrace properties in the Borough, such as 136/138 Brewery Road but that does not justify the proposal. However, the occupiers also have access to a large communal outdoor area on top of the rear building. This reduces the adverse consequences for overall living conditions.
13. The implications for daylight, outlook and visual impact at the adjoining flats would be exacerbated if the development at 25/27 Herbert Road went ahead. However, that permission is no longer extant and there is no evidence about when or if it might be pursued in the future. As such, this does not alter the assessment undertaken.
14. The previous Inspector concluded that that scheme would unacceptably harm the living conditions of the occupants of four flats in the 29 Herbert Road development owing to loss of daylight and/or outlook. The proposal has been reduced in size and so can be differentiated. Furthermore, in respect of Window 4, the BRE guidance would be adhered to and the earlier decision makes no reference to the communal garden. The likelihood of development taking place at 25/27 Herbert Road has also receded. As such, where my findings differ from those of the last Inspector, they are justified by the differences between the developments proposed and changing circumstances.
15. In summary, the proposed development would harm the living conditions of the occupiers of two of the flats at 29 Herbert Road in respect of outlook from their terraces. In other respects, the impact on residential living conditions would be acceptable. Nevertheless, there would be a conflict with Policy DH(b) of the Core Strategy with Detailed Policies of 2014 which seeks to avoid a significant loss of amenity to adjacent or nearby properties.

Other Considerations

16. The latest information is that the Council is able to demonstrate a housing land supply of 3.1 years. This is well below Government expectations. Whilst the proposal would only deliver one unit this would nonetheless be valuable in boosting the housing stock in circumstances where there is a significant shortfall. This was acknowledged by the previous Inspector as well as benefits that would ensue for the local economy.
17. In addition, the existing single storey building at No 27A is unprepossessing and does not provide a strong sense of enclosure to Herbert Road. In general, the immediate townscape comprises two and three storey buildings tight up against the back edge of pavement. The proposed extension would therefore reflect and perpetuate the urban grain and would relate well to the adjoining premises at No 29. The existing flue would also be hidden from wider public gaze. Overall, it would result in a significant visual enhancement within the Local Centre as supported by Core Strategy Policy TC7.

Final balance

18. The proposal would harm the living conditions of the occupiers of two of the flats at 29 Herbert Road. There would be a visual improvement to the Local Centre but there would nonetheless be a conflict with the development plan as a whole. However, because of the housing land supply position, paragraph 11 d) of the Framework is relevant.
19. On the debit side, a high standard of amenity for existing users would not be achieved because of the effect on the outlook from two existing terraces. The impact on the living environment for the occupiers would nevertheless be mitigated by the availability of a large communal area on the rooftop.
20. The proposal would deliver an additional housing unit in a Borough that is falling well short of the level of housing supply required by national policy. One unit would make a minor but useful contribution as indicated by paragraph 70 of the Framework. Furthermore, great weight should be given to the benefits of using suitable sites within existing settlements for homes. The proposed unit would also be on brownfield land and its urban location is generally supported by national policy.
21. In addition, one of the aims of the Framework is to achieve well-designed and beautiful places. Moreover, good design is a key aspect of sustainable development. The proposal scores well in this respect since it would improve the appearance of an unattractive building which has a weak presence in the street scene. It would also complement its immediate neighbour and the general form of buildings along Herbert Road. This is a significant benefit of the proposed development.
22. When assessed against the policies in the Framework as a whole, the adverse impact on the living conditions of neighbours does not significantly and demonstrably outweigh the benefits of an additional home in a suitable location which would enhance the appearance of the area. Consequently, the presumption in favour of sustainable development applies and this indicates that permission should be granted.
23. This is a different outcome to the last appeal but the scheme has been amended and there has been a change in circumstances since then. Furthermore, that Inspector did not undertake the balance under paragraph 11 d) of the Framework which is required in this case.

Conditions

24. The approved plans should be specified in the interests of certainty. Details of external materials are necessary to achieve a satisfactory appearance. Due to the proximity to residential properties a construction management plan to suppress dust and other emissions is required. A limit on the water consumption rate is justified by The London Plan. To ensure a satisfactory living environment for future occupiers of the apartment, adequate sound insulation and details of the extraction equipment for the takeaway below should be agreed. The cycle storage facilities should be incorporated to promote sustainable transport and the refuse storage areas provided so that the development functions properly.
25. Some of the details referred to by these conditions are required before construction starts either because they would affect that process or to provide

a suitable 'trigger point'. Where necessary, the wording of the suggested conditions has been adjusted for clarity or to better relate them to the proposal. Reference to specific standards has also been omitted as the implications for adhering to them have not been set out. It will be a matter for the Council to assess whether the submitted details are acceptable or not when approval is sought pursuant to the conditions.

26. Whilst The London Plan seeks to improve air quality, no specific development plan policies have been referred to that limit dry NOx emissions from boilers. A restriction in this respect is therefore not warranted. The apartment would not be a "dwellinghouse" for the purposes of the Town and Country Planning (General Permitted Development) Order 2015. Furthermore, the Council has not indicated which category of permitted development it seeks to control. A condition in this respect would therefore be neither reasonable nor necessary.

Conclusion

27. The proposal would not accord with the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the drawing nos 19.002.EX01A, 19.002.PR02E, 19.002.PR03H, 19.002.PR04G, 19.002.PR05D, 19.002.PR06F, 19.002.PR07F, 19.002.PR08F, 19.002.PR09C, 19.002.PR10F, 19.002.PR11A, 19.002.PR12A and 19.002.PR13A.
- 3) No development shall take place until a schedule and samples of all external materials and finishes to be used on extension hereby permitted, including windows and roof coverings, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall include a management scheme to control and minimise emissions of pollutants from and attributable to the construction of the development. This should include a risk assessment and a method statement which should comprise:-
 - A dust risk assessment to include dust suppression methods to be used including details of equipment during the different stages of the development; and
 - Proposals for monitoring dust/particulates and procedures to be put in place where agreed dust/particulates levels are exceeded.
- 5) The dwelling hereby permitted shall not be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 105 litres per person per day has been complied with.
- 6) No development shall take place until a scheme of noise insulation measures for all divisions (walls and/or floors) separating non-residential/residential areas has been submitted to and been approved in writing by the local planning authority. The scheme of noise insulation measures shall demonstrate the level of sound insulation that will be achieved for airborne and impact sound. The approved scheme shall be implemented prior to the commencement of the residential use and be permanently retained thereafter.
- 7) No development shall take place until details of the installation, operation, and maintenance of odour abatement equipment for the takeaway unit at 27A Herbert Road, including the type of extract system, the height of the discharge and the efflux velocity of the effluent at the point of discharge, has been submitted to and approved in writing by the local planning authority. The extraction system shall be fully implemented in accordance with the approved details prior to the first occupation of the development hereby permitted and maintained thereafter in accordance with the approved maintenance schedule.
- 8) Prior to the first occupation of the development hereby permitted, the residential and commercial refuse and recycling storage arrangements shown on drawing no 19.002.PR02E shall be provided and thereafter retained.

- 9) Prior to the first occupation of the development hereby permitted, the cycle parking spaces shown on drawing no 19.002.PR03H shall be provided and thereafter retained for that purpose.