



Appeal Decision

Site visit made on 23 January 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12.02.2024

Appeal Ref: APP/N5660/W/23/3324797

Rear of 126 Kennington Park Road, LONDON, SE11 4DJ

- 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 and Mrs C Allen against the decision of London Borough of Lambeth.
 - The application Ref 22/04168/FUL, dated 23 November 2022, was refused by notice dated 3 April 2023.
 - The development proposed is the construction of a new single storey 2 bedroom dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for the construction of a new single storey 2 bedroom dwelling at rear of 126 Kennington Park Road, LONDON, SE11 4DJ in accordance with the terms of the application, Ref 22/04168/FUL, dated 23 November 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. Applications for planning permission are to be determined in accordance with the development plan for the area unless material considerations indicate otherwise. In this case, the relevant parts of the development plan are the Lambeth Local Plan (Local Plan) and the London Plan. The National Planning Policy Framework (the Framework) is a material consideration. The Framework was updated in December 2023. Paying regard to the respective cases and any specific references to national policy drawn to my attention, the update to the Framework does not change my conclusions.

Main Issues

3. The main issues are whether the proposal would:
 - Create acceptable living conditions for future occupants of the dwelling.
 - Do its part in promoting sustainable modes of transport and mitigating any harmful transport effects that may arise as a consequence of future occupants owning a car.

Reasons

Living conditions

4. The Council's reason for refusal raises concerns about various aspects of living conditions, which I will address individually. In doing so I appreciate that sites rarely offer perfect living conditions and that it is possible for minor deficiencies in some areas to be made up in other aspects of a proposal. As such, taking a holistic view of whether good living conditions would be provided is preferable to adopting a tick box approach. I have approached this issue with this in mind, alongside fully recognising where something is an explicit requirement of development plan policy, and that the Framework makes clear that creating high quality buildings and places is fundamental to what the planning and development process should achieve.

External amenity space and general outlook

5. Policy H5(b)(i) (Local Plan) sets an expectation that all new houses should provide 30sqm as a minimum level of external amenity space. The differing views the parties take on the size of the enclosed garden area makes little difference. Taken alone, the garden area falls short of the 30sqm requirement by a margin of between around 2.5sqm and 4sqm. What makes the difference in terms of meeting the standard is the inclusion, or not, of what the appellant describes as an entrance courtyard.
6. The entrance courtyard is external space and is rather more than just a doorstep. It would sit behind a gate separating it from the street and would therefore be private space. Its amenity value would be restricted by its primary function, which is to serve as a movement space between the dwelling and the street and provide access to bicycle and waste storage.
7. Policy H5 provides a metric to be achieved in respect of private amenity space rather than a more detailed basis for judging the amenity value of the space itself. Paragraph 5.33 (Local Plan) indicates that quality requirements are included in Policy Q2 (Local Plan). There is no evidence to suggest that the 30sqm calculation isn't intended to also include an element of external space where the amenity value is limited by its functionality. In practice most gardens include some space where practical usability for a wider variety of activities is restricted. On this basis, I see no reason why the entrance courtyard should not be included as private amenity space. In this respect, the requirements of Policy H5 would be met.
8. In relation to the quality of the amenity space, the Council have not qualified their view that the garden width would be narrow. As a matter of fact and degree, I do not find it to be narrow. When coupled with the length, the garden would be usable and adequate for a property of the proposed size. It would be enclosed on all sides, which would restrict the quality of views afforded from it, but not in a way dissimilar to many urban courtyard style gardens. The level of enclosure would not be oppressive. Nor would inadequate outlook be provided, particularly due to the length of the garden and intervisibility between it and three different rooms on sides of the dwelling where differing views would be afforded.

9. The garden has the potential to be a private and tranquil space, protected from the busy road noise of Kennington Park Road. In this regard, the garden is located to take advantage of the quiet side of the dwelling. Taking a rounded view, the garden space would meet the requirements of Policy Q2 (Local Plan).

Dual aspect

10. Policy H5 (Local Plan) sets an expectation that new residential development will provide dual aspect accommodation, unless exceptional circumstances are demonstrated. No exceptional circumstances have been argued by the Appellant.
11. I have paid regard to definitions of dual aspect from the Mayor of London, the most recent being from London Plan Guidance: Housing Design Standards (June 2023) (LPG). These documents are guidance, not policy, although I recognise that Paragraph 5.31 (Local Plan) provides reasoned justification for Policy H5 (Local Plan) and specifically references the Housing SPG definition of dual aspect meaning 'openable windows on two external walls'.
12. The garden would include four windows, on three external walls, serving three different rooms. Further windows would face onto the entrance courtyard. The garden would be enclosed by the dwelling itself and the boundary wall. The dwelling walls would include windows facing onto a garden that would be open to the elements. On an ordinary understanding of the word, the dwelling walls facing the garden would be external. The degree of enclosure does not as a matter of fact and degree render the relevant walls of the dwelling as internal or create a situation where it would be reasonable to treat the garden in a similar way to a recessed balcony.
13. By way of informing this judgment further, the parts of the Mayor's SPG drawn to my attention assist by providing the definition referenced in the Local Plan and anticipating instances where the two external walls needed to achieve dual aspect may be on opposite sides or wrap around the corner of a building.
14. I have paid regard to the reference to Appendix 3 of the LPG that the Council provides in their statement of case. None of the illustrations appear to be directly comparable to the proposal and the illustration at 'C' in the guidance is only partially applicable. Overall, the Council have not adequately explained how the 50% guidance should sensibly be applied in this instance. As such, I am unable to give it material weight in reaching a view on this issue.
15. As a matter of fact and degree, paying regard to the number and location of the windows proposed, views afforded, and distances between them, I am satisfied that dual aspect would be achieved. This is provided windows on different walls are openable (which could be secured by condition). As such, the requirements of Policy H5 (Local Plan) would be met. In addition, as the provision of dual aspect dwellings would be maximised and single aspect avoided, the proposal would accord with Policy D6 (London Plan).

Sunlight and daylight

16. The Appellant submitted a Sunlight and Daylight Assessment (Light Report) with the Appeal. There is a very low risk of any party being prejudiced by accepting the Light Report at this stage. As such, I have paid regard to it in reaching my findings.

17. The Light Report analyses and quantifies the provision of natural daylight and sunlight to habitable rooms within the proposal, with reference to the commonly used BRE Guidance. I have no reason to accept the methodology and findings in the Light Report as anything other than reasonable.
18. Taking account of the Light Report findings, alongside the other evidence, the proposal would provide sufficient sunlight and daylight for future occupants and therefore accord with Policy D6 (London Plan).

Ventilation and overheating

19. The proposal would be required to comply with the building regulations in respect of overheating and ventilation. Paying regard to aspect (discussed above) and the openable window options and variety, no site specific heightened risks of ventilation issues are demonstrated by the evidence. The location of the windows does not suggest to me that providing any necessary ventilation would be infeasible for security reasons.
20. In respect of overheating, the Light Report identifies some potential for prolonged periods of sun exposure to windows within the garden. This is likely to affect windows differently over the course of a day, rather than create a consistent and overwhelming impact across most of the property. However, it is prudent to require the submission and approval of an overheating mitigation strategy to allow any necessary mitigation to be better incorporated into the detailed design. This would be a proportionate response to the requirement for development to avoiding overheating in Policy D6 (London Plan).
21. For similar reasons to those discussed above in relation to the amenity space, paying regard also to the standards of light afforded, the living areas within the dwelling would not suffer from inadequate outlook or sense of enclosure.
22. Taking a holistic view of living conditions, the proposal would offer a dwelling of a good size, with adequately proportioned rooms, storage, and a useable and reasonably flexible layout. It would be accessible and have access to an amenity space in a private and tranquil location. The size of the amenity space relies on an internal courtyard to achieve the necessary requirements of policy. This does not dent the acceptability of the amenity space when regard is paid to its quality. The dwelling itself would achieve good levels of sunlight and daylight, with any planning related risks of overheating capable of mitigation by condition. Taken as a whole, acceptable living conditions would be provided.
23. In conclusion on this main issue, the proposal would create good living conditions for future occupants of the dwelling. It would accord with the development plan for the area, specifically Policies H5 and Q2 (Local Plan) and Policy D6 (London Plan) which include requirements relating to housing standards and quality.

