



Appeal Decision

Site visit made on 20 February 2024

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2024

Appeal Ref: APP/C5690/W/23/3323102

402-404 Evelyn Street SE8 5QL

- 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 Singh Jhas against the decision of the Council of the London Borough of Lewisham.
 - The application, Ref DC/22/129456, dated 22 November 2022, was refused by notice dated 20 April 2023.
 - The development proposed is the construction of a three storey building to provide 4 commercial units at ground floor, 8 self-contained flats on the upper floors, together with the provision of a green roof, bin storage and cycle parking spaces to the rear.
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Procedural matter

1. On the application and appeal forms the appellant incorrectly described the proposal as a four storey building. It is not clear how this error came about as it is correctly described as a three storey building by both parties elsewhere – as shown on the application plans. I have corrected this error in the bullet points above.

Decision

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Mr Singh Jhas against the Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

Main issues

4. There are three main issues in this case:
 - The effect of the proposal on the character and appearance of the area, including the Deptford High Street and St Paul's Church conservation area and other heritage assets.
 - Whether the proposal would harm the green infrastructure network.
 - Whether, in the absence of a planning obligation, the proposal would harm the provision of infrastructure in the area.

Reasons

The site, surrounding area and the proposal

5. The appeal site is an irregularly shaped area fronting onto Evelyn Street, relatively close to the junction with Deptford High Street to the east. It is currently occupied by a used car lot and a car wash, with a single storey enclosure covering around half of the car wash. The remainder of the site consists of hard standing. The photographic evidence shows that the site was once occupied by three storey traditional buildings with narrow plot widths, although these are long gone.
6. The surrounding area is very mixed in character with a range of residential employment and commercial uses. Immediately to the east of the site is a former public house on the corner with Deptford High Street. This was apparently demolished, aside from the ground floor façade, without consent and appears to be in the process of being rebuilt – work was in hand at the time of my visit. The Council has stated that this is a non-designated heritage asset.
7. The site backs onto the rear of 227 Deptford High Street which is a Grade 2 listed building. At the rear of this property there was a structure until the late 1990s which was demolished without consent and has been rebuilt. The Council has stated that, although not the original structure and its function has changed, it is still part of the listing of the property,
8. To the west of the site is the Akwaaba Centre, a part single part two storey relatively modern building. On the opposite side of Evelyn Street, northeast of the site, is a locally listed former public house, to which the Council has drawn attention.
9. The site is not in a Conservation Area (see below).
10. The proposal is the construction of a three-storey mixed-use development with commercial units on the ground floor and eight flats above. No car parking would be provided.
11. The site has a relatively lengthy planning history, but in particular in 2019 planning permission was granted for the development of a three storey building on the site to provide commercial units at ground floor level and flats above, with related elements. This permission, which has lapsed, is a matter of relevance for the Council as it featured what the authority regard as a more sympathetic design approach.

The effect on the character and appearance of the area

12. The site was formerly within the Deptford High Street and St Paul's Church Conservation Area but was removed in November 2019. No reason for this removal has been given, but to judge from the submitted conservation area plan, this was part of an overall review of areas excluded/included in the designated area. The Conservation Area now ends at the former public house to the east of the appeal site.
13. The Council states that the site is sensitive because it is at the entrance to the Conservation Area. This argument is of considerable importance in this case

because the Council's main concern is that the proposed design does not reflect and respect the character of the Conservation Area.

