



Appeal Decision

Site visit made on 4 June 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 JUNE 2024

Appeal Ref: APP/E5330/W/23/3336119

62 Herbert Road, London SE18 3SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Patel against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref is 23/0892/F.
 - The development proposed is 'construction of a three-story residential building at the land to the rear of No. 62 Herbert Road to provide one (1) new residential unit (Use Class C3)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As part of the appeal, the appellant submitted information on usage of space to the rear of 62 Herbert Road. This was not before the Council at the time it determined the application, but it does not alter the proposal in any way and the Council has been able to comment on the information as part of the appeal process. I am satisfied given its nature that no unfair prejudice would be caused by my consideration of this evidence, and I have taken it into account.
3. Beyond the lack of detail to assess use of space to the rear of the building, the Council did not raise concerns about effects of the proposal on occupiers of No 62. However, following my visit where I observed access arrangements and windows to the rear of this property, I invited the main parties to provide comments on the effect of the proposal on access and living conditions for occupiers of the upper floors of No 62. I have taken the representations made into account.

Main Issues

4. The main issues are:
 - i) whether or not living conditions for future occupiers of the proposed development would be acceptable with particular regard to outlook, privacy and the provision of amenity space;
 - ii) the effect of the proposal on living conditions for occupiers at 60 and 64 Herbert Road in respect of outlook and light; and
 - iii) the effect of the proposal on living conditions for occupiers of 62 Herbert Road in respect of light, outlook, privacy, access and amenity space.

Reasons

Living Conditions - Future Occupiers

5. The appeal proposes a three-storey dwelling within a yard to the rear of 62 Herbert Road. No 62 appears as a two-storey building as it fronts Herbert Road, but a lower-ground floor level including a single-storey projection is visible from the rear. The plans indicate removal of this single-storey projection, as well as a set of external steps up to the rear of the building's ground-floor level.
6. The proposed dwelling would be accessed from Westdale Road. It would occupy most of the existing yard at its ground-floor level, extending up to the rear wall of No 62. The first and second floor levels would be of reduced depth and positioned towards Westdale Road, leaving a gap to the rear of No 62. Amenity space would be provided in this gap in the form of a terrace accessed from the first-floor of the dwelling.
7. The area of the terrace would exceed the minimum standard for provision of private amenity space specified by Policy D6 of the London Plan 2021 ('the LP'), but the Policy references qualitative aspects of development at Table 3.2 which should also be addressed, including a requirement for space to be usable.
8. As well as sitting between the proposed building and the rear of No 62, the terrace would be flanked by projections extending from the rear of the neighbouring buildings at 60 and 64 Herbert Road so that the space would be more or less hemmed in by two-storey development. The height of the surrounding elevations would be highly imposing given the modest width and depth of the space and would result in a substantial degree of enclosure so that opportunities for outlook would be exceedingly limited. Furthermore, the relationship with adjacent buildings would be likely to significantly restrict light reaching the terrace and while the appellant has submitted an Internal Daylight Assessment ('IDA') considering levels of daylight within the dwelling, I have no assessment demonstrating that the terrace would receive acceptable levels of daylight or sunlight.
9. In combination, these factors would severely diminish the attractiveness of the terrace. In my judgement, it would be an oppressively enclosed and gloomy environment, significantly limiting its value as amenity space to occupiers. I find as a result that the terrace would not offer suitably high quality usable space to meet the needs of occupiers' of the development, causing detriment to their quality of life.
10. In addition, separation between windows serving habitable rooms to the rear of the dwelling and the rear elevation of No 62 would be limited. The kitchen and lounge on the first-floor level of the dwelling would be a dual aspect open plan space served by an additional large window facing Westdale Road which would provide the room with acceptable outlook. However, the bedroom at second-floor level would only be served by rear windows. The IDA suggests that levels of daylight to the bedroom would meet guideline standards, but while there can be a relationship with factors which also affect light levels, outlook is a distinct concept. Adequate access to daylight is not therefore firm evidence of satisfactory outlook. In my assessment, the very close proximity of the rear of No 62 and the presence of neighbouring development at Nos 60 and 64 to either side of the windows would significantly enclose views and the

constrained outlook for the bedroom would fall short of what could reasonably be expected by future occupiers.