Transport

24. The Appellant has submitted a Unilateral Undertaking (S106) aimed at addressing the Council's second reason for refusal. The S106 makes the following substantive obligations:
 - Car club membership.
 - Permit free parking.

- Cycle hire membership.
25. Taken together, the obligations secure accordance with Policies T1, T3, and T6 (Local Plan). Car club membership and permit free parking are explicit requirements of Policies T3 and T6. Permit free parking would meet the aims of Policy T1 by promoting sustainable patterns of development, maximising trips made by sustainable modes and reducing dependence on the private car, paying regard also to the level of public transport accessibility.
 26. A draft S106 was submitted with the appeal and commented on by the Council in their statement of case. An updated version of the S106 was submitted to the Inspectorate in line with the 7 week deadline in the Appeal start letter. The updated version was unsigned, with a signed and executed version following at a later point containing the same substantive detail as the updated version. In the circumstances, balancing the issues of fairness and not unnecessarily holding back otherwise acceptable development, I exercised my discretion to accept the signed S106 and allow the Council the opportunity to comment on it.
 27. The Council have not commented on the detail of the updated S106. I have paid regard to the Council's comments regarding timing, which I address in substance above. Any dispute between the Appellant and the Council over payment of the Council's legal fees to review the S106 is a matter between the parties. This is paying regard to the duty that both have to behave reasonably, although no costs claim has been made in this case and I do not consider it appropriate to initiate a costs process independently.
 28. Turning to whether the S106 can be taken into account, paying regard to the comments from both parties. It is signed, dated, and validly executed. In terms of detailed content, the updated S106 makes additions in relation to notices, the parking restriction schedule, and the cycle club operator. It also updates the definition of a Resident's Parking Bay to include orders made under the Road Traffic Regulations 1984, clarifying that CPZ permits are included. Payment of the monitoring fee on commencement of development is justified. Paying regard to the scale and nature of the development, earlier monitoring is not justified on the basis of the evidence provided.
 29. Taken as a whole, all the obligations (including monitoring arrangements) accord with the provisions in Reg 122 Community Infrastructure Levy Regulations 2010 and the policy tests in the Framework. As such, I have taken the obligations into account.
 30. In conclusion on this main issue, the proposal would do its part in promoting sustainable modes of transport and mitigating any harmful transport effects that may arise as a consequence of future occupants owning a car. There is no conflict with the development plan, including Policies T1 and T3 (Local Plan).

Other Matters

31. The site is within the Kennington Conservation Area (Conservation Area). I have paid regard to the duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 relating to preserving or enhancing its character or appearance.

32. In terms of impact on the Conservation Area, the hardstanding and undeveloped nature of the site creates a weak point in the street scene that is highly visible in public views, including the public square. The proposal would enhance the character and appearance of the area by providing built development of a suitable scale and appearance.
33. This is subject to conditions requiring submission and approval of materials, which are of fundamental importance to the success of the development, most obviously the boundary wall with the street. I agree with the Cleaver Square Residents' Association that the roofscape is also important, as the roof of the development will be very visible from surrounding properties around the square. This includes both the quality of the green roof and the roof lights. These details would therefore need to be the subject of conditions.

Conclusion

34. The proposal would create acceptable living conditions for future occupants of the dwelling and do its part in promoting sustainable modes of transport and mitigating any harmful transport effects that may arise as a consequence of future occupants owning a car.
35. It would accord with the development plan as a whole, pointing towards a grant of planning permission.
36. As such, the appeal is allowed subject to the conditions discussed below.

Conditions

37. I will consider conditions by reference to the numbering in the attached schedule. Where used, I have amended the wording of the conditions suggested by the Council, as appropriate, in the interests of clarity and effectiveness. I have also paid regard to the Appellant's comments.
38. (2) (3) are necessary in the interests of certainty. (3) needs to be a pre commencement condition to ensure that the necessary information about existing and proposed ground levels is available before works commence.
39. (4) (7) (8) (9) are needed to ensure a good standard of external appearance, design (included secured by design, and to preserve the character and appearance of the Conservation Area.
40. (5) (13) (14) are necessary in the interests of using the planning system to make appropriate provision for construction management and surface water management, paying regard also to other interested party comments about the potential impact of construction. (5) (13) need to be pre-commencement conditions as the required plan/strategy may include measures that would need to be in place upfront.
41. (6) is necessary to ensure acceptable provision for waste and recycling. Although the location of storage is clearly shown on the approved plans, there is a legitimate public interest in requiring submission and approval of details of ventilation for the storage space, given its location within the entrance courtyard.
42. (10) is necessary to ensure that sustainability measures are considered, including the risks of overheating for the reasons explained elsewhere in this decision.

43. (11) is necessary in the interests of ensuring appropriate control over future development considering the location of the site in relation to neighbours and the location within a Conservation Area. Whilst the conditions and limitations attached to permitted development rights would naturally restrict what may be possible without the need to apply for planning permission, the sensitivity of the location provides a clear justification for this restriction in accordance with Paragraph 54 (Framework).
44. (12) is necessary to provide planning stage appropriate identification and management of fire risks. Fire safety compliance is covered by Part B of the Building Regulations, however Policy D12 (London Plan) imposes a requirement to consider identified matters. The Appellant's Planning Fire Safety Strategy template starts to address this, but there may be a need for more detail as part of an evolving design process and taking a precautionary approach to this issue.
45. (15) is necessary to ensure that appropriate cycle storage provided and retained for that purpose.

D R McCreery

INSPECTOR

Appendix : Schedule of Conditions

1. Time Limit The development to which this permission relates must be begun not later than the expiration of three years beginning from the date of this decision notice.
2. Approved Plans The development hereby permitted shall be carried out in accordance with following plans and drawings, unless otherwise agreed in writing by the Local Planning Authority :

Planning, Heritage & DAS October 2022; Flood Risk Assessment October 2022; Parking Statement 3 October 2022; Basement Impact Assessment rev A03; Location Plan; Existing GF Plan; Existing Front Elevation; Existing Side Elevation; Existing Section AA; Proposed GF Plan; Proposed RF Plan; Proposed Front Elevation; Proposed Side Elevation; Proposed Section AA; Proposed Section BB.

3. Prior to commencement of development, existing and proposed section drawings shall be submitted and approved by the Local Planning Authority that clearly identify the existing and proposed ground levels by reference to datum levels. The development shall be carried out in accordance with agreed details unless otherwise agreed in writing with the Local Planning Authority.
4. Notwithstanding the approved drawings, no development above ground level shall commence until samples and a schedule of all external materials to be used in the elevations and roof and all facing materials (including a stock brick to match the existing boundary wall and window details to include method of opening), within the development hereby permitted are submitted to and approved in writing by the Local Planning Authority, together with an invitation to view the samples on site. The development shall not be carried out other than in accordance with the approved materials.
5. No development shall commence until full details of the proposed construction methodology, in the form of a Method of Construction Statement, have been submitted to and approved in writing by the local planning authority. The Method of Construction Statement shall include: a) The scope and nature of notifying neighbours with regard to specific works; b) Advance notification of road closures; c) Details regarding parking, deliveries, and storage; d) Details regarding dust mitigation and asbestos disposal; e) Details of measures to prevent the deposit of mud and debris on the public highway; and f) Any other measures to mitigate the impact of construction upon the amenity of the area and the function and safety of the highway network. No development shall commence until provision has been made to accommodate all site operatives', visitors' and construction vehicles loading, off-loading, parking and turning within the site or otherwise during the construction period in accordance with the approved details. The demolition and development shall thereafter be carried out in accordance with the details and measures approved in the Method of Construction Statement unless otherwise agreed with the Local Planning Authority.

