



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: 13 November 2024

Appeal Ref: APP/C5690/W/24/3344992

39a Dartmouth Road, Lewisham, London SE23 3HN

- 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 Hall Management against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/23/134272.
 - The development proposed is the demolition of garage, change of use, alteration and conversion of the ground floor and first floor and extension at roof level at the rear of 39 and 41 Dartmouth Road SE23 to provide a dwelling house with roof terrace, together with new courtyard and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. 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.
4. 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

5. The main issues are the effect of the proposal on the:
 - living conditions of surrounding residents with specific regard to privacy, enclosure and outlook;
 - living conditions of future occupiers with specific regard to daylight and sunlight; and
 - loss of any existing employment space.

Reasons

Living conditions of surrounding residents

6. The appeal site is located behind Nos 39, 41 and 43 Dartmouth Road in Lewisham although access is via Bird in Hand Passage along the northern flank. The surrounding area is mixed use, with commercial premises fronting Dartmouth Road at the ground floor level and mainly residential properties located above. The appeal site is also adjoined to the rear by other residential properties including Maple Cottage and The Works, Bird in Hand Mews.
7. The properties most effected by the proposal are the flats at the upper floors of Nos 39 and 41 Dartmouth Road and Maple Cottage and The Works, Bird in Hand Mews at the rear of the site.

39 and 41 Dartmouth Road

8. Both these properties adjoin the site to the west and contain small balconies to the rear. From the details before me the proposal has been designed at the upper floor levels to minimise overlooking and loss of privacy to these properties. There are no openings that face these properties in the proposed second floor, with the first floor opening that serves a kitchen being annotated as obscured glazing. Furthermore, all the flank windows at first and second floor levels have also been annotated as obscured glazed. As such, overlooking and loss of privacy would be minimised at these properties.
9. Nevertheless, the proposal would provide for an additional floor on top of the existing flat roof near these properties. It is acknowledged that the proposal has been set back away from the rear windows and balconies and contains no access to the small flat roof. However, any increase in height and mass in this location would have a significant impact on the outlook and light experienced in these existing flats, with particular reference to the rear windows and balconies by enclosing their views.
10. Specifically, the only meaningful outlook from the top floor at 41 is via the rear openings, which are currently in close proximity and overlooking the existing flat roof of the proposal. Thus, any increase in height and mass in this location would have a significant impact on its outlook. The proposal would increase the height at this level, creating a box like feature on the existing flat roof, which would obscure and enclose views from this property, to the detriment of its occupiers.

Maple Cottage and The Works, Bird in Hand Mews

11. These properties have a tight relationship at the rear of the proposal. The proposed window at first floor level, along with the opening and new balcony at the second floor would provide unobscured views into these properties' rear windows and private amenity spaces.
12. The appellant highlights that whilst the balcony could have some overlooking impacts, these would be limited given the presence of the parapet wall and acute viewing angles. Nevertheless, the first-floor windows would still provide overlooking and notable loss of privacy experienced from the proposal. Whilst a degree of mutual overlooking is to be expected in an urban setting, the extremely close relationship would create unacceptable overlooking from the

appeal site into windows and private amenity areas at these properties and vice versa.

13. I would acknowledge that had the proposal otherwise been found as acceptable, a condition could have been attached to ensure that the first-floor window could be obscured glazed to minimise overlooking. However, this is the only upper floor window that is currently not subject to any obscured glazing. Thus, the provision of obscured glazing, to mitigate overlooking from this window, would have a detrimental impact on the living conditions of any future residents, as this could lead to a poor outlook and sense of feeling hemmed in.
14. For the reasons above, the proposal would unacceptably harm the living conditions of the adjoining occupiers of Nos 39 and 41 Dartmouth Road and Maple Cottage and The Works, Bird in Hand Mews, due to the sense of enclosure, overlooking and the impact on outlook. Therefore, the proposal would conflict with the objectives of policies DM32 and DM33 of the Lewisham Local Development Framework: Development Management Local Plan (LDMP), adopted November 2014; and policy 15 of the London Borough of Lewisham Core Strategy (LCS), adopted June 2011; 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, seeks a good standard of amenity for all existing occupants of buildings.

