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# Appeal Decision

Hearing and site visit held on 17 October 2012

**by M F Aldous BA (Hons), Dip Mgt, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 29 October 2012**

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**Appeal Ref: APP/E5330/A/12/2178469**

**Land adjacent 228 Tunnel Avenue, London SE10 OPL.**

- 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 Richard Blue against the decision of the Council of the London Borough of Greenwich.
  - The application Ref 12/0308/F, dated 8 February 2012, was refused by notice dated 17 May 2012.
  - The development proposed is a 62 bedroom new build student accommodation.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. At the Hearing an application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

## Main Issue

3. The main issue in this case is whether the proposal would provide acceptable living conditions for the future occupants of the building, with particular regard to air quality.

## Preliminary Matters

4. The appeal site enjoys the benefit of a planning permission won on appeal in October 2010 for a 47 bedroom hotel (APP/E5330/A/10/2127740). The hotel decision is clearly a material planning consideration to which I must attach weight.
5. I am informed that the current proposal, although different in terms of land use and the nature of occupation, relates to a similar building occupying the same footprint as that for the hotel. Given these factors and the nature of the Council's single reason for refusal, there are no character and appearance or car parking issues that need to be addressed in this decision.

## Reasons

6. The appeal site is triangular in shape and consists of an end of terrace dwelling and adjacent land, which at the time of my visit was in use as a hand car wash centre and a storage yard. It fronts onto Tunnel Avenue and has an industrial estate directly opposite on that side. Immediately to the rear is a slip road

onto the A102 Blackwall Tunnel approach road and the elevated section of the A102 itself. To the south-east is a row of terraced houses.

7. Essentially this is a straightforward case with only one main issue. It is not disputed between the parties that given the location of the site it suffers from poor air quality. Indeed, the Council points to the fact that the site is unusual in that it is vulnerable to factors leading to poor air quality from all sides, although no doubt the very busy and elevated section of road immediately to the rear of the site is the principal contributory factor in this regard. The proposed internal design of the building reflects this fact with habitable rooms facing onto the Tunnel Avenue frontage.
8. As a result, and in order to provide for decent air quality for the future inhabitants of the building, the Appellant proposes a system of internal air filtration and conditioning that would eliminate harmful nitrogen dioxide and particulates and enable occupation free from the risk of poor air quality.
9. However, in order to achieve this objective the building would effectively be sealed, with windows fixed shut in order to prevent the intrusion of polluted air. In the Council's view this would result in a poor living environment for students served by filtered and recycled air with no access to relief by opening windows even during clement weather.
10. It points to the fact that students could occupy rooms within the building for eight or nine months of any year, unlike the transient visitors who would use the hotel for a day or two were that permission to be implemented and where the air conditioning arrangement would be similar. The Council also suggests that there is evidence to support the view that persons living in such conditions could also be vulnerable to psychological concerns arising from living within a 'closed environment' of this kind.
11. From all that was written and said to me at the hearing I share such concerns. In my view to be located in a building where natural ventilation was not an option because of the nature of surrounding air quality would not be conducive to good living conditions. Whilst I am prepared to accept that the technology involved and advocated by the Appellant under the proposal would be more than capable of delivering clean and healthy air to the students, the inability to access natural ventilation at any time, and to therefore reside within a building with a closed environment would not be conducive to good living conditions. Whilst such an arrangement might work satisfactorily for short term occupants, such as hotel users, that is not the case here, where students would occupy the building for long periods.
12. At the hearing the Appellant suggested that it might be possible to develop a system that allowed for some opening of windows to a fixed extent with the attendant internal air conditioning system remaining capable of delivering acceptable air quality within the prescribed parameters. However, I have no convincing evidence before me that such a hybrid approach would deliver the necessary result, and in any case having fenestration that was capable of being opened to some degree whilst psychologically welcome would result in rooms being exposed to very high noise volumes arising from the activity which is immediately adjacent to the proposed building on all sides.
13. So even if a technical solution of this kind might be possible it could well cause problems by reason of significant noise impact which would not itself be

conducive with delivering good environmental or study conditions for the future occupants of the building.