6. Prior to the first occupation of the uses hereby permitted, details of waste and recycling storage (including detail on ventilation of refuse stores) for the development shall be submitted to and approved in writing by the Local Planning Authority. The storage shall be provided in accordance with the approved details prior to the commencement of any of the uses hereby permitted and shall thereafter be retained solely for its designated use.
7. Prior to occupation of the development hereby permitted, a satisfactory Secured by Design inspection must take place. The resulting Secured by Design certificate shall be submitted to and approved by the local planning authority.
8. Prior to any above ground works taking place, a detailed specification of the green roofs shall be submitted to and approved in writing by the local planning authority. The specification shall include details of the quantity, size, species, position and the proposed time of planting of all elements of the green roofs, together with details of their anticipated routine maintenance and protection. The green roofs shall be installed in accordance with the approved details and thereafter be maintained in accordance with the details for the lifetime of the development unless otherwise agreed in writing with the Local Planning Authority.
9. If within 5 years of the installation of the green roof any planting forming part of the green roof shall die, be removed, or become seriously damaged or diseased, then this planting shall be replaced in the next planting season with planting of a similar size and species.
10. Prior to any above ground works taking place, a Sustainability Statement shall be submitted to and approved in writing by the local planning authority which demonstrates the following: a) Details of how the development will not exceed mains water consumption of 105 litres per head per day. b) detailed design measures designed to mitigate any risks arising from overheating, c) Details on how sustainable design standards are integral to the design, construction and operation of the development. The development shall be carried out in accordance with the approved details with any specific measures retained unless otherwise agreed in writing.
11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification) no enlargement, improvement, alteration, building, or enclosure permitted by Schedule 2, Part 1, Classes A, B, C, D, E or F of the Order shall be carried out or erected without the prior written permission of the local planning authority.
12. The development shall be carried out in accordance with the submitted Fire Strategy. Prior to first occupation of the development a statement of compliance shall be submitted to and approved in writing by the Local Planning Authority, setting out any further necessary mitigation measures to ensure compliance with Policy D12 (London Plan). The development shall be implemented in accordance with any further approved details. All measures shall be retained for the lifetime of the development.

- 13.No development shall commence on site until a detailed Surface Water Management Strategy document has been submitted to and approved in writing by the local planning authority. This document shall include: - a detailed design of the site's surface water drainage system; - demonstrate the technical feasibility/viability of the system through the use of SuDS to manage the flood risk to the site and elsewhere; - the measures taken to manage the water quality for the lifetime of the development; and - maintenance schedule, confirmation of the management arrangements.

The approved scheme for the surface water drainage shall be carried out in accordance with the approved details before the development hereby approved is first occupied and shall remain in place throughout the lifetime of the development unless otherwise agreed in writing with the Local Planning Authority.

- 14.NRMM If Non Road Mobile Machinery (NRMM) of net power of 37kW and up to and including 560kW is required on site during the course of demolition, site preparation and construction phases, it must comply with the emission standards set out in chapter 7 of the GLA's supplementary planning guidance "Control of Dust and Emissions During Construction and Demolition" dated July 2014 (SPG), or subsequent guidance. Unless it complies with the standards set out in the SPG, no NRMM shall be on site, at any time, whether in use or not, without the prior written consent of the local planning authority. The developer must register all NRMM at <https://nrmm.london/user-nrmm/register> prior to bringing it on to site and shall keep the register up to date by listing all NRMM used during the demolition, site preparation and construction phases of the development.
- 15.Prior to occupation of the development details of cycle storage demonstrating accordance with Policy T3(F) (Local Plan) shall be approved in writing by the Local Planning Authority. The approved cycle storage shall be provided prior to first occupation of the development and shall remain available for cycle storage throughout the lifetime of the development unless otherwise agreed in writing with the Local Planning Authority.

Ends