11. I further note that while the submitted plans indicate that a window to the rear of No 62 which serves the kitchen on the first floor is obscure glazed up to a height of 1.5m, I saw at my visit that it was fitted with clear glazing. As a consequence, it would afford direct views into both the bedroom and the kitchen and lounge of the proposed dwelling at very close range, resulting in a distinct lack of privacy for occupiers. The appellant indicates that the obscure glazing had been removed by a tenant without their permission and that it would be reinstated. Obscure glazing may restrict views from No 62 into the proposed dwelling. However, no alterations to the existing windows to No 62 were specified as part of the application. Even if the provision of obscure glazing would be reinstating a former situation, it would be likely to affect the living conditions that are presently enjoyed by occupiers of No 62. Against this context, I am not satisfied that it would be appropriate to secure mitigation for the overlooking of the dwelling by way of a planning condition to require obscure glazing of the window to No 62.
12. The internal area of the dwelling would significantly exceed minimum standards. However, a considerable proportion of the area would be non-habitable space at ground-floor level with no windows. It would not therefore meet needs for amenity space or habitable rooms with adequate outlook, and irrespective of the standards of fit out and finish, I find that the overall quantity of internal space would not compensate for the shortcomings that I have identified above.
13. Having regard to the cumulative effects of the constrained outlook for the rear bedroom in combination with the poor quality of the proposed amenity space, I find irrespective of my additional concerns about overlooking that the dwelling would not offer suitably high-quality accommodation. There would be detriment to living conditions for future occupiers of the development and I conclude that the proposal would conflict with Policy D6 of the LP and Policies H5 and DH1 of the Core Strategy with Detailed Policies 2014 ('the CS') insofar as they include requirements for high quality housing development and attractive and well-functioning spaces.
14. The fact that potential occupiers would be aware of the nature of the dwelling, and some may, for whatever reason, be willing to occupy it is not in my view a compelling justification to allow development that would provide for unacceptable living conditions in conflict with the development plan.

Living Conditions – 60 and 64 Herbert Road

15. The dwelling would be clearly appreciable in views from habitable windows to the rear elevations of Nos 60 and 64 as well as a terrace above the single-storey part of the projection to No 64. I have no firm reason to doubt the appellant's evidence that neighbouring occupiers' access to natural light would not be harmfully diminished. However, I have already noted that outlook is a different consideration.
16. The development would have a flat roof, but I consider its height and depth extending along the site boundaries would be an imposing feature and would result in a notable sense of enclosure and loss of outlook over the appeal site

for occupiers of Nos 60 and 64 which would be harmful. Neighbouring occupiers may not have objected to the proposal, but this harm would be permanent.

17. I therefore conclude that there would be harm to living conditions for occupiers at 60 and 64 Herbert Road contrary to Policies E(a) and DH(b) of the CS which seek to ensure no unacceptable loss of amenity for adjacent occupiers.
18. The Council's reason for refusal refers additionally to Policy D14 of the LP but this relates to noise and is not directly relevant to the harm that I have identified above.