14. Whilst the site abuts the Conservation Area, I cannot agree with the Council that the land – or any buildings on it – forms the gateway to the designated area. That function is performed by the former public house which is being rebuilt, located on the corner of the two roads. The appeal site faces towards Evelyn Street and is entirely part of the streetscene on that busy thoroughfare. This matter is in many respects central to the dispute.
15. The proposed building would be divided vertically into three sections. The middle section is five windows wide, those at the flanks are three windows in width. The two flank sections would be constructed of red brick, with the middle section constructed of a lighter yellow brick. Brick detailing would be incorporated in between some of the window openings, as well as recessed faux downpipe features. The windows themselves would be metal, with those in the flank sections would be a darker colour, those in the middle would be finished in powder coated golden bronze.
16. The design of the development is overtly modern, and has been described as utilising a New London Vernacular design. If the imperative was to reflect the development round the corner in the Conservation Area, I could more readily understand the Council's approach. However, sitting where it does in Evelyn Street, which has a far more mixed streetscene, the design approach is entirely appropriate.
17. The Council has stated that the design of the lapsed 2019 permission was more appropriate. I can understand this point from the position of the authority, as the earlier scheme featured narrower vertical divisions – which more reflected some of the original (though not all) buildings in the Conservation Area. In any event, this is not a contest between the current proposal and a previous lapsed scheme, and I have to consider the effect of the current proposal.
18. For the reasons given above I find that the design approach is entirely appropriate to its setting, and that the materials and detailing are of good quality. I consider that the proposal would have no effect on the setting of the Conservation Area, whose character and appearance would be preserved. In coming to this conclusion I have paid special attention to s92(1) of the Planning (Listed Buildings and Conservation Areas) Act.
19. I have referred above to other designated and undesignated assets in the surrounding area. In particular Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard should be had to the desirability of preserving the setting of listed buildings. This means that considerable weight and importance must be given to any harm caused to designated assets in the planning balance. This includes any harm to the setting of a listed building – such as 227 Deptford High Street. However there is no evidence that the proposal would harm the setting of this building and in fact (given the current use of the site) would enhance it.
20. The proposal would at the lowest conserve the significance of the heritage assets and their settings and would accord with policy HC1 of the London Plan (LP) (2021). It would accord with Lewisham Core Strategy (CS) (2011) policies 15 and 16 which seek high quality design and the conservation of heritage assets and their settings, and with Development Management Policies

30 (design), 36 (development adjacent to conservation areas), and 37 (locally listed buildings).

21. The appellant has criticised the Council for applying policies related to development in conservation areas to a proposal outside the designated area. However I do not find that to be the case.¹

Green infrastructure

22. LP policy G5 deals with urban greening and sets out the appropriate amount of urban greening required in new development. The parties agree an appropriate Urban Greening Factor (UGF) of 0.4. CS policy 7 supports LP policy in relation to urban greening.
23. The proposal has an estimated UGF of 0.3 which falls slightly short of the LP figure, but the appellant would be content with a condition to achieve this level. However the Council's appeal statement resists this approach as there is stated to be a lack of confidence that the figure could be achieved. However this conflicts with the Council's report on the application, which states that further measures could have been easily incorporated.
24. Overall, I consider that this shortfall could be the subject of a condition to require additional planting at a later stage. Even on a tight site this would be possible and compliance with the above policies would be achievable.

Infrastructure and a planning obligation

25. One of the reasons for refusal stated that, in the absence of a planning agreement under s106 of the Act, the proposal would cause unacceptable harm related to a range of matters. These matters were carbon offsetting, a contribution towards a Controlled Parking Zone, and a contribution towards the Council's Local Labour and Business Scheme.
26. It appears that the carbon offsetting matter might have been resolved with the submission of a revised Energy Statement, but the others remain outstanding (notwithstanding the submission of a revised Transport Statement).
27. Each of these matters is supported by policy at the local or London-wide level, and I consider the matters are all necessary and relevant. No agreement has been provided and, although I understand the appellant's complaint that this was not requested during the application process, no agreement has been provided at the appeal stage. The position of the appellant is that they would be happy for a condition to be imposed.
28. However it is clear that a condition which requires the applicant to enter into a planning obligation is not likely to be enforceable. The matters set out above are important to the satisfactory development of the site. The absence of an obligation weighs heavily against the proposal.

Planning balance and conclusion

29. A number of matters weigh in favour of the proposal – as accepted by the Council. In particular the provision of employment and residential floorspace is a benefit, as is the removal of the currently unsightly appearance of the site.

¹ The reason for refusal also refers to DMP policy 31, which relates to alterations to existing buildings, and is clearly not relevant

30. The question of green infrastructure could be safely left to a condition, and the effect on the character and appearance of the area – including heritage assets – is at worst neutral.
31. However the lack of any mechanism to properly deal with the infrastructure contributions outweighs the benefits and, in the absence of a resolution to this matter, the balance is firmly tilted against the appeal.
32. For the reasons given above I conclude that the appeal should be dismissed.

P. J. G. Ware

Inspector