



Appeal Decision

Site visit made on 22 October 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal Ref: APP/C5690/W/20/3256304

Land at Brockley Rise and Duncombe Hill, Forest Hill, London SE23 1QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Baig (Investor Alliance Limited) against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/111251, dated 25 February 2019, was refused by notice dated 24 January 2020.
 - The development proposed is the erection of 7 apartments together with landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted a set of revised plans with the appeal. The revisions would enlarge the footprint of the proposed development to provide additional floor space. In addition, the appellant has submitted an amended landscaping scheme in relation to the refused plans. The amended landscaping scheme is supplemented by supporting technical documentation^{1,2}.
3. The appeal process should not be used to evolve a scheme and it is important that I determine this appeal on the basis of what was considered by the local planning authority, and on which interested people's views were sought. This is particularly important given the significant public interest in this case. For the avoidance of doubt, I have not had regard to the revised plans or the amended landscaping scheme, which includes the supporting technical documentation, as part of the determination of this appeal.
4. Following the submission of a daylight and sunlight report with the appeal, the Council have advised that they no longer wish to defend the fifth reason for refusal which relates to the effect of the development upon the living conditions of the occupiers of No 5 Duncombe Hill, in respect of daylight and sunlight. The report does not evolve the original proposal and the nature of the concerns of those who would normally have been consulted are clear from consultation on the original set of plans. As such, I do not consider that their interests would be prejudiced if I take account of this document in the determination of the appeal. I do not disagree with the views of the Council in respect of this matter and hence it does not fall to be considered as a main issue.

¹ Tree Planting Specification and Costs – Prepared by CSA Environmental (Report No: CSA/4403/01) (July 2020)

² Arboricultural Impact Assessment – Prepared by Wharton (Ref No: 200428 0759 AIA V1B) (June 2020)

5. The Council's officer report refers to the Draft London Plan (the 'DLP') and states that 'some weight' may be given to the DLP as a material consideration. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. I have been provided with no relevant policies from the DLP, nor have I been provided with any substantive details of the status of this emerging plan. Consequently, I attribute the plan and policies very limited weight as a material planning consideration.

Main Issues

6. The main issues are:
- the effect of the development upon the character and appearance of the area; and
 - whether satisfactory living conditions would be provided for future occupiers of the proposed development in respect of the amount of internal space and privacy.

Reasons

Character and appearance

7. The appeal site is a triangular plot of undeveloped land located on the corner of Duncombe Hill and Brockley Rise. The site is predominately grassed and features five trees, all of which are protected by a group Tree Preservation Order ('TPO').
8. Immediately adjacent to the appeal site there is a section of Council owned land which is an open space accessible to the public. The land includes a large sycamore tree which is protected by a TPO and sited near to the rear boundary of the appeal site.
9. It is proposed to erect a part three and part four storey residential development comprising of seven flats. To facilitate the development, all of the existing trees at the appeal site would be felled. The submitted landscaping plan shows that replacement trees and a hedge would be planted around the proposed building.
10. Duncombe Hill is a residential street that rises steeply upwards from the appeal site towards Blythe Hill Fields. The street features a mix of property types from a variety of architectural periods including terraced, semi-detached and detached dwellings and also several flatted blocks. The properties are laid out in a linear pattern and follow a clear building line.
11. Despite the mix of property types and architectural styles, the consistent use of external brick and render finishes, in addition to the strong linear pattern of development, creates a design balance and symmetry which contributes positively and distinctively to the character and appearance of the area.
12. Brockley Rise is a busy street which includes shops, restaurants, hot food takeaways, a public house and a variety of other business uses. The road is well served by public transport, which includes a bus stop that is located on the pavement adjacent to the appeal site. Along the section of Brockley Rise

- opposite to the appeal site there are a significant number of mature street trees, which contribute positively to the local distinctiveness of the area.
13. The main parties explain that in 1968 a tenancy agreement was entered into between the Council and "William's Poster Advertising Company LTD", later JC-Decaux. The agreement required the preservation of the company's land (the appeal site) as a "public garden", in exchange for the use of part of the land located immediately to the rear of the appeal site which was within the Council's ownership for the display of advertising.
 14. During this time the appeal site was accessible to the public. In effect, the appeal site and the adjoining Council owned land were used as a single entity of open space, albeit that the respective parts of land were in different ownerships.
 15. The tenancy agreement was for an initial period of three years, then on a year to year basis thereafter. A provision was included within the agreement that either party (the Council or the company) had the right to terminate the agreement with a 12-month notice period. JC Decaux served notice on the Council approximately two to three years ago and on the expiry of the 12-month notice period the advertising panels were removed from the Council's land and the application site was no longer required to be retained as a "public garden". After the 12-month notice period, the appeal site was put up for auction and it was acquired by the appellant.
 16. Following the acquisition of the appeal site, the appellant erected 2.3m high timber hoarding around the site to prevent any public access. The Council issued an enforcement notice for a breach a planning control, which alleged that the hoarding did not have planning permission. The enforcement notice was upheld at appeal on 27 September 2019³.
 17. At the time of my site visit, the site remained enclosed by timber hoarding, albeit that it was substantially lower than 2.3m on the site boundaries facing Duncombe Hill and Brockley Rise, with signage identifying that the site is private land.
 18. Despite the private ownership of the site and the existing hoarding, which prevents public access to the site, the Council contend that the appeal site is an existing public open space and whilst it is not formally designated as an open space within the development plan, they argue that great weight should be applied to the retention of the area relative to its undesignated status. The appellant disputes this position and argues that the site is not an existing open space.
 19. Policy 12 of the Lewisham Local Development Framework: Core Strategy (the 'CS') relates to open space and environmental assets within the Borough. The strategic aims of the policy are to conserve nature, green the public realm and provide opportunities for sport, recreation, leisure and well-being.
 20. Criteria 2.b. of Policy 12 explains that this will be achieved by protecting Metropolitan Open Land, open space, urban green space and green corridors from inappropriate built development to ensure there is no adverse effect on their use, management, amenity or enjoyment in accordance with the principles of PPG2 and the London Plan.

³ PINS Ref: APP/C5690/C/19/3224210

21. Paragraph 7.103 of the CS explains Policy 12 was prepared to take account of the now cancelled national guidance in PPG17 (Planning for Open space, Sport and Recreation). PPG17 explains that open space should not be built on or developed without a robust and up-to-date assessment proving that the land is surplus to requirements. This approach is consistent with paragraph 97 of the Framework. Therefore, whilst the CS was adopted prior to the publication of the Framework, having regard to paragraph 213 of the Framework, given the degree of consistency with paragraph 97 of the Framework, the policy is not out of date.
22. Policy 12 does not define open space, nor have the Council directed me to any other definition for this term within the development plan. However, Annexe 2 of the Framework defines 'open space' as "All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity."
23. The grammatical construction of the definition indicates that the reference to sport, recreation and visual amenity relates to areas of water only. Therefore, in this regard, open space that is not an area of water, such as an area of land, is defined by the Framework as "all open space of public value".
24. The part of the Framework which relates to open space and recreation is contained within the section on promoting healthy and safe communities. Therefore, what is meant by 'public value' must be considered in this context.
25. Paragraph 96 of the Framework explains that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities.
26. Representations submitted in respect of the appeal indicate that the appeal site is valued by the local community. However, the appeal site is not formally designated as open space in the development plan, even though the plan was adopted at a time when the land was publicly accessible. Moreover, I am mindful that if development did not occur at the site, then it is likely that the land may well remain enclosed in perpetuity with no public access.
27. Whilst I recognise that the view of the appeal site, including the existing trees, may be restful to the local community, such benefits could be replicated by observing private gardens, which are not open spaces of public value. Therefore, whether land is to be classified as open space, in the context of the Framework, is not expressly linked to visual amenity. In this regard, this is a significant constraint which must be taken into account when determining whether the appeal site is of public value.
28. In the absence of any public access, the appeal site's contribution to the health and well-being of the community would be limited to views of the site from the public realm. However, as set out above, such benefits could be replicated by observing private gardens. For this reason, and, given that the appeal site has no formal allocation within the development plan, as a matter of fact and degree, I conclude that the appeal site is not an open space of public value. Consequently, I find that the appeal site is not an existing open space as defined by the Framework. Therefore, Policy 12 of the CS and the requirements of paragraph 97 of the Framework are not applicable to the appeal proposal.

29. I am cognisant that the Hopcroft Neighbourhood Plan (the 'NP') designates the site as a Local Green Space. The Council explain that the NP is unadopted and the evidence before me suggests that the emerging plan has not been examined, nor has it been through the referendum process. Consequently, I attribute the plan and policies very limited weight as a material planning consideration.
30. Whilst I have found that the appeal site is not an existing open space, the undeveloped nature of the site and the presence of the existing trees provides visual relief from the surrounding dense urban environment. Despite its enclosure, owing to the low height of the fencing facing Duncombe Hill and Brockley Rise, in addition to the topography the area which rises upwards away from Brockley Rise, views into the undeveloped site are readily visible from the public realm. Therefore, the extent of the visual relief provided is significant given the site's prominent location on the corner of Duncombe Hill and Brockley Rise. Moreover, the existing trees complement the street trees opposite the appeal site and create an attractive verdant character. These factors contribute positively to the local distinctiveness of the area.
31. The proposal would introduce a large part three and part four storey building at the appeal site, which would occupy a significant proportion of the site and be located close to the site boundary with Brockley Rise. Moreover, the proposed bike and bin stores would further increase the extent of built development over the site. Therefore, the proposal would have a cramped appearance and would appear as a prominent and intrusive form of development when viewed from both Duncombe Hill and Brockley Rise. Consequently, the significant visual relief from the surrounding dense urban environment and the important sense of openness currently provided by the appeal site would be lost.
32. In addition, the proposed development would result in the loss of all of the existing trees at the appeal site. I recognise that when assessed as individual specimens the three crab apple trees and the maple tree have limited amenity value. However, when viewed as a group of trees, which also includes the willow tree at the appeal site, and within the wider street context which features street trees on the opposite side of Brockley Rise and the sycamore tree sited near to the rear boundary of the appeal site, the trees have significant amenity value when viewed from the public realm and their loss would cause significant harm to the area's verdant character.
33. The landscape design statement submitted with the planning application explains that 'a high-quality landscaping design for the scheme will be achieved through a variety of planting across the site', which includes living walls. However, only a very limited amount of information was submitted with the planning application to demonstrate the extent of the proposed landscaping and how the new planting, including the replacement trees would be managed to ensure they would reach maturity. In any event, if suitable replacement landscaping could be achieved, this would not overcome the significant harm to the character and appearance of the area caused by the proposed development.
34. The Council argue that the proposed development would compromise the long-term health of the protected sycamore tree located near to the rear site boundary. The appellant explains that a root protection system could be constructed that would safeguard the health and longevity of the tree. Even if I

- were to accept the appellant's position, this is a matter of neutral consequence and would not outweigh or overcome the harm that I have identified above.
35. In terms of the design of the proposal, the siting of the proposed building shows little regard to the existing building lines on Duncombe Hill and Brockley Rise, in particular the layout of the Brockley Rise facing elevation would be at odds with the linear pattern of development where buildings typically face straight onto the street, as opposed to at an angle.
 36. Moreover, the extensive and disproportionate use of cladding and fenestration throughout the proposed development, in addition to the introduction of large external balconies, would be out of keeping with the local vernacular. Therefore, the proposal would have a stark and jarring appearance when viewed in the context of the surrounding development on Duncombe Hill and Brockley Rise, which would cause significant harm to the character and appearance of the area.
 37. The Council have expressed concerns about the impact of the proposed development on the existing open space to the rear of the appeal site. Whilst I recognise that the east elevation has a limited number of openings, the proposed corner windows and the external balconies either side of the east elevation would provide natural surveillance of the existing open space. Moreover, the existing open space would be overlooked by passers-by using Duncombe Hill and Brockley Rise. As such, I find that this aspect of the development would not harm the character and appearance of the area.
 38. For the reasons set out above, I conclude that the proposed development would cause significant harm to the character and appearance of the area. As such, the proposal would not accord with Policy 15 of the CS, DM Policies 25, 30, 32 and 33 of the Lewisham Local Development Framework: Development Management Local Plan (the 'LP') and Policies 3.4, 7.4, 7.6 and 7.21 of the London Plan (2016), insofar that they collectively require new development to be of a high quality design, which takes account of the site context and local character, including the retention of existing trees of value.
 39. Given the above, the proposal would also be inconsistent with paragraph 127(c) of the Framework, which requires development to be sympathetic to the local character. Paragraph 130 of the Framework makes clear that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

Living conditions of future occupiers

40. Policy 3.5 of the London Plan (2016) states that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. Table 3.3 of the London Plan sets out the minimum space standards for new dwellings, which incorporates the minimum space standards for new residential development as set out within the Government's Technical Housing Standards - Nationally Described Space Standard (March 2015) (the National Standard).
41. DM Policy 32 of the LP sets out housing design, layout and space standards for new residential development within the Borough. Criteria 4 of DM Policy 32 relates to internal standards and explains that new housing should meet the minimum space standards in the London Plan.

42. The proposed development would provide a total of seven flats, which would comprise of a single one-bedroom unit (shown as 'Flat 1' on the floor plans) and six two-bedroom units (shown as 'Flats 2-7' on the floor plans).
43. The National Standard sets out that the minimum space standard for a two-bedroom, four-person unit is 70 square metres (gross internal floor area – 'GIA'). Whereas the minimum standard for a two-bedroom, three-person unit is 61 square metres GIA.
44. The submitted floor plans show a double bed within all of the bedrooms of the proposed two-bedroom units. On that basis, the Council contend that Flats 2-7 should be classified as two-bedroom, four-person units. The appellant disputes this assessment stating that the furniture shown is for 'illustrative purposes' and that it does not imply actual occupancy. Therefore, he argues that the units should be classified as two-bedroom, three-person units.
45. In addition, the appellant explains that the balconies should be counted towards the GIA of each of the units. However, the National Standard explains that "the Gross Internal Area of a dwelling is defined as the total floor space measured between the internal faces of perimeter walls that enclose the dwelling". The balconies are external structures and do not count towards the GIA of the respective flats for the purposes of applying the minimum space standards.
46. The proposed floor plans are not marked as 'illustrative' and they do not contain any notes or annotations to explain that the furniture shown should not be used to determine the number of bed spaces within each unit. As a matter of fact and degree, I consider that Flats 2-7 are capable of being occupied by four persons, as evidenced by the proposed floor plans, which show four bed spaces per unit. Consequently, I share the Council's view that the proposed flats should be classified as two-bedroom, four-person units.
47. The gross internal floor area of Flats 2-7 would fall below the minimum standard of 70 square metres GIA, as set out within the National Standard. Consequently, the proposal would provide an unduly small and cramped standard of accommodation for future occupiers.
48. Further to the above, owing to the layout of the development, the bedroom and living room windows of the ground floor flats (shown as 'Flats 1-2' on the floor plans) would face the existing bus stop on Brockley Rise. Due to the close proximity of the bus stop and its orientation, which faces into the proposed development, users of the bus stop would have direct views into the living room and bedroom areas of both of the ground floor flats. Such overlooking would cause a lack of privacy for the occupiers of the properties.
49. I recognise that the ground floor of the development would be elevated above the street level. However, the extent of the level change would be limited and users of the bus stop, particularly those standing, would have direct views into Flats 1 and 2 at a close proximity.
50. The appellant argues that a planning condition could be used to secure the reorientation of the existing bus stop, so that users waiting for a bus would face the roadside. However, the bus stop is located on land outside of the appellant's control and no substantive evidence has been put forward to demonstrate that the bus operator would be agreeable to such works.

Consequently, the imposition of such a condition would not meet the tests set out in paragraph 55 of the Framework.

51. For the reasons set out above, I conclude that the proposed development would fail to provide satisfactory living conditions for future occupiers in respect of the amount of internal space and privacy. As such, the proposal would not accord with DM Policies 32 and 33 of the LP and Policies 3.5 and 7.6 of the London Plan (2016) which collectively require new housing development to meet the minimum space standards, as set out within the National Standard, and to deliver high quality indoor spaces which provide adequate privacy for future occupiers.

Other Matters

52. The appellant argues that the Council planted the existing trees at the appeal site, which would have been a breach of the tenancy agreement from 1968. Whilst this may or may not be the case, this is a matter which falls outside of the scope of this appeal.
53. The appellant states that if the site remains undeveloped, they are under no obligation to maintain the land or the existing trees. In addition, they explain that the boundary hoarding would remain. I cannot be certain that refusal of planning permission would necessarily equate to such consequences, nor is it clear whether or not the existing hoarding has planning permission, but in any event, this would not overcome the very weighty conflict that I have identified with the development plan policies as outlined in the main issues above. Moreover, the Council has the power to require the proper maintenance of land, as set out under Section 215 of the Town and Country Planning Act 1990 (as amended).

Conclusion

54. There would be some limited benefits to the construction industry and to the vitality and viability of local services from the spend of future occupiers arising from the proposed development. In addition, the proposed development would increase the supply of housing in the local area. However, given the quantum of development proposed, such benefits would be modest and would not overcome or outweigh the significant harm that I have identified in respect of the main issues.
55. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell

INSPECTOR