Living Conditions – 62 Herbert Road

19. Policy H(c) of the CS sets out criteria for residential development on backland and infill sites, including that there is no unreasonable reduction in the amount of amenity space enjoyed by existing residents. The appellant's evidence indicates that the part of the site where the dwelling is proposed is not used as a garden by residents of No 62 and this appeared to be the case at my visit. The appellant has also provided a copy of a variation to a lease on No 62 where this part of the site was surrendered. On that basis, I find that there would not be an unreasonable reduction in the amount of amenity space enjoyed by existing residents at the site, and the proposal would not conflict with Policy H(c) of the CS.
20. However, external steps up to the rear of the ground-floor level of No 62 from where there are internal stairs to residential accommodation on the upper floors would be removed as part of the proposal. The development would also occupy the full width of the plot so as to preclude access to the residential accommodation on the upper floors of No 62 from the rear of the site.
21. The appellant advises that it is intended to create a new access via a door on Herbert Road, but this is not shown on the submitted plans. Effects on the ground floor shop unit and the shopfront which currently fills the width of the site are therefore unclear and whether or not other properties have carried out similar works as the appellant asserts, I cannot be sure that a new access to the front of the building would be acceptable in this case. As a consequence, it is unclear if a planning condition to require details of new access to the upper floors would be effective and I consider that such a condition would be unreasonable. A planning condition would not therefore offer an appropriate mechanism to address this matter and I can only find that the proposal would result in loss of appropriate means of access to the residential accommodation on the upper floors of No 62.
22. In addition, the window to the kitchen on the first-floor level of No 62 provides the only current source of light and outlook for this room. The projections to Nos 60 and 64 are already fairly conspicuous sitting to either side of the window and the proposal would further enclose views towards the rear, resulting in a loss of outlook. Second-floor windows to the rear of the proposed dwelling would also afford direct views into the kitchen at very close range resulting in significant and intrusive overlooking. Use of obscure glazing to the kitchen window may reduce overlooking and views of the development, but I have already noted above that I am not satisfied such measures could appropriately be secured as part of this appeal, even if it would reinstate a former circumstance. In any event, I have no assessment of any effects of the proposal on levels of natural light within the kitchen. Even if the kitchen

window were obscure glazed, I cannot therefore be sure that the proposal would not cause a harmful loss of access to natural light.

23. Although there would not be an unreasonable reduction in the amount of amenity space for residents of No 62, the proposal would result in the loss of an appropriate means of access, loss of outlook and privacy, and it has not been demonstrated that there would not also be a harmful loss of light. I therefore conclude that the proposal would cause unacceptable harm to living conditions for occupiers of 62 Herbert Road, in conflict with Policies E(a) and DH(b) of the CS.

Other Matters

24. From the information before me and what I was able to observe on site, separation between the dwellings to the rear of 40, 42 and 44-46 Herbert Road and the frontage buildings is generally greater than on the appeal site. The dwellings are also part of terraces spanning wider plots which are not flanked to both sides by adjacent buildings as would be the case here. These examples are not therefore directly comparable to the appeal scheme and given that these factors would have an influence on living conditions for neighbouring and future occupiers of the dwellings, they do not offer significant support for the proposal.

Planning Balance

25. The National Planning Policy Framework ('the Framework') identifies a need to significantly boost the supply of housing and to make efficient use of land. The LP similarly seeks to increase housing supply with a range of units and supports development on small sites such as this. Against these objectives, making effective use of an under-utilised site in a reasonably accessible location to provide an additional dwelling that would contribute to the supply and mix of housing locally is an important benefit of the proposal that would attract significant weight. However, the extent of the benefit would be very limited given the small scale of the development. While there would be some economic benefits through the construction and occupation of the dwelling, these would similarly be of very limited scale.
26. Furthermore, while the proposed dwelling would add to the overall supply of housing, it would also result in loss of appropriate access to existing residential accommodation on the upper floors of No 62.
27. Weighing against the proposal, I have found that there would be harm to living conditions for occupiers of 62 Herbert Road and some modest harm to living conditions for occupiers of 60 and 64 Herbert Road. The development would also fail to provide suitable living conditions for future occupiers. The Framework includes a requirement for a high standard of amenity and cumulatively, I consider the failure to provide a high standard of amenity for a number of dwellings to weigh significantly against the proposal.
28. In my judgment, the adverse impacts of the proposal would significantly and demonstrably outweigh the modest benefits when assessed against the policies in the Framework taken as a whole. The benefits would further be insufficient to outweigh the conflict with the development plan.

Conclusion

29. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR