



Appeal Decision

Site visit made on 22 October 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/C5690/W/24/3342176

26 Homecroft Road, Lewisham, London SE26 5QG

- 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 Dr Jeff Higley against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/23/132444.
 - The development proposed is a new 3 bedroom, three storey dwelling in the rear part of the land of 26 Homecroft Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal the appellant has submitted an amended drawing (number 448:110) showing the proposed internal finished floor levels highlighted with red hatched lines. The amended drawing shows that the internal floor heights would be 2.5m at the ground and first floor levels. The highest point in the second floor would also achieve 2.5m, albeit that it tapers down to 2.1m at the eaves level. I have given due consideration to the guidance in the 'Procedural Guide: Planning Appeals - England' (2024), and the 'Wheatcroft Principles' referred to in the guidance¹, which addressed the matter of amended plans being submitted at appeal, along with other case law² in deciding whether to accept the revised plan.
3. I consider the proposal before me (should the amended drawing 448:110 be included), is essentially the same as the scheme that was considered by the Council and therefore that the appeal process is not being used to evolve the scheme³. As such I am satisfied that the revision does not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced or impacted should I accept the amended plan. Furthermore, the Council have also had the opportunity to consider the amended details.
4. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published.

¹ Bernard Wheatcroft Ltd v SSE and Another (1982) 43 P. & C.R. 233.

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

³ Annex M of the Procedural Guide Appeals

5. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework as published in December 2023, and any reference to paragraph numbers are to this version.
6. The Lewisham Local Plan is at examination with the Secretary of State. However, I have little information to suggest when the plan is likely to be adopted, or if any policies have been modified, or if there are any unresolved objections. Accordingly, I attribute limited weight to this plan.

Main Issues

7. The main issues are the effect of the proposal on the:
 - character and appearance of the surrounding area;
 - living conditions of existing residents with specific regard to outlook, enclosure and privacy; and
 - living conditions for future occupants with specific regard to daylight/sunlight, outlook and residential standards.

Reasons

Character and appearance

8. The character of the area is mainly residential, albeit the more commercial area of Sydenham district centre is only a short walk away. The appeal site is located in a prominent position close to the junction of Homecroft Road and Newlands Park in Lewisham. The layout of Newlands Park provides a tapering effect to the properties in this section of the road. As such, the gardens at the rear of Newlands Park progressively get shorter as one approaches Homecroft Road.
9. There is a distinct traditional feel to the area, with many of the residential properties having a Victorian appearance. The terrace of properties neighbouring the site to the south (Nos 111 - 139 Newlands Park) have a strong rhythm and distinct traditional style which enhances the appearance of the area. Nevertheless, there are also examples of alternative architectural styles along Newlands Park, notably at "Parkside" (at the junction with Tredown Road) and The New Testament Church of God at No 141, adjoining the appeal site.
10. The proposal seeks to sub-divide the garden at the rear of 26 Homecroft Road and erect a new contemporary three-storey dwelling fronting Newlands Park. Whilst the area provides a relatively traditional feel, I see no reason why the proposed contemporary design approach would be inappropriate in this location, which could provide visual interest within the existing traditional built forms. Given the proposal would be read from Newlands Park, the appellant highlights that the three-storey approach has been designed to mimic the proportions of existing properties, albeit with a contemporary design and palette of materials.
11. In my view, as proposed, the scale, massing and height of the dwelling would conflict with the lower scale of the garden space at No 139 and the single storey nature of The New Testament Church of God, adjoining either side of

the appeal site. Given its prominent position, the three-storey building would be highly conspicuous when viewed from surrounding public vantage points, appearing as a separate, visually dominant development, that would cause harm to the character of the immediate area.

12. Furthermore, the tapered effect of the road also restricts garden areas along Newlands Park, as one approaches from the south, and the subsequent three-storey massing within a smaller plot size, provides a development which sits awkwardly within the site's parameters, appearing somewhat bulky and cramped in appearance. In my view, the resulting development does not take advantage of the constraints of the site and consequently does not appear respectful to its surrounds.
13. With regard to the provision of the balconies at the site, I note that balconies and terraces are not a general feature of the area. Thus, the provision of the balcony at the front of the proposal and the second-floor terrace at the rear would be out of keeping. Nevertheless, there are some Juliet balconies at Parkside, and a pair of upper floor balconies with balustrades at Nos 54 and 56 Newlands Park, which are evident in the locality. However, these examples are uncommon and do not provide an overriding influence over the character of the area or street scene.
14. Whilst the proposed development would optimise the potential of the site to accommodate new housing in line with national policy, the proposal would fail to respond positively to the existing character and appearance of the area. Accordingly, the scheme would be contrary to policies DM30 and DM33 of the Lewisham Local Development Framework: Development Management Local Plan (LDMP), adopted November 2014; policy 15 of the London Borough of Lewisham Core Strategy (LCS), adopted June 2011; and the aims and objectives of the Small Sites Design Guide Supplementary Planning Document (SPD), adopted in October 2021 which collectively seek, among other things, high quality design which is sustainable, accessible and optimises the potential of sites, whilst being sensitive to the local context and responding to local character. The proposal would also conflict with paragraph 135 of the Framework which advises, amongst other things, that new development should be sympathetic to local character whilst maintaining a strong sense of place.

Living conditions – existing residents

15. The residential properties most effected by the proposal are 139 Newlands Park and the rear of the properties at 26 and 28 Homecroft Road.

139 Newlands Park

16. Given the taper of the road, the rear garden at No 139 is significantly smaller than others in the vicinity, as such the main private garden space is located along the flank elevation adjoining the appeal site. I appreciate that the flank wall of the proposal has glazed blocks behind perforated brickwork which would alleviate the stark impact of the massing along this elevation. Nevertheless, the proposal would still provide an imposing two-storey wall, along with the bedroom at second floor, near the garden at No 139, providing a substantial increase in height and mass.

17. This relationship would provide an oppressive presence, looming over the garden area, resulting in a poor outlook to these residents. The presence of a new dwelling in this location would leave occupants of No 139, feeling hemmed in due to a heightened sense of enclosure and the dominance of the proposal, to the detriment of their living conditions.
18. The proposal also incorporates a terrace area at the rear of the second floor. The appellant highlights that overlooking from this area would be mitigated through the provision of a translucent roof terrace screen. Whilst this may alleviate overlooking and loss of privacy issues, the screen would nevertheless provide a further structure at second floor level, adding to the sense of enclosure to the detriment of No 139.
19. The proposal has been designed with two windows on the flank elevation facing No 139 and its private garden area. The window at ground floor level is described as a clerestory window, thus is high-level, and is a secondary window serving a kitchen. The first-floor window is also a secondary window serving a bedroom, as such both these units could be conditioned to contain obscured glazing to mitigate issues of overlooking and loss of privacy, had the proposal otherwise been found as acceptable.

26 and 28 Homecroft Road

20. The proposal would occupy a position at the rear of these properties and given the orientation of the gardens would be offset from these rear elevations at an acute angle. The scheme has been designed to minimise overlooking between the proposal and these units, through the provision of the aforementioned translucent roof terrace screen on the second-floor terrace and a clerestory window on the first storey at the rear serving bedroom 2.
21. Nevertheless, the proposal would provide a significant increase in the height and mass at the rear of these properties. I acknowledge that the topography slopes down and away from Nos 26 and 28, providing a lower ground floor level, however the proposal would provide a significant increase in built development, in relatively close proximity to these properties where there currently is only limited, low-level development. This would result in a significant impact on their outlook. Whilst there is a similar relationship with the rear of the existing houses along Newlands Park to other properties in Homecroft Road, these have increased distances due to the presence of larger rear gardens, unlike the proposal here which is close to the site boundary. Consequently, the presence of a three-storey dwelling in this location would be overbearing and dominant to the detriment of their living conditions.
22. For the reasons above, the proposal would unacceptably harm the living conditions of the adjoining occupiers at 139 Newlands Park and 26 and 28 Homecroft Road, due to the impact on outlook and enclosure. Therefore, the proposal would conflict with the objectives of LDMP policies DM32 and DM33; LCS policy 15; the relevant provisions of policy D3 of The London Plan (LP), adopted March 2021 and the Small Sites SPD which collectively seek, among other things, for developments to avoid any adverse impact on the amenity of neighbouring properties. It would also be contrary to Paragraph 135 f) of the Framework which, amongst other things, also seeks a good standard of amenity for all existing occupants of buildings.

Living conditions – future occupiers

23. From the information before me, there is no definitive evidence in respect to whether the habitable rooms particularly in the ground floor at the front of the proposal would receive adequate levels of daylight/sunlight. Whilst the kitchen would be dual aspect, the use of the clerestory window and overhang of the front balcony is likely to have implications in respect to the amount of light received in the room. Furthermore, the orientation of the proposal and positioning of adjoining properties would further impact on light received.
24. I acknowledge that the appellant has submitted a sun study, which highlights the positioning of the sun and levels of shadows cast throughout the year. However, this is for external purposes only and does not provide internal levels of light received, and as such I afford the study limited weight.
25. In regard to the outlook from bedroom 2, from the details before me, the habitable room would include two windows, a clerestory window to the rear and a thin vertical window to the flank. As previously mentioned, the window in the flank elevation would be required to be obscured glazed to mitigate overlooking, leaving the only meaningful outlook via the clerestory window. Whilst it would provide natural light for the occupant, given its high level any outlook from this opening would be limited to oblique views of the sky only, providing a poor outlook for future occupiers.
26. With regard to the floor levels, the amended plans highlight that the requisite floor to ceiling heights of 2.5m for at least 75 per cent of the Gross Internal Area of each dwelling has been achieved in accordance with LP policy D6.
27. However, the proposed development would have an unacceptably harmful effect upon the living conditions of its future occupiers, with particular reference to outlook and adequate levels of daylight/sunlight. The proposal is therefore contrary to the relevant provisions of LP policy D6; LDMP policy DM32 and LCS policy 15 which amongst other things, seek to provide high quality design and living conditions for all residential occupiers including providing a satisfactory level of outlook and natural lighting. It would also be contrary to the Framework which, amongst other things, expects planning decisions to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards.

Other Matters

28. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. One of the residents has a protected characteristic for the purposes of the PSED. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. In reaching my decision, I have kept these interests at the forefront of my mind. However, these are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
29. The appellant currently resides at the donor property at 26 Homecroft Road, a Victorian property, which currently contains narrow corridors and staircases, making accessibility difficult. The proposal has been specifically designed for the appellant who is wheelchair bound, to assist in their mobility requirements.

Consequently, I have no doubt that the proposed dwelling would improve the appellant's quality of life.

30. I have carefully considered the appellants' circumstances and acknowledge the requirement for an accessible dwelling. However, I have limited evidence of whether the appellant has explored options to find more suitable accommodation in the local area, or any indication of the adaptability of the host property to provide suitable accommodation to meet the appellants needs. Consequently, it has not been demonstrated that they cannot be met by other means, and I apportion this moderate weight.
31. I also acknowledge that the proposal would result in modest social and economic benefits, including the support future occupiers would give to local businesses and services. The proposed development would also deliver a new unit on site located in a suitably accessible area relatively quickly, in accordance with the aims and objectives of the Framework.

Conclusion

32. The proposed development conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. The scheme also fails to accord with the requirements of the Framework.
33. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect the economic wellbeing of the country, by protecting its character and appearance, and the rights and freedoms of others, including the living conditions of neighbours which are both legitimate objectives. The relevant planning policy objectives could not be achieved by means less imposing or intrusive, and the minimum action necessary to achieve those important ends, would not have an excessive or disproportionate effect on the interests of the persons affected.
34. The public interest cannot be served by means that cause less interference with the appellant's rights. Therefore, dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 1 and Article 8 would not occur.
35. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the intended occupiers of the site and to meeting their needs in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.
36. For the reasons given above I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR