

Appeal Decision

Site visit made on 20 August 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2024

Appeal Ref: APP/C5690/W/24/3337699

358 Old Mill Site, London, SE6 3AB

- 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 Joseph Mann and Mr Shenol Osman against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/23/132716.
 - The development proposed is the construction of two flats including shared gardens and private amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have had regard to a previous appeal decision¹ on the site which was dismissed due to the Inspector finding harm in relation to the living conditions of neighbouring occupiers, harm to the living conditions of future occupiers and that insufficient information was submitted in relation to flood risk. This decision is a material consideration.

Main Issues

3. The main issues are the effect of the proposed development on:
 - flood risk, including surface water drainage;
 - archaeology; and
 - the character and appearance of the area.

Reasons

4. The appeal site, 358 Bromley Road, comprises an irregular shaped parcel of land which can be accessed from Bromley Road, where it has a narrow road frontage, or from a shared access located between 5 and 7 Southend Lane (Nos.5 and 7). The widest part of the site is located to the rear, when viewed from Bromley Road and adjoins the boundary of No.7. The site is currently vacant, the former mill buildings which previously occupied the site were demolished in approximately 2006.

¹ Appeal Ref: APP/C5690/W/21/3287681

5. The surrounding area is mixed in character, with commercial premises and residential properties located in close proximity to one another. There are several large multi-storey flatted developments on Bromley Road, while Southend Lane has lower density residential development, consisting of predominantly semi-detached and terraced properties. The appeal site is also adjacent to the boundary with the Homebase site and whilst the buildings are located some distance away, the car park adjoins the boundary with the appeal site.
6. The proposed development would comprise the erection of a detached, part single, part two-storey building, to provide two residential units. Each of the proposed dwellings would have access to a communal garden and private amenity spaces.

Flood Risk and Surface Water Drainage

7. The appeal site is in Flood Zone 2, which have a medium probability of flooding, it is also located in close proximity to the culverted River Ravensbourne.
8. The appeal is supported by a site-specific Flood Risk Assessment (FRA), which concludes that the appeal site would not be at a significant risk of flooding and would introduce measures to mitigate the risk of flooding occurring to the proposed dwelling. These include, the floor levels being raised by 300mm, and that flood resilience measures that would be incorporated into the design. On this basis, I am satisfied that the proposed dwelling could be made safe from flood risk.
9. The appeal is also supported by a Flood Warning and Evacuation Plan (FWEP) which sets out guidance for future occupiers in relation to flood warnings and evacuation plans. However, whilst it makes provision for evacuation no evacuation routes are shown to areas with a lower risk of flooding, and it also sets out that where evacuation is not feasible that occupiers should move to an upper floor of the building. In this particular case, there is no communal access provided to the upper floor of the building. Nevertheless, I am satisfied that further clarification on the FWEP could be secured by imposition of a suitably worded planning condition.
10. In respect of the River Ravensbourne Culvert, the submitted plan² shows the proposed development in relation to the location of the River Ravensbourne Culvert, which runs parallel to Bromley Road, across the front part of the site. This plan is annotated to illustrate the offset which would be provided to the proposed building to the Culvert, which at its closest point would be located approximately 6.24 metres from the Culvert.
11. The Environment Agency (EA) objected to the application on the basis that insufficient information had been provided to assess the effect of the proposed development on the culvert. The EA response states that the suitable offset distance is eight metres from the outer edge of the culvert at the closest point of the proposed development footprint. I have had regard to the appellant's statement which states that a lesser offset distance of four metres had been agreed with the EA. However, the letter³ provided by the EA in response to

² Plan Ref: 263_P_201 Existing and Proposed Ground Floor Culverted River

³ Dated March 2017

pre-application enquiry indicates that whilst a minimum offset of four metres could be agreeable, any incursion into the eight-metre buffer zone should be justified. No such justification has been provided. On this basis, I find that it has not been demonstrated that the minimum required offset distances have been provided or would be capable of being provided.

12. Furthermore, the submitted plans also indicate the possible location of a further culvert, which crosses through the site and would be directly affected by the proposed development. This plan does not show any offset from this culvert, which the appellant states that it is disused. However, the EA disagree, and they state that it is still in use. I have not been provided with any substantive evidence that the culvert is disused, and as the proposed building would be located on top of the culvert it has not been demonstrated the minimum required offset distances has been provided or is capable of being provided.
13. The appeal site is also located within a Critical Drainage Area. These areas are identified as being most at risk from groundwater and surface water flooding.
14. Policy SI13 of the London Plan 2021 states that development proposals should aim to achieve greenfield run-off rates and ensure that surface water run-off is managed as close to its source as possible. This policy also sets out the drainage hierarchy which should be followed, with preference to green over grey features. The supporting text to the policy states that rainwater should be managed as close to the top of the hierarchy as possible.
15. Policy 10 of the Lewisham Local Development Framework Core Strategy Development Plan Document, adopted June 2011 (CS) requires, amongst other things, that new development demonstrates that the most sustainable drainage system that is reasonably practical is being incorporated to reduce flood risk, improve water quality, and achieve amenity and habitat benefits.
16. The Lead Local Flood Authority (LLFA) objected to the application. They requested justification to be provided as to why it was not feasible to connect to the nearby watercourse (Ravensbourne River), following the hierarchy of drainage set out in the Policy SI13 of the London Plan. The LLFA also requested a further assessment of opportunities to include other green infrastructure such as rain gardens within the gardens of the proposed development to provide additional attenuation and confirmation as to how the remaining catchment area other than the roof area is to be drained.
17. The SUDS Design Report (Revision B) states that the surface water will be discharged at an attenuated rate into the existing surface water drainage system adjacent to the site. It is not disputed that due to the constraints of the site, that ground infiltration as a means of surface water discharge is not feasible. However, I have not been presented with any substantive evidence to demonstrate that other methods further up the hierarchy could not be utilised. Furthermore, there are other details pertaining to the surface water drainage scheme that have not been submitted. Whilst some of the LLFA's requests for further information could be secured by imposition of suitably worded planning conditions, this would not address the conflict with Policy SI13 in respect of the drainage hierarchy.

18. I accept that there may have been some initial confusion as to the revisions submitted to the FRA and SUDs Design Report. However, I am satisfied that these documents have been reviewed by the Council as part of the appeal. Therefore, whilst I acknowledge that some additional information has clearly been provided, for the reasons set out above, I find that it is not sufficient to demonstrate that the proposed development would not result in adverse local flooding impacts.
19. Consequently, taking a precautionary approach, I therefore conclude that insufficient information relating to flood risk and sustainable drainage has been provided for me to be satisfied that the proposed development would not result in adverse local flooding impacts. Thus, the proposed development would be contrary to Policy SI13 of the London Plan 2021 and Policy 10 of the CS which require, amongst other things, that development should not add to the risk of localised flooding and demonstrates that the most sustainable drainage system that is reasonably practical is being incorporated to reduce flood risk, improve water quality and achieve amenity and habitat benefits.
20. It would also be contrary to Paragraph 173 of the Framework which states that development should only be allowed in areas a risk of flooding where it can be demonstrated that the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment, it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

Archaeology

21. The appeal site is located within an Archaeological Priority Area (APA), which broadly covers the alluvial deposits associated with the River Ravensbourne and the Kempton Park Gravel terraces which underlie them. This area contains the current course of the River Ravensbourne, as well as infilled paleochannels associated with former alignments of the river. The appellant does not dispute the location of the appeal site within a APA.
22. Policy HC1 of the London Plan states that development proposals should identify assets of archaeological significance and use this information to avoid harm or minimise it through design and appropriate mitigation.
23. Policy 16 of the CS states that the Council will ensure that the value and significance of the borough's heritage assets and their settings, which include archaeological remains, will continue to be monitored, reviewed, enhanced and conserved according to the requirements of government planning policy guidance, the London Plan policies, local policy and English Heritage best practice.
24. Policy DM37 of the Lewisham Local Development Framework Development Management Local Plan, adopted November 2014 (DMLP) states that conservation, protection and enhancement of the archaeological heritage of the borough will be promoted through requirements to assess and plan for the archaeological implications of development proposals that may affect the archaeological heritage of a site which may require preliminary archaeological site evaluations. Proposals on sites within areas of archaeological priority as

shown on the Policies Map should be accompanied by an evaluation. It further states that evaluations should be commissioned from professionally qualified archaeological organisations or consultant.

25. Historic England were consulted on this application, and previous applications. Their comments⁴ on this current proposal state that there is insufficient information to assess the archaeological impact of the proposed development and that the imposition of a planning condition to secure submission of an Archaeological Desk Based Assessment would not be sufficient to ensure the absence of harm. They state that their request for pre-determination evidence is consistent with the previous consultation responses for applications to develop the site. The appellant disputes this.
26. The appeal proposal is not supported by any detailed evidence regarding the likely archaeological significance of the site nor any likely impacts. It is noted that the appellant would be content to undertake a desk-based assessment and suggests that this could be covered by a condition. However, if there is any reasonable prospect of archaeological remains within the site that could be adversely affected by development, then assessment and, if necessary, evaluation should take place before a planning application is determined. This is in order to be able to predict the presence of any remains and assess their potential significance.
27. I have also regard to the appellant's final comments which make reference to the inclusion of a suggested condition by the Council. However, whilst I accept that there is a condition suggested by the Council this does not indicate that the Council's position has changed. The Council's Statement of Case sets out the justification for including this matter as a reason for refusal.
28. Notwithstanding that this requirement did not form a reason for refusal on the previous application, and therefore not a matter which was considered by the previous Inspector, I find, taking a precautionary approach, that further evidence is required. For the reasons stated above, it would not be appropriate to secure this by condition, and therefore I find that it has not been demonstrated that the proposed development would not have an adverse effect on the significance of a heritage asset of archaeological interest.
29. Thus, it would be contrary to Policy HC1 of the London Plan (2021), Policy 16 of the Lewisham Core Strategy (2011) and DM Policy 37 of the Lewisham Development Management Local Plan (2014). These policies require, amongst other things, that development proposals should identify assets of archaeological significance and use this information to avoid harm or minimise it through design and appropriate mitigation.
30. It would also be contrary to Paragraph 200 of the Framework states where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

⁴ Letter dated 11 September 2023

Character and Appearance

31. Paragraph 135 of the National Planning Policy Framework (the Framework) states that development should function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development, be visually attractive as a result of good architecture, layout and appropriate and effective landscaping and sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change, such as increased densities.
32. Policy 15 of the CS, states that all development will be expected to ensure the highest quality design, which is sustainable, accessible to all, optimises the potential of sites and is sensitive to the local context and responds to local character.
33. Policies 30 of the DMLP states that development proposals will be required to attain a high standard of design, including the creation of a positive relationship to the existing townscape. Policy 33 of the DMLP also states that development proposals should make a high-quality positive contribution to an area and provide a site-specific creative response to the character and issues of the street frontage
34. As outlined above, the proposed development would comprise the construction of a part single, part two-storey building to provide two self-contained flats, with communal garden and private amenity spaces, together with associated landscaping, and the provision of cycle and bin stores. The building would use both modern and traditional materials including brick façades with vertical zinc elements and a configuration of modular coated aluminium windows. The Council has raised no concerns with regards to the use of materials and based on the evidence before me I see no reason disagree.
35. The design of the proposed development is contemporary and seeks to maximise the potential use of this irregularly shaped site. It would occupy a large proportion of the plot and be sited close to the boundary with No.7 and the rear elevations of 3 and 5 Southend Lane (Nos. 3 and 5. It would have an area of garden located adjacent to Bromley Road, with the proposed dwelling set back within the widest part of the site. However, whilst there would as a result of the proposed development be changes to the outlook of neighbouring properties who have views of the appeal site, these would not give rise to adverse harm to character and appearance of the area. Therefore, I find that whilst the proposed development would inevitably alter the appearance of the site, this would not be in such a way that it causes significant visual harm to the character and appearance of the area.
36. The character and appearance of the surrounding area is mixed and although Southend Lane has a predominantly traditional, residential character and appearance, the proposed dwelling would be set back from Southend Lane and would have a very limited frontage appearance in this location. As outlined above, Bromley Road has a mixed character including some contemporary multi-storey residential buildings. Therefore, taking into account the limited viewpoints possible from Southend Lane and the variety in buildings styles experienced from Bromley Road, I find that the proposed

development would not cause unacceptable harm to the character and appearance of the area.

37. I acknowledge that the effect of the proposed development on the character and appearance of the area did not form a reason for refusal of the previous application⁵. However, I disagree with the appellant that there has not been a material change in circumstances through the submission of a revised design and layout, together with a reduction in the overall number of units. Furthermore, each application must be determined on its own merits. Nevertheless, for the reasons set out above, I have found that the proposed development would not cause harm to the character and appearance of the area.

38. Consequently, I conclude that the proposed development would not result in unacceptable visual harm to the character and appearance of the area. Thus, it would not be contrary to Paragraph 130 of the Framework, Policies D3 and D4 of the London Plan, Policy 15 of the CS, and Policies 30 and 33 of the DMLP. These policies require, amongst other things, high-quality design that make the best use of land by following a design-led approach that optimises the capacity of sites and makes a high-quality and positive contribution to an area.

Other Matters

39. I have had regard to the appellant's statement which states that all matters raised in the previous application and appeal have been resolved by submission of this revised scheme. However, for the reasons set out above, I disagree and have found harm in relation to the main issues. The appellant also states that the Council has introduced a new reason for refusal contrary to guidance contained within the Planning Practice Guidance⁶ (PPG). However, this guidance relates primarily to the appeal process. In any case, the Council has provided reasons for refusing the application and further justification throughout the appeal process. On this basis, I find that the Council has not acted contrary to this guidance.

40. The appellant alleges that the consultation responses received during the course of the application were not available on the Council's website, which the LPA disputes. Nevertheless, copies of the responses referred to by the Council in the Officer Report and Statement of Case have been supplied with the appeal documentation. I am therefore satisfied that the appellant has had the opportunity to review these and provide comments, as necessary.

41. I have had regard to the third-party representations in relation to an ongoing land dispute. However, this is not an issue which can be addressed in this appeal which is confined to the consideration of the main issues against the development plan.

42. In respect of other matters raised by third parties, in particular those which have not been considered as part of the main issues above, the Council found that the proposed development would not result in any adverse harm to the living conditions of neighbouring occupiers in relation to outlook, privacy and daylight/sunlight, as a result of the revised scale and bulk of the first floor.

⁵ Planning Application Ref: DC/21/122777

⁶ Paragraph 049 – ID:16-049-20140306

The Council also found that subject to the imposition of conditions in relation to refuse and cycle storage provision that there would be no adverse effects on highway safety. Based on the information before me and my own observations, I see no reason to disagree with these findings.

43. The Council also acknowledge that the submitted plans did not show the position of the conservatory to the rear of No.7. However, it is clear that the Council were aware of this omission when reaching their conclusion and as such it has not altered their findings, nor has it affected mine.
44. The appeal site comprises previously developed land, which is located in a sustainable location close to services and facilities, as well as existing residential development. As such, in principle, there is no objection to the use of the site for residential purposes. I acknowledge that both national and local planning policies promote the use of small site to meet London's housing needs.
45. In this case, the proposed development would deliver two additional housing units, which would make a small contribution to housing supply. However, due to the small-scale nature of the proposed development, the benefits of two additional housing units would as a consequence be limited and not sufficient to outweigh the harm in relation to the main issues.
46. It is not disputed that the proposed development would provide adequate living conditions for future occupiers and would not cause adverse harm to the living conditions of neighbouring occupiers. The latter formed a reason for refusal on the previous scheme and appeal dismissal. However, the absence of harm is a neutral matter which neither weighs for or against the proposal.

Conclusion

47. For the reasons given above, whilst I have found that the proposed development would not cause harm to the character and appearance of the area, I find that it has not been demonstrated that the proposed development would not give rise to adverse effects on flood risk and archaeology. Consequently, the proposed development would conflict with the development plan as a whole. There are no material considerations of sufficient weight which indicate that a decision should be taken otherwise in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Lancaster

INSPECTOR