14. The Council also indicated that it was not fully confident that the proposed air quality operational, management, repair and replacement and system failure response action arrangements would ensure that acceptable living conditions were maintained. Whilst I appreciate that modern systems of this kind might be unfamiliar, I was impressed by what was said by the Appellant at the hearing with regard to such matters. I consider that appropriate planning conditions could be framed that would ensure that appropriate mechanisms of this kind were put in place and were capable of being monitored to deliver the desired outcome in terms of air quality assurance.
15. However, this factor does not overcome the concerns outlined above which lead me to conclude that given the locational constraints of the site and the proposed nature of the use of the building, that good living conditions for its occupants could not be assured. As such I find the proposal to be in conflict with the objectives of policies SE2 and E3 of the Greenwich Unitary Development Plan, 3.2 and 7.14 of the London Plan and inconsistent with paragraphs 109, 120 and 124 of the National Planning Policy Framework (the Framework).

### **Other Matters**

16. Transport for London (TfL), objects to the proposal because in its view the rear elevation of the building would extend too close to the adjoining A102 slip road and might encroach into the infrastructure which supports that structure, and reduce or eliminate the scope for effective maintenance of both the highway and that elevation of the proposed building. Given the extreme proximity of these elements it was unable to provide confidence that the necessary approvals that might be needed to achieve these objectives would be forthcoming.
17. TfL admitted that it had not made similar objections in relation to the hotel proposal which would feature an identical building. Notwithstanding that missed opportunity, it felt obliged to raise the concerns outlined above which flow from what is proposed, and the physical constraints of the site on its north-eastern side where it abuts the very busy A102 slip road.
18. I observed the nature of these concerns on my site visit. The Appellant remained confident that the integrity of both the road infrastructure and the external maintenance of the proposed building and the highway could be assured. It is difficult, from the information made available to me, to reach a firm conclusion on these matters which might prevent or constrain the nature of development planned.
19. Such matters do form worries which I can not be confident of overcoming by the imposition of planning conditions were I minded to allow the appeal. However, it is clear from the reasoning relating to the main issue above that this is not the case. Whilst these concerns may not therefore in their own right be decisive or definitive, they do support my fundamental conclusion that the current proposal is unacceptable for the reasons given.

## **Conclusions**

20. I have found that this proposal, because of the nature and location of the site, its environmental constraints and the nature of the proposed air quality control system, would not provide acceptable living conditions for the future occupants of the building. As such it is in conflict with national planning policy as expressed within the Framework and with the adopted development plan. Planning conditions would not overcome these concerns.
21. This is the decisive factor against the proposal, which is not offset by its attributes, which include delivering an otherwise sustainable form of development within an area identified as having good redevelopment and regeneration potential.
22. For these reasons and having had full regard to all other matters raised, I therefore conclude that this appeal should not succeed.

*Michael Aldous*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Mr J Chana	Cameo Properties
Mr P Walsh	Parsons Brinckerhoff
Ms B Tuckett-Jones	Parsons Brinckerhoff
Mr R Blue	Appellant
Mr R Elshout	AACEurovent Ltd
Mr B Silk	

### **FOR THE COUNCIL**

Ms C Longman	Air Quality Officer Royal Borough of Greenwich
Mr J Paterson	Environmental Protection Royal Borough of Greenwich
Ms K Erifevieme	Planning Officer Royal Borough of Greenwich

### **INTERESTED PERSONS**

Mr K Duguid	Transport for London
Mr M Dresner	Transport for London

### **DOCUMENTS SUBMITTED AT THE HEARING**

Document 1	Appellant's Costs Application.
Document 2	Council's Costs Application Rebuttal.