Living conditions of future occupiers

15. From the information before me, lightwells are proposed to both the front and the rear of the proposal to provide natural light for the potential residential unit. I have not been provided with any daylight/sunlight report nor any assessment in accordance with the British Research Establishment (BRE) tests on light with specific regard to the bedrooms at the ground floor level.
16. Whilst I acknowledge that the front lightwell serving bedroom 2 would be considerably larger than the rear one serving bedroom 3, given that it is positioned between the existing three-storey buildings it would create a very tight area for sunlight and daylight to penetrate. As a result, the modest separation distance between the buildings coupled with their height, would seriously restrict the amount of natural light that could enter the habitable room, leading to poor living conditions.
17. From my site observations and limited information provided, the orientation of the proposal, the course of the sun and direction of shadowing would impact on the amount of sunlight experienced in these ground floor bedrooms. However, without a more detailed BRE assessment, I cannot be certain that the proposal would not lead to an excessive loss of daylight and/or sunlight in these habitable rooms, given its relationship with the adjacent properties. As such I have adopted a precautionary approach.
18. Consequently, the proposed development would have an unacceptably harmful effect upon the living conditions of its future occupiers, with particular reference to sunlight/daylight. The proposal is therefore contrary to the relevant provisions of policy D6 of The London Plan (LP), adopted March 2021; LCS policy 15 and LDMP policy DM32 which amongst other things, seek to provide high quality design and living conditions for all residential occupiers

including providing a satisfactory level of natural lighting. Furthermore, it would be contrary to the Framework which, amongst other things, also seeks a good standard of amenity for all existing and future occupants of buildings.

Loss of existing employment space

19. The appeal site is currently vacant, albeit it was previously used for storage facilities associated with light industrial use and later a bakery. The appellant contends that the site is unviable for employment, and from my site visit it was apparent that refurbishment works would be required as the building is not in good condition and is unlikely to be suitable for a wide range of commercial activities, without future investment.
20. LDMP policy 11 highlights at criterion 3 that where uses are proposed for a site or building in employment or retail use that do not involve any job creation or retention, the Council will require evidence that a suitable period of active marketing of the site for re-use/redevelopment for business uses through a commercial agent, that reflects the market value has been undertaken. The appellant has supplied information¹ regarding the viability of the site, which states that the owner has struggled to find suitable occupiers for the premises for 20 years.
21. Nevertheless, the information supplied is limited and dated. Specifically, there is little evidence before me in respect to details of the property's distribution on relevant agencies databases for potential tenants; advertising on websites; letting rates offered; sales details; rent and vacancy rates and details of the premises being advertised for alternative uses. Furthermore, there is a lack of detail in respect to flexible marketing offered, evidence on different tenures; reduced rates; range of lease terms and conditions and/or incentives to encourage alternative employment use at the site.
22. Based on the evidence before me, including the limited submitted marketing-related reports and documents, I am not satisfied all opportunities for reuse or redevelopment for employment generating uses have been fully explored. For example, there appears to be little information in respect to alternative uses and layouts, which may benefit small-scale flexible businesses or start-ups.
23. Consequently, there is insufficient evidence before me to conclude that there is no reasonable prospect of the site being used for business use, and I must adopt a precautionary approach. The proposal is therefore contrary to the relevant sections of LDMP policy 11, LCS policy 5 and LP policy E2 which collectively seek to support business opportunities by providing suitable business space to meet local demand in terms of type, use and size.

Other Matters

24. I 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 a site located in a suitably accessible area relatively quickly, in accordance with the aims and objectives of the Framework. Furthermore, it would promote the more efficient use of an underutilised plot of land. To these benefits I

¹ Evaluating the economic case for the development – December 2023 and a marketing letter from GT Estates dated April 2015

apportion moderate weight given the limited scale and nature of the proposed development.

25. The appellant has drawn my attention to a scheme which relates to infill development, granted planning permission at a neighbouring site². Based on the limited information before me, it is unclear whether the relationship of the proposal to the neighbours or future occupiers living conditions was the same as that considered here. Nevertheless, the scheme turned on its own merits, and as such I give this example only limited weight, as I cannot be certain it is directly comparable. In any event, each case must be judged on its own merits, and I must determine the appeal based on the evidence before me.

Conclusion

26. For the reasons outlined above and having regard to the development plan, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

Robert Naylor

INSPECTOR

² LB Lewisham Planning Ref: DC/23/133599