

Appeal Decision

Site visit made on 11 November 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2024

Appeal Ref: APP/H5960/W/24/3345520

48 Longley Road, Wandsworth, London SW17 9LL

- 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 Shaahin Ismail Malida against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref is 2023/4594.
 - The development proposed is the erection of two, 2-bedroom 4-person, semi-detached houses at the rear of 48 Longley Road, each with private outside amenity space; associated waste storage facilities, bicycle parking and landscaping works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on: a) the character and appearance of the area, including a nearby locally listed building; b) the living conditions of the occupants of 46 and 50a Longley Road, with regards to daylight and sunlight, outlook and privacy; c) the risk of flooding, having regard to the appeal site's location; and d) the reduction of carbon emissions.

Reasons

Character and appearance

3. The appeal site relates to 48 Longley Road, though based on the proposed development there would be some overlap with the rear garden of 46 Longley Road. The development proposed would principally take place at the rear of the site. The surrounding area is characterised by traditional residential properties with spacious rear gardens that extend to the River Graveney and the railway line at the rear. Numerous properties in the row of properties on the southern side of the road have been extended, but they nor the backland development (dwellings) at 42, 50a, 52a, and 94a have altered the spacious character associated with properties in the street that positively contributes to the character and appearance of the area.
4. The appellant says that the land has been used as a storage/building yard since 2008 and fenced off from No 48. Prior to that, they say that the land was used as a nursery. However, in the appeal decision from 2022, it was explained that the appellant's statement that the "site will continue to have residential use." Hence, the lawful use of the site is unclear, though I note hardsurfacing and a detached building are present. If a person wishes to ascertain if an existing use or development is lawful, the correct approach is for them to make an application under section 191 of the 1990 Act for a certificate of lawful use or development.

5. The Housing Supplementary Planning Document (SPD) outlines that the development of back gardens is...generally regarded as an inappropriate form of development in the borough. The SPD goes on to explain that garden spaces play a number of important roles, such as their contribution to local character, and that there is no local justification that can be made for the development of residential gardens in the borough as the borough's housing targets can be met without relying on garden land.
6. That said, even if I were to approach this decision as if the land were previously developed, all development needs to be high quality, contribute to a good quality environment, and respond to its context regardless of making efficient use of the land.
7. The proposal follows two earlier schemes that were dismissed at appeal in 2019 and 2022. Although the design-led approach would see a shared garden lie between the proposed dwellings and the rear of No 48, the proposed dwellings would result in a cramped appearance at the rear of the site. This is due to the size of each dwelling, which would be larger than those at Nos 50a and 52a, and due to the minimal spacing between each dwelling and/or the site's boundaries. Their footprint would occupy nearly all the site's width. I recognise that the scale of each dwelling on its own would be comparable to existing dwellings in the area; the proposal's collective width, scale, and massing would result in a dominant form of development across the whole of the rear part of the site. A similar point was made by the Inspector, who considered a proposed replacement dwelling at No 50a in 2023. The use of suitable materials and fenestrations do not change my view.
8. The appeal scheme is unlike the development at No 94a in that the building that would be replaced here is modest in size and scale. Those replaced at No 94a extended across the full width of that plot and had a greater footprint. Furthermore, the dwelling at No 42a is set within a garden that extends across the rear of 42 and 44 Longley Road, which maintains the verdant, spacious character to each of the plots. The proposal would not achieve that as the built form would be sited close together. Although the appellant refers to the area's rapid transformation due to the need for affordable housing, the appeal scheme would not deliver affordable homes.
9. Shared gardens would be formed between the proposed dwellings and No 48, and the fence between Nos 46 and 48 would be removed to allow use of the shared garden to the rear of No 46. Through planning conditions, appropriate landscaping could be secured to achieve a verdant character, and access to these spaces would be beneficial for the occupants of the different properties. However, those spaces would not change the cramped form of development proposed at the rear part of No 48.
10. No 46 is a locally listed building and is the former home of Sir Harry Lauder, a prominent music hall artist. Its significance is cultural, but the dwelling also has architectural detailing. The proposed dwellings would be set further back from No 46 and its spacious rear garden than the 2022 dismissed appeal scheme. This, together with the removal of the boundary fence, would, despite the flank elevation abutting No 46's boundary, ensure that No 46 would retain a spacious verdant character. Therefore, despite the harm that I have identified, the proposal would not harm the setting of No 46.
11. Although the appeal site lies in an accessible location, and the proposal would

make effective use of the land, I conclude, on this issue, that the proposed development would cause significant harm to the character and appearance of the area. While the proposal would accord with Policy LP3 of the Wandsworth Local Plan 2023 – 2038 (Local Plan) in respect of the locally listed building as it would preserve its significance, appearance, character, function, and setting, this is outweighed by the conflict that the proposal would cause with Local Plan Policy LP7, Policies H1 and D3 of The London Plan and the SPD. Jointly, these seek, among other things, development to follow a design-led approach to achieve a form and layout that enhances local context by delivering high quality buildings and spaces that positively respond to local distinctiveness and character through their layout, scale, appearance, and shape.

Living conditions

12. The appeal site has a south-west to north-east orientation. No 50a is to the south-east while No 46 is to the northwest of the appeal site and the proposed development. The first-floor window in the flank elevation of No 50a appears to serve a bedroom. The ground-floor window in the flank elevation of No 50a is the sole opening serving this room. Both windows have an outlook across to the appeal site over the modest boundary treatment.
13. The proposal would introduce a tall, blank brick façade directly in front of No 50a's windows. That façade would extend in either direction in front of the windows, which would be around 7.5 metres away. This would harm the outlook and thus the living conditions of the occupiers of No 50a, especially from the ground-floor room. The effect would be overbearing and significant even if the rooms served by the ground and first floor flank elevation windows would receive adequate sunlight and daylight.
14. The garden of No 50a already experiences shading during the day and across the year due to the dwelling that this garden serves. Even with the proposed dwellings, this relationship would not change to the extent whereby I consider the effect would be adverse due to the siting of the dwellings in relation to No 50a and its garden.
15. The garden of No 46 currently experiences shading because of boundary treatment, landscaping, or the outbuildings at the rear of the site. However, due to the size and orientation of this garden, there are considerable periods in the day across the year when it is not subject to shading. The proposal would cause increased shading to No 46's garden. The extent of this would vary depending on the time of day and year, but an unacceptable impact on daylight and sunlight would not be caused due to the size of the garden and its orientation, which would ensure that adequate levels of both would still enable occupiers to enjoy using this space.
16. If the secondary window serving the kitchen/dining/living room in the flank elevation of the dwelling proposed adjacent to No 46's garden was clear glazed, there would be a loss of privacy to the future occupants of this dwelling as views would be possible from the shared garden. However, by imposing a planning condition to secure the use of obscure glazing, this would overcome that harm while enabling some passive surveillance of the shared garden space without compromising the privacy of people using that space.
17. Despite the changes made since the last proposal on the appeal site, I have considered the scheme before me on its own merits, and while no harm would arise in terms of daylight and sunlight in the gardens and the privacy of the

future occupants, these matters do not alter or outweigh the significant harm that would be caused to the living conditions of No 50a and their outlook. Accordingly, I conclude that the proposal would conflict with Local Plan Policy LP2 and the SPD, which together seek, among other things, development to not adversely impact the amenity of existing and future occupiers or neighbouring properties.

Risk of flooding

18. The existing property is in Flood Zone 1, along with much of the land that would be used for the proposed development. However, the southern part of the appeal site near the river falls partly within Flood Zone 2/3a as determined by the Environment Agency's (EA) flood risk mapping. This situation was the case in both previous appeals.
19. Land in Flood Zone 2 has a medium probability of flooding from rivers whereas land in Flood Zone 3 has a high probability of flooding from rivers.
20. Local Plan Policy LP12 states that development will be guided to areas of lower risk, both on-site and by applying the 'Sequential Test', as set out in national policy guidance, and where required, the 'Exception Test'. Inappropriate developments and land uses will be refused in accordance with national policy and guidance and the Council's Strategic Flood Risk Assessment (SFRA). The policy goes on to say that future development in Zone 3a and Zone 2 will only be considered if the 'Sequential Test' has been applied and the Exceptions Test passed in accordance with national planning policy and guidance.
21. The aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower risk of flooding. This is important given that the proposed development falls into the more vulnerable flood risk classification.
22. A Flood Risk and Sustainable Drainage Assessment (FRA) has been submitted. The FRA does not contain a Sequential Test. There is also no topographical survey included in the FRA to accurately ascertain whether the site's ground levels are such that the flood risk is equivalent to the risk of Flood Zone 1 and higher than flood levels. While there can be discrepancies in the EA flood risk mapping at the edge of flood zones, actual flood levels, which include modelled flood data for fluvial flood models, have not been obtained from the EA, and as such, there is no evidence to currently suggest that the existing flood zones for the site are incorrect.
23. The Sequential Test must be passed before the Exception Test can be applied. Hence, I have not gone on to consider whether the Exception Test is met, including flood resilience considerations in relation to the structural stability of the riverbank and any need to maintain a buffer zone.
24. Regardless of whether a pre-commencement condition was imposed in respect of the structural integrity of the riverbank, and the appellant is correct that the occupants of the development would be safe and the development will not increase the risk of flooding elsewhere, these matters do not nullify the need to initially pass the Sequential and Exception Tests to establish whether the proposal is acceptable in principle on flood risk grounds.
25. Paragraphs 168 and 173 of the National Planning Policy Framework (the Framework) are clear that development should not be permitted as the

proposal has not considered directing the development away from areas at highest risk of flooding so that flood risk is minimised. As such, it has not been demonstrated that the appeal site is a suitable location for the proposed development in terms of the risk of flooding. The proposal therefore conflicts with Local Plan Policy LP12 and Framework paragraphs 165, 168 and 173. Jointly, they seek to guide new development to areas of lower risk and require applications to be supported by site-specific flood risk assessment.

Reduction of carbon emissions

26. The submitted Energy Statement (ES) outlines the approach to adopt passive and active energy efficiency measures. Solar roof tiles are shown on the south-east facing roof sections on the proposed roof plan, and while the plans do not identify the location of the air source heat pumps for each dwelling, the ES confirms that they are proposed for space and water heating. The appellant also outlines how a *fabric first* approach would ensure that the energy efficiency targets set out in Building Regulations are met and exceeded.
27. I note the Council's wish to secure details of how the 35% reduction sought by Local Plan Policy LP10 will be achieved so that they can be included early on in the design process. The ES nonetheless provides sufficient detail on how this target would be met, and the location of solar roof tiles is shown on the plans, which could be subject to an approved plan condition. Furthermore, I am satisfied that the precise final details could be secured through a separate planning condition to achieve the necessary carbon emission reduction on site while enabling the technical design stage to take place.
28. On this basis, the proposed development would deliver the necessary reduction of carbon emissions and accord with Local Plan Policy LP10, which seeks all new residential development to achieve a minimum on-site carbon emission reduction of 35%.

Other Matters

29. Given the intervening distance, the proposal would not cause unacceptable impacts to the occupiers of 42 Longley Road. The proposal would also not add to any on-street parking stress given that it would be a car-free development.

Conclusion

30. I have found that the proposed development would cause harm to the character and appearance of the area and the living conditions of No 50a, and the appeal site would not be a suitable location for the proposal, having regard to the risk of flooding. My conclusions on these issues outweigh the neutral effect arising from the proposal's compliance with reducing carbon dioxide emissions and the modest benefit of two additional homes in an accessible location, and the limited economic benefits that would come with that. As such, this leads me to conclude that the proposal conflicts with the development plan, and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
31. For the reasons given above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR