



Appeal Decision

Site visit made on 15 October 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/E5330/W/24/3344248

31 Herbert Road, Greenwich, Woolwich SE18 3SZ

- 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 Aptullah Kagantekin against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref is 23/2910/F.
 - The development proposed is Change of use of part ground floor from Betting Shop (Use Class Sui Generis) and amalgamation with the existing ground floor shop unit to create a single commercial unit (Use Class E), change of use of first floor from Tattoo Parlour (Use Class Sui Generis) and office space (Class E) to residential (Use Class C3) together with construction of an additional storey via a mansard roof extension and first floor front extension to provide six (6) new residential units with associated balconies, replacement shopfront and associated external works and alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. From the evidence before me there is no dispute between the main parties as to the acceptability of the proposed alterations to the ground floor of the property, to create one larger retail unit with a new shopfront. I shall therefore confine my detailed considerations to the proposed upper floor alterations and extension.

Main Issues

3. The main issues in this appeal are:
 - whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to units 1 and 3 and daylight; and
 - the effect of the proposal on the living conditions of the occupiers of dwellings at 29 Herbert Road, with particular regard to privacy.

Reasons

Living conditions – future occupants

4. The site comprises a two-storey commercial building within Herbert Road Local Centre as defined by the Royal Greenwich Local Plan Core Strategy with Detailed Policies, adopted 2014 (the CS). The area has commercial street frontage with retail and other businesses, many with residential uses above.

5. The appeal proposal would extend and convert the first floor of the building to residential use and erect a mansard roof extension to provide a total of six units, four on the first floor and two on the second floor. Units 1 and 3 would be provided at first floor and would be enclosed within the building by units 2 and 4 and the new floor above. The scheme before me is an amendment to the previous scheme which was considered under Council reference 23/1109/F and appeal reference APP/E5330/W/23/3328769.
6. There is no dispute between the main parties that the size of the flats, the individual room sizes, and the floor to ceiling heights comply with and exceed the local and national space standards. There is also no dispute between the main parties that the proposal would provide appropriate levels of sunlight for all units. From the evidence before me the Council's concern relates to the provision of daylight to units 1 and 3.
7. A Daylight and Sunlight Report (Within Development) (the DSR)¹ was submitted with the planning application and I have been provided with a copy. The DSR aims to check whether the proposed accommodation would provide its future occupiers with adequate levels of daylight and sunlight. It is based on the Building Research Establishment (BRE) Guide 'Site Layout Planning for Daylight and Sunlight: a good practice guide, 3rd Edition'.
8. The DSR confirms that none of the windows for unit 1 would meet the target set out in the BRE guidelines. For the bedroom of unit 1 the percentage of the plane achieving the target is only 36%, which is a significant shortfall below the 50% recommended in the guidelines. The living/dining room for unit 1 also suffers a shortfall, albeit less than the bedroom. For unit 3 although the bedroom would achieve the minimum, the proposal would also fall significantly short of the BRE guidelines for the living/dining room.
9. The DSR advises that the BRE guidelines are intended to be used flexibly, to help rather than constrain the designer, and that the numerical guidelines should be interpreted flexibly since natural light is only one of the many factors in the design of a layout. This is also reflected in the National Planning Policy Framework (the Framework) which advises a flexible approach should be taken to applying policies or guidance relating to daylight and sunlight where they would otherwise inhibit making efficient use of a site. However, the Framework only supports such flexibility where the scheme would provide acceptable living standards.
10. The windows to units 1 and 3 have been enlarged as much as is reasonably practical and both units are provided with a small balcony. Nevertheless, even though it is only three windows that are affected, the DSR confirms that this relates to both windows to unit 1 and the main habitable living room for unit 3. Consequently, both of these units would be significantly affected by the reduced levels of daylight.
11. Even taking account of the flexibility advised in the guidelines, the Framework and the Planning Practice Guidance, the significantly low levels of daylight for unit 1 and the living room of unit 3 would result in harmful living conditions for the future occupants of these units. Consequently, I find that the proposed development would not result in a very good level of compliance with the

¹ Right of Light Consulting Chartered Surveyors – Daylight and Sunlight Report (Within Development) dated 5 September 2023

guidance, even in the context of an urban development and would not provide acceptable quality of accommodation for the future occupants. That the proposal before me provides improved levels of daylight over the previous scheme considered at appeal would not justify still providing these units with poor levels of light.

12. That the balconies could be removed and made part of the bedrooms is not the scheme which is before me. Moreover, this would need a new daylight assessment to be carried out to determine the level of daylight for each room and such a scheme would also need to be assessed against the adopted policies. I have no compelling evidence that such a change would sufficiently increase daylight to the rooms currently affected. Furthermore, the removal of the balconies would remove the outdoor space for the flat.
13. I also have no compelling evidence that the proposal before me is the only viable means of achieving residential development of this floor of the building and, consequently, the need for efficient use of the site would not outweigh the harm I have identified.
14. For the above reasons, I find that the proposed development would not provide acceptable living conditions for future occupiers, with particular regard to units 1 and 3 and to daylight. This would be contrary to Policy D6 of the London Plan 2021 (the LonP) and Policies H5 and DH1 of the CS. Collectively, these policies seek to, amongst other matters, ensure that housing is of a high quality design which provides sufficient daylight.
15. The proposal would also fail to comply with the Mayor of London Housing Supplementary Planning Guidance, March 2016 (the Mayors Housing SPG) which seeks to prioritise improved standards for the quality and design of housing and requires single aspect dwellings to demonstrate that all habitable rooms are provided with adequate daylight.
16. For the same reasons, the proposal would also conflict with principle G.2.2 of the Royal Borough of Greenwich Urban Design Guide Supplementary Planning Document (the Urban Design SPD) which seeks to ensure that building facades are designed to receive high quality daylight and aims for all dwellings to benefit from daylight that conforms to BRE standards.

Living conditions – neighbouring occupants

17. A narrow alley separates the appeal site from the neighbouring building, 29 Herbert Road (No. 29). At the time of my visit this alley was gated at both ends. No. 29 is a three storey building with a retail unit on the ground floor and flats on the upper floors. The upper floors of No. 29 have habitable room windows and balconies facing towards the appeal site with only the narrow alley separating the buildings.
18. The proposal at No. 31 would include windows in the side elevation facing towards No. 29, winter gardens at first floor for units 2 and 4, and patio areas for units 5 and 6 at second floor. The first floor windows are indicated on the submitted plans as high level and to be fitted with obscure glazing. Consequently, and subject to a condition to ensure that these windows are fitted with obscure glazing and retained as such, this would limit the opportunities for overlooking from No. 31 to No. 29.

19. The winter gardens at first floor would have large areas of glazing enclosing these spaces. I acknowledge that I have not been made aware of any objections directly from the residents at No 29. However, the third party representation received does relate to loss of privacy to the neighbouring property. Due to the size of the glazing of the proposed winter gardens, and the very small separation distance, the occupiers of proposed units 2 and 4 would, when using these spaces, directly overlook at least four windows of the adjacent property, two of which are Juliet balconies with full height glazing.
20. During my visit I observed that the windows and balconies at first floor level, within No. 29, have been provided with obscure covering to the glazing, up to a height of approximately 1.5 metres. This is materially different to what the Inspector observed at the time of the previous appeal at this site and what the Council made their decision on.
21. However, although the approved plans for the development of No. 29 show obscure glazing on these windows and condition 2 of that consent requires the development to be carried out in accordance with the plans, there is no condition that requires the windows to be retained as obscure glazing. The requirement to submit details under condition 12 of the planning permission for No. 29 related to the balustrade and roof terraces and did not require the submission of glazing details for the windows.
22. It is not appropriate for me, in determining this appeal, to make any conclusions on whether replacement of obscure glazing with clear glass would materially affect the external appearance of the building so as to require planning permission under Section 55(2)(a) of the Town and Country Planning Act 1990.
23. Nevertheless, the windows to the side elevation of No. 29 were obscured at the time of my visit. Moreover, the appellant has, within their statement of case, offered to obscure glaze the glass to the winter gardens up to a height of 1.5 metres. Such a change would be capable of being secured by an appropriately worded condition and would not be unreasonable.
24. With obscure glazing in the windows and winter gardens facing towards No. 29 views from the appeal proposal into No. 29 would be restricted and would ensure that the proposed development would not have an unacceptable adverse effect on the living conditions of the occupiers of the neighbouring properties.
25. For the above reasons, with regard to the effect on the living conditions of the occupiers of dwellings at 29 Herbert Road, with particular regard to privacy, subject to conditions to secure obscure glazing, the proposal would comply with the requirements of Policy DH(b) of the CS which seeks to, amongst other matters, ensure that development would not cause unacceptable loss of amenity to adjacent occupiers by reducing the amount of privacy.
26. For the same reasons, the proposal would be acceptable when assessed against the Urban Design SPD and specifically principle G.2.1 which requires development to consider the privacy of future and existing residents including demonstration that privacy would be achieved between new and existing developments.

Other Matters

27. The Council did not find harm or development plan conflict in relation to including, but not exclusively, the principle of residential development, the mix of housing, the design of the scheme, including the additional floor, mansard roof and overhang, the level of outdoor space proposed for each unit, parking, or highway safety. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.
28. I also acknowledge the letter of support from a third party and that no objections were received from statutory consultees. However, this would not alter my conclusions on the main issues.

Planning Balance

29. The Council accepts that it cannot currently demonstrate a five-year housing land supply as required by the Framework. At the time of the officer report the housing land supply was only 2.8 years. This represents a significant shortfall and thus paragraph 11(d) of the Framework is engaged.
30. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. Policy D6 of the LonP and Policies H5 and DH1 of the CS are the most relevant in considering the proposal. However, none of these policies seek to restrict development in the area and they are all broadly consistent with the Framework which requires development to provide a high standard of amenity for future users. As such I have given the conflict with these policies significant weight in this appeal. The proposed development would conflict with the development plan as a whole and I attribute considerable weight to this harm in the overall balance.
32. The proposal would accord with the Framework which seeks to boost the supply of housing, promotes the use of brownfield sites and efficient use of land, and aims to achieve a mix of housing. Moreover, the proposal would also provide economic and employment benefits both during and post construction, especially from the provision of the larger retail unit, and is in a location with access to services and facilities. I afford significant weight to the provision of these new residential units and the retail unit. However, as only six dwellings are proposed the benefit is limited when weighing the merits of the scheme. I therefore afford significant weight to the limited benefit the development would make to addressing the housing shortfall.
33. On the other side of the balance, the proposal would result in unacceptable living conditions for the future occupiers of units 1 and 3. This matter carries significant weight against the development.
34. Consequently, in my judgement, the harm I have identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It therefore follows that the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

35. The proposal would conflict with the development plan as a whole, and there are no other considerations, including the provisions of the Framework, which would outweigh this. Therefore, I conclude that the appeal should be dismissed.

K Townsend

INSPECTOR